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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 76 Friday,

No. 251 December 30, 2011

Pages 82075–82420

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

RIN 0560–AH97

Highly Erodible Land and Wetland Conservation

AGENCY: Office of the Secretary and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: Existing Department of Agriculture (USDA) regulations specify the conditions that may make a producer ineligible for certain USDA benefits, such as disaster assistance payments from the Farm Service Agency (FSA), in certain cases in which agricultural commodities are planted on highly erodible land or a converted wetland, or the production of agricultural commodities on acreage is made possible by the conversion of a wetland. Those regulations also specify the authorized exemptions, which include an exemption based on a ''good faith'' determination. The ''good faith'' provisions in the USDA regulations allow violators of highly erodible land conservation (HELC) or wetland conservation (WC) provisions to retain eligibility for USDA program benefits if certain conditions are met. This rule revises the ''good faith'' provisions in two ways, first, by requiring higher level concurrence within USDA with the good faith determination and second, by reducing the amount of the benefit to be received in an amount commensurate with the seriousness of a HELC violation. These changes to the regulations are made to implement provisions specified in the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill).

DATES: *Effective Date:* December 30, 2011.

FOR FURTHER INFORMATION CONTACT: Candace Thompson, Production, Emergencies and Compliance Division, Farm Service Agency, United States Department of Agriculture (USDA); telephone: (202) 720–3463. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

USDA regulations specifying the conditions that may make a producer ineligible for certain USDA benefits, such as disaster assistance payments from FSA, in certain cases in which agricultural commodities are planted on highly erodible land or a converted wetland, or production of agricultural commodities on acreage is made possible by the conversion of a wetland, are in 7 CFR part 12, ''Highly Erodible Land and Wetland Conservation.'' The regulations have been in place since the implementation of the requirements in the Food Security Act of 1985 (Pub. L. 99–198, commonly known as the 1985 Farm Bill). The 1985 Farm Bill provides restrictions applicable to participants in certain USDA programs on the use of highly erodible land and wetlands. Participants are ineligible for certain loans, payments, and benefits for the production of an agricultural commodity on highly erodible land unless the land is farmed according to a conservation system approved by USDA's Natural Resources Conservation Service (NRCS). Participants are similarly ineligible for benefits if they convert a wetland to make possible the production of an agricultural commodity or plant an agricultural commodity on a converted wetland. Under the HELC and WC provisions of the 1985 Farm Bill, persons determined to be in violation of HELC or WC provisions are ineligible for certain loans, payments, and benefits in the year that the violation occurred. Persons who violate HELC or WC provisions remain ineligible for certain loans, payments, and benefits until corrective actions have been implemented on the highly erodible land or the converted wetland has been restored. This rule is not changing these HELC and WC provisions.

The 1985 Farm Bill and the current regulations provide some exemptions to the requirements of the HELC and WC provisions and allow USDA flexibility in helping producers achieve compliance. Eligibility for loans, payments, and benefits may be reinstated if one of the exemptions authorized by the 1985 Farm Bill and implemented in the current regulations applies. One of those exemptions applies to persons who failed to apply a conservation system on highly erodible land, or who converted wetlands or planted an agricultural commodity on a converted wetland but who acted in good faith and without intent to violate HELC or WC provisions. These exemptions are specified in § 12.5, ''Exemptions.''

Prior to the 2008 Farm Bill, the HELC and WC provisions in 16 U.S.C. 3812 and 3822 allow for a good faith exemption to the program ineligibility that would otherwise apply in the case of a violation. Section 2002 of the 2008 Farm Bill amends the ''good faith'' provisions by requiring additional review for determinations for both HELC and WC matters and by changing the HELC provisions to provide that in all cases the Secretary can impose a payment reduction commensurate with the seriousness of the violation. Under prior law in some cases the Secretary was required to automatically fully allow program benefits. With respect to review, the 2008 Farm Bill specifies that local HELC and WC good faith determinations must be reviewed within the agency. Specifically, under the new process, the good faith determinations made by a local FSA county committee must be reviewed at the FSA State or district level, with the technical concurrence of the NRCS State or area level conservationist, before benefits are restored.

These new provisions have been implemented administratively to be in compliance with the 2008 Farm Bill requirements, and this rule changes the regulations accordingly.

In addition to making these changes, this rule revises several paragraphs in the regulation to simplify the structure and to clarify the language, without changing the substantive provisions. Additionally, this rule makes a minor, technical change by adding the word ''acreage'' in the paragraphs on wetland mitigation, so that the rule will now

require that wetland values, acreage, and functions are adequately mitigated. (**Note:** The remaining uses of the term ''functions and values'' in 7 CFR part 12 are correct and do not need to be changed.) That change is made to be consistent with section 1222(f)(2) of the 1985 Farm Bill, (16 U.S.C. 3822(f)). The change is being made in the following paragraphs:

- Section 12.1(b)(4),
- Section 12.4(c),
- Section 12.5(b)(1)(iii)(D), (b)(1)(vi)(A), (b)(1)(vi)(B), and (b)(4)(i), (b)(4)(i)(E), (b)(4)(i)(F), (b)(4)(ii), and(b)(4)(iii),
- Section 12.31(d) (in the final sentence only), and
- Section 12.33(a).

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553) as specified in section 2904 of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Orders 12866 and 13563

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

The Office of Management and Budget (OMB) designated this rule as not significant according to Executive Order 12866, and, therefore, this rule has not been reviewed by OMB.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Secretary of Agriculture, FSA, and CCC are not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The specific changes required by the 2008 Farm Bill that are identified in this rule are considered administrative in nature, solely amending those provisions in the USDA regulations dealing with HELC and WC violators and the retention of USDA program benefits. Therefore, FSA has determined that NEPA does not apply to this final rule, and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule, appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule does not impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not preempt Tribal law. This rule was included in the October through December, 2010, Joint Regional Consultation Strategy facilitated by USDA that consolidated consultation efforts of 70 rules from the 2008 Farm Bill. USDA sent senior level agency staff to seven regional locations and consulted with Tribal leadership in each region on the rules. When the consultation process is complete, USDA will analyze the feedback and then incorporate any required changes into the regulations.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4). In addition, the Secretary of Agriculture is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

This rule has a potential impact on participants in most programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 2904 of the 2008 Farm Bill, which provides that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 12

Administrative practice and procedure, Loan programs—Agriculture, Price support programs, Reporting and recordkeeping requirements, Soil conservation.

For the reasons explained above, 7 CFR part 12 is amended as follows:

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

■ 1. The authority citation for 7 CFR part 12 is revised to read as follows:

Authority: 16 U.S.C. 3801, 3812, and 3822(h).

§ 12.3 [Amended]

■ 2. Amend § 12.3, in paragraph (a), by removing the words ''Virgin Island'' and adding, in their place, the words ''Virgin Islands.''

§ 12.4 [Amended]

■ 3. Amend § 12.4, in paragraph (d)(2), by removing the words ''or highly erodible land'' and adding, in their place, the words ''on highly erodible land.''

■ 4. Amend § 12.5 as follows:

■ a. Revise paragraph (a)(5) to read as set forth below,

■ b. Add paragraph (a)(7) to read as set forth below,

■ c. Revise paragraph (b)(5)(i) to read as set forth below.

§ 12.5 Exemption.

(a) * * *

(5) *Good faith.* (i) No person will become ineligible under § 12.4 as a result of the failure of such person to apply a conservation system on highly erodible land if all of the following apply:

(A) FSA determines such person has acted in good faith and without the intent to violate the provisions of this part;

(B) NRCS determines that the person complies with paragraph (a)(5)(ii) of this section; and

(C) The good faith determination of the FSA county or State committee has been reviewed and approved by the applicable State Executive Director, with the technical concurrence of the State Conservationist; or district director, with the technical concurrence of the area conservationist.

(ii) A person who otherwise meets the requirements of paragraphs (a)(5)(i)(A) and (a)(5)(i)(C) of this section will be allowed a reasonable period of time, as determined by NRCS, but not to exceed one year, during which to implement the measures and practices necessary to be considered actively applying the person's conservation plan, as determined by USDA. If a person does not take the required corrective actions, the person may be determined to be ineligible for the crop year during which such actions were to be taken, as well as any subsequent crop year.

(iii) Notwithstanding the good-faith requirements of paragraph (a)(5)(i) of this section, if NRCS observes a possible compliance deficiency while providing on-site technical assistance, NRCS will provide to the responsible person, not later than 45 days after observing the possible violation, information regarding actions needed to comply with the plan and this subtitle. NRCS will provide this information in lieu of reporting the observation as a violation, if the responsible person attempts to correct the deficiencies as soon as practicable, as determined by NRCS, after receiving the information, but not later than one year after receiving the information. If a person does not take the required corrective actions, the person may be determined to be ineligible for the crop year during which the compliance deficiencies occurred, as well as any subsequent crop year.

(iv) A person who meets the requirements of paragraphs (a)(5)(i) and (a)(5)(ii) of this section will, in lieu of the loss of all benefits specified under § 12.4(d) and (e) for such crop year, be subject to a reduction in benefits by an amount commensurate with the seriousness of the violation, as determined by FSA. The dollar amount of the reduction will be determined by FSA and may be based on the number of acres and the degree of erosion hazard for the area in violation, as determined by NRCS, or upon such other factors as FSA determines appropriate.

(v) Any person whose benefits are reduced in a crop year under paragraph (a)(5) of this section may be eligible for all of the benefits specified under § 12.4(d) and (e) for any subsequent crop year if, prior to the beginning of the subsequent crop year, NRCS determines that such person is actively applying a conservation plan according to the schedule specified in the plan on all highly erodible land planted to an agricultural commodity or designated as conservation use.

* * * * *

(7) *Technical and minor violations.* Notwithstanding any other provisions of this part, a reduction in benefits in an amount commensurate with the seriousness of the violation, as determined by FSA, and consistent with paragraph (a)(5)(iv) of this section, will be applied if NRCS determines that a violation involving highly erodible land that would otherwise lead to a loss of benefits is both of the following:

(i) Technical and minor in nature; and

(ii) Has a minimal effect on the erosion control purposes of the conservation plan applicable to the land on which the violation occurred.

(b) * * *

(5) *Good faith violations.* (i) A person who is determined under § 12.4 of this part to be ineligible for benefits as the result of the production of an agricultural commodity on a wetland converted after December 23, 1985, or as the result of the conversion of a wetland after November 28, 1990, may regain eligibility for benefits if all of the following apply:

(A) FSA determines that such person acted in good faith and without the intent to violate the wetland provisions of this part; and

(B) NRCS determines that the person is implementing all practices in a mitigation plan within an agreed-to period, not to exceed one year; and

(C) The good faith determination of the FSA county or State committee has been reviewed and approved by the applicable State Executive Director, with the technical concurrence of the State Conservationist; or district director, with the technical concurrence of the area conservationist.

* * * * *

■ 5. In addition to the amendments set forth above, in the following places in part 12 remove the words ''functions and values'' and add in their place the words ''values, acreage, and functions'':

■ a. § 12.1(b)(4),

■ b. § 12.4(c) each time it appears,

■ c. § 12.5(b)(1)(iii)(D), (b)(1)(vi)(A), (b)(1)(vi)(B), and (b)(4)(i) introductory text, (b)(4)(i)(E), (b)(4)(i)(F), (b)(4)(ii), and(b)(4)(iii).

■ d. § 12.31(d) in the final sentence only, and

■ e. § 12.33(a).

Dated: December 16, 2011.

Thomas J. Vilsack,

Secretary.

[FR Doc. 2011–33547 Filed 12–29–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 303, 317, 319, and 381

[Docket No. FSIS–2011–0024]

RIN 0583–AB02

Food Ingredients and Sources of Radiation Listed or Approved for Use in the Production of Meat and Poultry Products; Technical Amendment

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This document contains technical amendments to the final labeling regulations that were published in the **Federal Register** on December 23, 1999. The regulations related to harmonizing and improving the efficiency of the procedures used by the Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) for reviewing and listing the food ingredients and sources of radiation listed or approved for use in the production of meat and poultry products.

DATES: December 30, 2011.

FOR FURTHER INFORMATION CONTACT: Victoria Levine, Program Analyst, Policy Issuance Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720–5627; Fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are the subject of these technical amendments were published on December 23, 1999, in a final rule titled ''Food Ingredients and Sources of Radiation Listed or Approved for Use in the Production of Meat and Poultry Products'' (64 FR 72168). Among other things, this final rule consolidated various existing regulations on food ingredients and sources of radiation into a single new part, 9 CFR part 424, applicable to both meat and poultry establishments. Specifically, it combined the separate listings of food ingredients approved for use in meat and poultry products contained in 9 CFR 318.7 and 9 CFR 381.147 into a single table (9 CFR 424.21(c)). FSIS then removed §§ 318.7 and 381.147 from the meat and poultry products inspection regulations. The Agency did not, however, replace all of the references to §§ 318.7 and 381.147 contained in the meat and poultry product inspection regulations with a reference to § 424.21(c), the correct citation.

As published, the final regulations contain this error in several locations and thus needs to be corrected. Therefore, FSIS is replacing all references to §§ 318.7 and 381.147 contained in the meat and poultry product inspection regulations with a reference to the correct section, § 424.21(c).

List of Subjects in 9 CFR Parts 303, 317, 319, and 381

Food grades and standards, Food labeling, Food packaging, Meat inspection, Poultry products.

Accordingly, 9 CFR parts 303, 317, 319, and 381 are corrected by making the following correcting amendments:

PART 303—EXEMPTIONS

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

■ 2. In § 303.1, revise paragraph (b)(1) of to read as follows:

§ 303.1 Exemptions.

* * * * *

(b)(1) The exempted custom prepared products shall be prepared and handled in accordance with the provisions of §§ 318.5, 318.6, 318.10, 381.300 through 318.311 of this subchapter and § 424.21 of subchapter E, and shall not be adulterated as defined in paragraph 1(m) of the Act. The provisions of §§ 318.5, 318.6, 318.10, and 318.300 through 318.311 related to inspection or supervision of specified activities or other action by an inspection program employee and the provisions of § 318.6(b)(9) and (10) shall not apply to the preparation and handling of such exempted products.

* * * * *

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

■ 3. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 4. In § 317.2, revise paragraph (f)(1)(vi)(B) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f) * * *

(1) * * *

(vi) * * *

(B) Such ingredients may be adjusted in the product formulation without a change being made in the ingredients statement on the labeling, provided that the adjusted amount complies with part 319 of this subchapter and with § 424.21 of subchapter E, and does not exceed the amount shown in the quantifying statement. Any such adjustments to the formulation shall be provided to the inspector-in-charge.

* * * * *

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

■ 5. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 6. In § 319.181, revise the second and third sentences to read as follows:

§ 319.181 Cheesefurters and similar products.

* * * They may contain binders and extenders as provided in § 424.21(c) of subchapter E. Limits on use as provided in § 424.21 are intended to be exclusive of the cheese constituent. * * *

■ 7. In § 319.281, revise the first sentence of paragraph (b)(9) to read as follows:

§ 319.281 Bockwurst.

* * * * *

(b) * * *

(9) Binders and extenders may be added as provided in § 424.21(c) of subchapter E. * * *

* * * * *

■ 8. R In § 319.300, revise the last sentence to read as follows:

§ 319.300 Chili con carne.

* * * The mixture may contain binders and extenders as provided in § 424.21(c) of subchapter E.

■ 9. In § 319.301, revise the last sentence to read as follows:

§ 319.301 Chili con carne with beans.

* * * The mixture may contain binders and extenders as provided in § 424.21(c) of subchapter E.

■ 10. In § 319.306, revise the last sentence to read as follows:

§ 319.306 Spaghetti with meatballs and sauce, spaghetti with meat and sauce, and similar products.

* * * Meatballs may be prepared with farinaceous material and with other binders and extenders as provided in § 424.21(c) of subchapter E.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 11. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

■ 12. In § 381.118, revise the first sentence in paragraph (a)(2)(ii) to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(a) * * *

(2) * * *

(ii) Such ingredients may be adjusted in the product formulation without a change being made in the ingredients statement on the labeling, provided that the adjusted amount complies with subpart P of this part and § 424.21(c) of subchapter E, and does not exceed the amount shown in the quantifying statement. * * *

* * * * *

■ 13. In § 381.129, revise paragraph (d) to read as follows:

§ 381.129 False or misleading labeling or containers.

* * * * *

(d) When sodium alginate, calcium carbonate, lactic acid, and calcium lactate are used together in a dry binding matrix in ground or formed poultry products, as permitted in

§ 424.21(c) of subchapter E, there shall appear on the label contiguous to the product name a statement to indicate the use of sodium alginate, calcium carbonate, lactic acid, and calcium lactate.

* * * * *

■ 14. In § 381.133,revise paragraph (b)(9)(xviii) to read as follows:

§ 381.133 Generically approved labeling.

* * * * *

(b) * * *

(9) * * *

(xviii) Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominance shown on the label, provided that the change in the quantity of ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in subpart P of this part and § 424.21(c) of subchapter E;

* * * * *

Done in Washington, DC, on December 23, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–33427 Filed 12–29–11; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AI81

[NRC–2010–0131]

AP1000 Design Certification Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to certify an amendment to the AP1000 standard plant design. The amendment replaces the combined license (COL) information items and design acceptance criteria (DAC) with specific design information, addresses the effects of the impact of a large commercial aircraft, incorporates design improvements, and increases standardization of the design. This action is necessary so that applicants or licensees intending to construct and operate an AP1000 design may do so by referencing this regulation (AP1000 design certification rule (DCR)), and need not demonstrate in their applications the safety of the certified design as amended. The applicant for this amendment to the AP1000 design is Westinghouse Electric Company, LLC (Westinghouse).

DATES: The effective date of this rule is December 30, 2011. The incorporation by reference of certain material specified in this regulation is approved by the Director of the Office of the Federal Register as of December 30, 2011. The applicability date of this rule for those entities who receive actual notice of this rule is the date of receipt of this rule.

ADDRESSES: You can access publicly available documents related to this action (see Section VI. Availability of Documents) using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

• *Federal Rulemaking Web site:* Public comments and supporting materials related to this final rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0131. Address questions and concerns regarding NRC dockets to Carol Gallagher; telephone at (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Serita Sanders, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at (301) 415–2956; email: *serita.sanders@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Analysis of Public Comments on the AP1000 Proposed Rule
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I. Background

Title 10 of the Code of Federal Regulations (10 CFR), Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' Subpart B, presents the process for obtaining standard design certifications. Section 52.63, ''Finality of standard design certifications,'' provides criteria for determining when the Commission may amend the certification information for a previously certified standard design in response to a request for amendment from any person.

The NRC originally approved the AP1000 design certification in a final rule in 2006 (71 FR 4464; January 27, 2006). The final AP1000 DCR incorporates by reference Revision 15 of the design control document (DCD) (ADAMS Accession No. ML053460400), which describes the AP1000 certified design. During its initial certification of the AP1000 design, the NRC issued a final safety evaluation report (FSER) for the AP1000 as NUREG–1793, ''Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design,'' in September 2004 (ADAMS Accession No. ML043570339) and Supplement No. 1 to NUREG–1793 (ADAMS Accession No. ML053410203).

From March 2006 through May 2007, NuStart Energy Development, LLC (NuStart) [1] and Westinghouse provided the NRC with a number of technical reports (TRs) for pre-application review of a possible amendment to the approved AP1000 certified design, in order to: (1) close specific, generically applicable COL information items (information to be supplied by COL

[1] The NuStart member companies are: Constellation Generation Group, LLC, Duke Energy Corporation, EDF-International North America, Inc., Entergy Nuclear, Inc, Exelon Generation Company, LLC, Florida Power and Light Company, Progress Energy, and Southern Company Services, Inc.

applicants/holders) in the AP1000 certified standard design; (2) identify standard design changes resulting from the AP1000 detailed design efforts; and (3) provide specific standard design information in areas or for topics where the AP1000 DCD was focused on the design process and acceptance criteria. TRs typically addressed a topical area (*e.g.,* redesign of a component, structure or process) and included the technical details of a proposed change, design standards, analyses and justifications as needed, proposed changes to the DCD, and Westinghouse's assessment of the applicable regulatory criteria (*e.g.,* the assessment of the criteria in 10 CFR part 52, Appendix D, Section VIII, ''Processes for Changes and Departures''). The NRC identified issues associated with the TRs and engaged Westinghouse in requests for additional information and meetings during the pre-application phase to resolve them.

On May 26, 2007, Westinghouse submitted, via transmittal letter (ADAMS Accession No. ML071580757), an application to amend the AP1000 DCR. The application included Revision 16 of the DCD (ADAMS Accession No. ML071580939). This application was supplemented by letters dated October 26 (ADAMS Accession No. ML073120415), November 2 (ADAMS Accession No. ML073090471), and December 12, 2007 (ADAMS Accession No. ML073610541), and January 11 (ADAMS Accession No. ML080150513) and January 14, 2008 (ADAMS Accession No. ML080220389). The application noted, in part, that:

(1) Generic amendments to the design certification, including additional design information to resolve DAC and design-related COL information items, as well as design information to make corrections and changes, would result in further standardization and improved licensing efficiency for the multiple COL applications referencing the AP1000 DCR that were planned for submittal in late 2007 and early 2008.

(2) Westinghouse, in conjunction with NuStart, has been preparing TRs since late 2005. These TRs were developed with input, review, comment, and other technical oversight provided by NuStart members, including the prospective AP1000 COL applicants. Submittal of these TRs to the NRC was initiated in March 2006. The TRs contain discussion of the technical changes and supplemental information that is used to support the detailed information contained in the DCD.

In Attachment 2 to the May 26, 2007, application, Westinghouse identified the criteria of 10 CFR 52.63(a)(1) that apply to the changes described in each TR and associated COL information items, if applicable.

On January 18, 2008, the NRC notified Westinghouse that it accepted the May 26, 2007, application, as supplemented, for docketing (Docket No. 52–006) and published a notice of acceptance (ADAMS Accession No. ML073600743) in the **Federal Register** (73 FR 4926; January 28, 2008). On September 22, 2008, Westinghouse submitted Revision 17 to the AP1000 DCD. Revision 17 contained changes to the DCD that had been previously accepted by the NRC in the course of its review of Revision 16 of the DCD. In addition, Revision 17 proposed changes to DAC in the areas of piping design (Chapter 3), instrumentation and control (I&C) systems (Chapter 7) and human factors engineering (HFE) (Chapter 18).

The NRC issued guidance on the finalization of design changes in Interim Staff Guidance (ISG) DC/COL–ISG–011, ''Finalizing Licensing-basis Information,'' (ADAMS Accession No. ML092890623), which describes various categories of design changes that should not be deferred and those that should be included in the DCR.

By letter dated January 20, 2010, Westinghouse submitted a list of design change packages that would be included in Revision 18 of the AP1000 DCD (ADAMS Accession No. ML100250873). A number of subsequent submittals were made by Westinghouse to narrow the focus of those design changes to the categories of changes that should not be deferred, as recommended by DC/COL–ISG–011.

Revision 18 to the AP1000 DCD (ADAMS Accession Nos. ML103480059 and ML103480572) was submitted on December 1, 2010, and contains both proposed changes previously described in the design change packages and changes already accepted by the NRC in the review process of Revision 17 to the AP1000 DCD.

In the course of its ongoing review of the amendment application, the NRC determined that changes from information in Revision 15 to the DCD were needed. In response to NRC questions, Westinghouse proposed such changes. Once the NRC was satisfied with these DCD markups, they were documented in the advance safety evaluation report (SER) as confirmatory items (CIs). The use of CIs is restricted to cases where the NRC has reviewed and approved specific DCD proposals. With the review of Revision 18, the NRC has confirmed that Westinghouse has made those changes to the DCD accepted by the NRC that were not addressed in Revision 17 to the AP1000 DCD. For the final rule, the NRC has completed the review of the CIs and prepared a FSER reflecting that action. The CIs were closed based upon an acceptable comparison between the revised DCD text and the text required by the CI. As further discussed later, Revision 19 is the version being certified in the final rule.

In order to simplify the NRC's review of the design change documentation, and to simplify subsequent review by the NRC's Advisory Committee on Reactor Safeguards (ACRS), the design changes pursuant to DC/COL–ISG–011 are reviewed in a separate chapter (Chapter 23) of the FSER. This chapter indicates which areas of the DCD are affected by each design change and the letters from Westinghouse that submitted them. In some cases, the NRC's review of the design changes reviewed in Chapter 23 may be incorporated into the chapters of the FSER where this material would normally be addressed because of the relationship between individual design changes and the review of prior DCD changes from Revisions 16 and 17 of the DCD.

The Westinghouse Revision 18 DCD includes an enclosure providing a cross-reference to the DCD changes and the applicable 10 CFR 52.63(a)(1) criteria. Revision 17 provides a similar cross-reference within the September 22, 2008, Westinghouse letter for those changes associated with the revised DCD. Revision 16, on the other hand, uses TRs to identify the DCD changes and lists the corresponding applicable 10 CFR 52.63(a)(1) criteria via Westinghouse letter, dated May 26, 2007 (Table 1). Revision 19 has a cross-reference similar to Revisions 17 and 18.

As of the date of this document, the application for amendment of the AP1000 design certification has been referenced in the following COL applications:

Vogtle, Units 3 and 4	Docket No. 05200025/6	73 FR 33118.
Bellefonte Nuclear Station, Units 3 and 4	Docket Nos. 05200014/5	73 FR 4923.
Levy County, Units 1 and 2	Docket Nos. 05200029/30	73 FR 60726.
Shearon Harris, Units 2 and 3	Docket Nos. 05200022/3	73 FR 21995.
Turkey Point, Units 6 and 7	Docket Nos. 05200040/1	74 FR 51621.

Virgil C. Summer, Units 2 and 3	Docket Nos. 05200027/8	73 FR 45793.
William States Lee III, Units 1 and 2	Docket Nos. 05200018/9	73 FR 11156.

II. Summary of Analysis of Public Comments on the AP1000 Proposed Rule

A. Overview of Public Comments

The NRC published the proposed rule amending the AP1000 DCR in the **Federal Register** on February 24, 2011 (76 FR 10269). The public comment period for the proposed rule closed on May 10, 2011. The NRC received a large number of comment submissions for the proposed rule (AP1000 rulemaking) from members of the public, non-governmental organizations, and the nuclear industry. A comment submission means a communication or document submitted to the NRC by an individual or entity, with one or more distinct comments addressing a subject or an issue. A comment, on the other hand, refers to statements made in the submission addressing a subject or issue.

The NRC received more than 13,500 comment submissions, which appear to be variations of two letters with largely similar content. These comment submissions also contained approximately 100 separate comments. The NRC also received 66 additional comment submissions containing over 100 comments. Finally, the NRC received four ''petitions'' to suspend or terminate this rulemaking, which are being treated as public comments. The petitions set forth approximately 39 comments. As stated in the proposed rule, ''Comments received after May 10, 2011 will be considered if it is practical to do so, but assurance of consideration of comments received after this date cannot be given.'' The NRC determined that it was practical to consider comment submissions received on or before June 30, 2011. Five of the comment submissions were received after the 75-day comment period closed, and the NRC has addressed these late-filed comment submissions as part of this final rule (the numbers above reflect those late-filed comments, which were deemed practical to consider). These late comment submissions consisted of one petition, two submissions requesting the NRC to reconsider comments made during the initial AP1000 DC rulemaking, and two submissions with supplemental information to support suspending this rulemaking. The NRC also received several comment submissions after June 30, 2011. The NRC deemed that it was not practical to consider, in this rulemaking, comments received after June 30, 2011 and, therefore, does not provide responses to those comments. The NRC has briefly reviewed them to ensure that they contain no health and safety matters.

There were several commenters in favor of completing the AP1000 rulemaking, while some were unconditionally opposed to completing the proposed amendment to the AP1000 design. The vast majority of commenters favored delaying (in some fashion) the AP1000 amendment rulemaking until lessons are learned from the Fukushima Daiichi Nuclear Power Plant (Fukushima) accident that occurred on March 11, 2011, and the NRC applies the lessons learned to U.S. nuclear power plants, including the AP1000 design.

Before responding to specific comments based upon the Fukushima Daiichi Nuclear Power Plant Event, the NRC is providing this discussion about the ongoing actions underway in response to this event. The Commission created a Near-Term Task Force (NTTF) to conduct an analysis of the lessons that can be learned from the event. The task force was established to conduct a systematic and methodical review of NRC processes and regulations to determine whether the NRC should make additional improvements to its regulatory system. The NTTF issued a report (ADAMS Accession No. ML111861807) evaluating currently available technical and operational information from the event, and presented a set of recommendations to the Commission. The task force concluded that continued operation and continued licensing activities do not pose an imminent risk to public health and safety. Among other recommendations, the NTTF supports completing the AP1000 design certification rulemaking activity without delay (see pages 71–72 of the report).

In an August 19, 2011, Staff Requirements Memoranda (SRM) (ADAMS Accession No. ML112310021), the Commission set forth actions related to the NTTF report together with a schedule for the conduct of those actions. Two of those actions have been completed and are documented in the following reports: ''Recommended Actions to Be Taken Without Delay from the Near-Term Task Force Report,'' September 9, 2011 (SECY–11–0124) (ADAMS Accession No. ML11245A127) and ''Prioritization of Recommended Actions To Be Taken In Response to Fukushima Lessons Learned,'' October 3, 2011 (SECY–11–0137) (ADAMS Accession No. ML11269A204).

The NTTF recommendations relevant to the AP1000 design certification are limited to: Seismic and flooding protection (Recommendation 2); mitigation of prolonged station blackout (Recommendation 4); and enhanced instrumentation and makeup capability for spent fuel pools (Recommendation 7). The task force concluded that, by the nature of its passive design and inherent 72-hour coping capability, the AP1000 design has many of the features and attributes necessary to address the Task Force recommendations, and the NRC concludes that no changes to the AP1000 DCR are required at this time. Moreover, even if the Commission concludes at a later time that some additional action is needed for the AP1000, the NRC has ample opportunity and legal authority to modify the AP1000 DCR to implement NRC-required design changes, as well as to take any necessary action to ensure that holders of COLs referencing the AP1000 also make the necessary design changes.

The NRC organized the comments on the AP1000 amendment into the following subject areas: Fukushima-related, shield building, containment, severe accident mitigation design alternative (SAMDA), spent fuel, environmental, other AP1000 topics, and general concerns. Some comments opposed the AP1000 rulemaking until purported shield building flaws are corrected. Many comments opposed completing the AP1000 rulemaking for reasons outside the scope of this rulemaking. For example, many comments opposed the completion of the AP1000 rulemaking until there is resolution of high level radioactive waste storage issues.

Due to the large number of comments received and the length of the NRC responses provided, this section of the statement of considerations (SOC) for the final rule amending the AP1000 design certification only provides a summary of the categories of comments with a general description of the resolution of those comments. A detailed description of comments and the NRC's response is contained in a comment response document, which is available electronically through ADAMS Accession No. ML113480018.

B. Description of Key Structures of the AP1000 Design

This section is provided to help readers understand the issues and the NRC's responses. The following is a brief description of the three design features that were commented on, and a summary of the design changes that are being approved by the AP1000 amendment.

Containment

The containment vessel is a single steel pressure vessel, inside which is located the reactor vessel with the nuclear fuel, the steam generators, the refueling water storage tank, and various equipment for power generation, refueling, and emergency response, and supporting electric power, control, and communications equipment.

The steel containment building stands independently inside the shield building. The containment's primary purpose is to retain pressure up to the maximum ''design pressure'' should an accident occur in which the reactor vessel or associated equipment releases reactor coolant into the containment atmosphere. The containment also acts as the passive safety-grade interface to the ultimate heat sink.

The primary containment vessel prevents the uncontrolled release of radioactivity to the environment. The AP1000 primary containment consists of a cylindrical steel shell with ellipsoidal upper and lower heads. The steel thickness is increased in the transition region where the cylindrical shell enters the foundation concrete to provide additional margin in consideration of corrosion.

Safety-related coatings are applied to both the interior and exterior surfaces of the containment vessel. These coatings have several functions. For the exterior surface, the corrosion-resistant paint or coating for the containment vessel is specified to enhance surface wetability and film formation, as well as for corrosion protection. Wetability and film formation are important to the passive cooling function. For the interior containment surfaces, the coatings are designed to remain intact within the zone-of-influence of any postulated pipe break (or to result in settling of any resultant debris) to facilitate heat transfer to the containment vessel and for corrosion protection. Periodic inspections are required of the containment internal and external surfaces and of the coatings on those surfaces.

As the interface to the ultimate heat sink (the surrounding atmosphere), the primary containment is an integral component of the passive containment cooling system. The exterior of the containment vessel provides a surface for evaporative film cooling and works in conjunction with the natural draft airflow created by the shield building baffle and chimney arrangement to reduce the pressure and temperature of the containment atmosphere following a design-basis accident (DBA). The source of water for the evaporative cooling is the passive containment cooling water storage tank, located at the top of the shield building.

Design changes within the scope of the amendment with respect to the containment vessel are certain details about coatings with respect to long-term core cooling capability and the calculated peak accident pressure (from correction of errors). Other changes included addition of a vacuum relief system to provide protection for external pressure events.

Shield Building

The shield building performs multiple functions (*e.g.,* to provide a biological shield to high-energy radiation, to support the primary containment cooling water storage tank on the roof, to shield the steel containment from high-velocity debris that may be generated by tornadoes or other natural phenomena, to protect the containment from aircraft impact, and to function as a ''chimney'' to enhance airflow over the primary steel containment to remove heat from the containment and reduce containment pressure in the event that post-accident cooling of the containment would be necessary). While other designs have included shield buildings of reinforced concrete, with the exception of the AP600 design, they did not perform cooling functions. The shield building is not intended to be a pressure retaining structure or to mitigate the effects of a containment failure. The shield building construction is primarily a steel-concrete composite module wall, with a reinforced concrete roof and reinforced concrete where the wall meets the foundation. The wall is appropriately reinforced and sized where the composite wall module joins the reinforced concrete sections and as appropriate to accommodate seismic loads and aircraft loads. This design is new to the amendment; previously the structure was all reinforced concrete.

The shield building and the containment are designed with a gap, or annulus, that ensures that both the shield building and steel containment are physically separate, excluding their foundation, and are considered to be ''freestanding.'' In the shield building, air flows from the environment through openings in the shield building wall. The air then flows down along an interior baffle, turns toward the steel containment vessel, and then rises alongside the steel containment vessel where it absorbs heat. This heated air naturally rises and is then exhausted through the chimney located in the center of the primary containment cooling water storage tank.

Design changes to the passive containment cooling system and shield building principally involve the redesign of the shield building to a steel-composite design, with related changes to air inlet sizing, height of the building, and gratings above the chimney opening. Revised safety analyses were performed to confirm adequate containment pressure control, capability of the shield building to withstand external events (tornado, seismic), as well as aircraft impact assessment. The shield building functions to protect the containment and facilitate passive containment cooling were not changed in the current amendment.

Spent Fuel Pool

The spent fuel pool (SFP) is a safety-related structure that is housed in the auxiliary building, which provides protection from aircraft impact or other external hazards.

For the first 72 hours after loss of normal SFP cooling, including response to a station blackout (SBO) event, the SFP relies upon the natural heat capacity of the water in the pool to absorb the heat from spent fuel elements, and boil the water in the pool. Thus, the safety-related means of heat removal for 72 hours is by heat-up of the volume of water in the pool and in safety-related water sources such as the cask washdown pit. The AP1000 design (as initially certified) included safety-related water level indication with readout and alarm in the main control room. A nonsafety-related spent fuel pool cooling system is also installed. Onsite, protected sources of water are available for up to 7 days, controlled from areas away from the pool. During high heat load conditions in the pool, two sources of alternating current (ac) power are required to be available. Water can be sprayed into the pool from two nozzle headers on opposite sides of the pool. A cross-connection also exists to the residual heat removal system. Those design features needed to provide make-up water after 72 hours and up to 7 days, such as the passive containment cooling water ancillary storage tank, and ancillary diesel generators, are protected from external hazards including the

safe-shutdown earthquake (SSE), tornado, and flooding.

Design changes within the scope of the current amendment are the number of fuel assemblies stored, the rack designs for new and spent fuel storage, the criticality analysis for spent fuel in the pool (including use of boron material attached to the storage cells), installation of spray headers, and credit for additional water sources for pool makeup.

C. Significant Public Comments and Overall NRC Responses

Comment: Many comments noted the NRC staff nonconcurrence on the shield building design and requested that the NRC should reconsider the views expressed in the nonconcurrence.

NRC Response: The NRC disagrees with these comments. Professional opinions may vary, and the NRC has mechanisms in place for making differing views known.

NRC employees can choose to exercise the nonconcurrence process as a way of communicating their views and ensuring their opinions are heard by NRC management. The NRC staff individual who authored the nonconcurrence used this open process to express concerns regarding the safety of the AP1000 shield building design. The specific concerns and staff response to the nonconcurrence are publically available (ADAMS Accession No. ML103370648).

The NRC concluded that the AP1000 shield building design is safe, meets the Commission's regulations, and provides reasonable assurance that the building will remain functional under design-basis loads. The comments did not offer new information on the matters related to the nonconcurrence nor did they include a rationale showing the NRC's resolution of the technical matters raised in the nonconcurrence to be incorrect. No change was made to the final rule, DCD, or environmental assessment (EA) as a result of these comments.

Comment: One comment noted that the spent fuel racks' design in Revision 18 increased the density. The higher density fuel pools require boron shields between stored assemblies to reduce the risk of criticality. The comment stated that such re-racking introduces potential partial loss of cooling water, possible fire of spent fuel assemblies, and release of large inventories of cesium-137 and other radionuclides.

NRC Response: The NRC agrees that, under the proposed amendment of the AP1000 DCR, the capacity of the spent fuel pool racks would be increased from 619 to 889 (rather than 884 as asserted by the comment) fuel assemblies, and that the increased density of fuel assemblies being stored in the spent fuel pool requires the use of boron shields as part of the amendment.

However, the NRC disagrees with this comment's assertion that the increased capacity and density would introduce potential loss of cooling water, resulting in a possible fire of spent fuel assemblies and large releases of radionuclides. The comment did not explain how increased fuel capacity and concomitant increase in density of the spent fuel pool would ''introduce'' potential loss of cooling water as compared with the capacity and density described in DCD Revision 15. The NRC does not believe that the increased capacity and density leads to a new (previously un-described or unconsidered) way of losing spent fuel pool cooling water. The NRC evaluated the proposed increase in fuel assembly capacity and density, and the effectiveness of the Westinghouse-proposed boron shields to ensure against re-criticality of the spent fuel stored in the spent fuel pool. The AP1000 DCD Revision 18 SFP criticality analysis was reviewed following the guidance found in NUREG–0800 Section 9.1.1, Revision 3, ''Criticality Safety of Fresh and Spent Fuel Storage and Handling,'' to ensure that the applicant is in compliance with the applicable regulations (General Design Criterion 62, ''Prevention of Criticality in Fuel Storage and Handling,'' and 10 CFR 50.68, ''Criticality Accident Requirements''). These requirements are generally performance-based with limitations on the reactivity values, and as such, there are no specific physical design requirements such as minimum geometric spacing which must be met. The AP1000 SFP criticality analysis demonstrates that, with the proposed storage arrangement of the SFP, the reactivity requirements are met, and no regulations are violated. Therefore, the NRC determined that that the AP1000 spent fuel pool storage arrangement is acceptable. No change was made to the rule, the DCD, or the EA as a result of this comment.

Comment: Several comments stated that given the recent event at the Fukushima plant in Japan, the 75-day comment period is not adequate and should be extended.

NRC Response: The NRC disagrees with this comment, and believes that the 75-day public comment period, which is consistent with most other NRC technical rulemakings, is adequate. The Commission established a NTTF to review relevant NRC regulatory requirements, programs, and processes, and their implementation, and to recommend whether the agency should make near-term improvements to its regulatory system. The public comment period for the proposed rule on the AP1000 design certification amendment closed on May 10, 2011, and the NTTF issued its report (ML111861807) on July 12, 2011. The NTTF considered the AP1000 design certification amendment in its report and noted that it has passive safety systems. By nature of their passive designs and inherent 72-hour coping capability for core, containment, and spent fuel pool cooling, the AP1000 designs have many of the design features and attributes necessary to address the NTTF recommendations. The NTTF supports completing the AP1000 design certification rulemaking activities without delay.

The NRC believes that the AP1000 final rulemaking can and should proceed without extending the public comment period because: (i) The NRC has determined that the AP1000 design certification amendment meets current regulations; (ii) the NRC will provide an opportunity for the public to provide input on NTTF recommendations, and (iii) if the NRC imposes additional requirements on the AP1000 design, existing regulations already define the process for doing so. No change was made to the rule, the DCD, or the EA as a result of this comment.

Comment: One comment questioned whether the NRC endorsed NQA–1–1994 for work performed for the AP1000 project, where the NRC documented that NQA–1–1994 adequately meets the NRC requirements in the Code of Federal Regulations, and whether the Westinghouse's AP1000 design meets the requirements of 10 CFR Part 50, Appendix B.

NRC Response: The NRC has, in application-specific requests for NRC approval of quality assurance programs, approved the use of NQA–1–1994 as an acceptable method to meet the requirements of Appendix B to 10 CFR Part 50. The NRC's approvals of NQA–1–1994 have been documented in NRC SERs on those requests.

The NRC believes that the AP1000 design meets the requirements of 10 CFR Part 50, Appendix B. By letter dated February 23, 1996 (ADAMS Accession No. ML11280A309), the NRC issued a safety evaluation report approving Revision 1 of the Westinghouse Quality Systems Manual (Westinghouse Quality Assurance (QA) Manual). The Westinghouse QA Manual is based upon the guidance in NQA–1–1994. The NRC found that the Westinghouse QA Manual meets all the

requirements of Appendix B. In addition, the NRC concluded in its FSER for the amendment that Revision 5 of the Westinghouse Quality Systems Manual, as described in the AP1000 Design Control Document, Revision 17, meets the criteria of Appendix B with respect to AP1000 quality assurance. No change was made to the final rule, the DCD, or the EA as a result of this comment.

Comment: Several comments claimed the containment design was flawed because the containment cooling method includes convective air flow and because the steel containment could be subject to corrosion. As a result, they state that Westinghouse has not satisfactorily proved that the thin steel containment shell over the reactor would be effective during severe accidents.

NRC Response: The NRC considers these comments to be outside the scope of the rulemaking amending the AP1000 DCR. These features of the AP1000 design that demonstrate that the containment shell would be effective during severe accident conditions, as well as resistant to corrosion have already been certified with Revision 15. The proposed amendment to the AP1000 design does not propose any modification to these features and, therefore, the comment is outside the scope of this rulemaking.

The NRC considers a single metal containment vessel to be acceptable if it meets the requirements of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section III, Subsection NE. This part of the ASME Code contains requirements for the material, design, fabrication, examination, inspection, testing, and overpressure protection of metal containment vessels. Many such vessels are in use at operating nuclear power plants. The AP1000 containment is designed to meet ASME requirements for a pressure of 6.9 kPa (59 psi) and a temperature of 149 degrees C (300 degrees F). Its thickness includes an allowance for corrosion that may occur over the 60-year design life of the plant.

The AP1000 containment building has an additional function—transferring heat from containment to the atmosphere. The staff has reviewed the applicant's analysis, which shows that the containment building and the shield building, working as a system, would transfer heat to the atmosphere during severe accidents as well as design-basis earthquakes. Experiments were conducted to demonstrate that these predictions are based upon physical phenomena that can be relied upon to work even when there is no ac power. In short, Westinghouse has demonstrated that the containment building is robust and will perform its safety functions effectively if a severe accident occurs at an AP1000 plant.

The commenters did not offer any basis for Westinghouse to revise its design or for the NRC to revise its evaluation. No change was made to the final rule, the DCD, or the EA as a result of these comments.

Comment: Many comments stated that Westinghouse has not proven that the reactor could be properly cooled in conditions similar to those at Fukushima.

NRC Response: The NRC considers these comments to be outside the scope of the rulemaking amending the AP1000 DCR. The Fukushima event involved an extended SBO (loss of offsite and onsite ac power). Westinghouse has shown that the AP1000 includes design features that keep the reactor properly cooled under these conditions. The features of the AP1000 design ensuring that the reactor can be properly cooled in an extended SBO are already part of the certified design for the AP1000, and are not being changed or modified by this final rule amending the AP1000 design. Therefore, these comments are out of scope for this rulemaking.

In addition, even if these comments are assumed to be within the scope of the rulemaking, the NRC disagrees with the comment. If a severe accident occurs, seriously damaging the core, the AP1000 containment can be adequately cooled for 3 days—even if a loss-of-coolant accident (LOCA) occurred and without any ac power—because the AP1000 containment is cooled by gravity-fed water from a tank located at the top of the containment. After 3 days with no ac power, only a small ''ancillary'' generator is needed. This generator is used to power a small pump that re-fills the tank that supplies water to the outside surface of the containment. The generator could be brought to the site; however, in an AP1000 design, two such generators are installed in a seismically qualified structure (along with fuel and supporting equipment). After 1 week, the containment can be cooled indefinitely as long as fuel for at least one ancillary generator is provided and there is water to replenish the water tank above the shield building, as discussed in the DCD.

These comments did not present any basis that would support an NRC determination that the AP1000 design is deficient in this regard. No change was made to the final rule, the DCD, or the EA as a result of these comments.

Comment: Some comments stated that there are significant unresolved technical issues related to Revision 19 changes and that the NRC has not fully disclosed its analysis of these weaknesses, and the existence of such weaknesses is evidenced by the concerns identified by Dr. Susan Sterrett, Mr. Arnie Gundersen of Fairewinds Associates, and Dr. John Ma.

NRC Response: The NRC disagrees with this comment. As discussed in more detail in the comment response document, the NRC concludes these issues were either resolved as part of the initial AP1000 rulemaking, or are resolved as part of this rulemaking. Elsewhere in this notice, NRC discusses the Revision 19 changes and summarizes the response to the other technical issues.

Comment: Many comments expressed views that nuclear power plants are too expensive or too dangerous, or that alternative energy sources should be pursued.

NRC Response: The NRC considers these comments to be outside the scope of the rulemaking amendment the AP1000 DCR. The NRC has concluded that the AP1000 design meets its regulatory requirements, and the comments do not offer any basis that this is not supported. Other issues about expense or alternative energy sources are outside the scope of the rulemaking amending the AP1000 DCR. A design certification rule is not an NRC license or authorization for construction or operation. No change was made to the final rule, the DCD, or the EA as a result of these comments.

Comment: Many comments expressed concerns about nuclear waste.

NRC Response: These comments address matters that are outside the scope of the rulemaking amending the AP1000 DCR. These comments do not address whether the AP1000 design changes, as reflected in the amendment application and evaluated in the NRC's SER and EA, meet the applicable NRC requirements. No change was made to the final rule, the DCD, or the EA as a result of these comments.

III. Discussion

A. Technical Evaluation of Westinghouse Amendment to the AP1000 Design

Westinghouse's request to amend the AP1000 design contained several classes of changes. Each class is discussed below:

Editorial Changes

Westinghouse requested changes to the AP1000 DCD to correct spelling,

punctuation, grammar, designations, and references. None of these changes make substantive changes to the certified design, and NUREG–1793, ''Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design,'' Supplement 2 (SER) does not address these changes.

Changes To Address Consistency and Uniformity

Westinghouse requested changes to the currently-approved AP1000 DCD (Revision 15) to achieve consistency and uniformity in the description of the certified design throughout the DCD. For example, a change to the type of reactor coolant pump (RCP) motor is evaluated in Chapter 5 of the SER on the application for the AP1000 amendment; Westinghouse requested that wherever this RCP motor is described in the DCD, the new description of the changed motor be used. The NRC reviewed the proposed change (to be used consistently throughout the DCD) to ensure that the proposed changes needed for uniformity and consistency are technically acceptable and do not adversely affect the previously approved design description. The NRC's bases for approval of these changes are set forth in the SER for the AP1000 amendment.

Substantive Technical Changes to the AP1000 Design (other than those needed for compliance with the AIA rule)

Among the many technical changes to the currently-approved DCD Revision 15 that are proposed by Westinghouse for inclusion in Revision 19 of the AP1000 DCD, the NRC selected 15 substantive changes for specific discussion in this final rule document, based on their safety significance:

- Removal of HFE DAC from the DCD.
- Change to I&C DAC and Inspections, Tests, Analyses, and Acceptance Criteria (ITAACs).
- Minimization of Contamination.
- Extension of Seismic Spectra to Soil Sites and Changes to Stability and Uniformity of Subsurface Materials and Foundations.
- Long-Term Cooling.
- Control Room Emergency Habitability System.
- Changes to the Component Cooling Water System (CCWS).
- Changes to I&C Systems.
- Changes to the Passive Core Cooling System (PCCS)—Gas Intrusion.
- Integrated Head Package (IHP)—Use of the QuickLoc Mechanism.
- Reactor Coolant Pump Design.
- Reactor Pressure Vessel (RPV) Support System.
- SFP Decay Heat Analysis and Associated Design Changes.
- Spent Fuel Rack Design and Criticality Analysis.
- Vacuum Relief System.

The NRC evaluated each of the proposed changes and concluded that they are acceptable. The NRC's bases for approval of these changes are set forth in the FSER for the AP1000 amendment and are summarized in Section XII, ''Backfitting and Issue Finality,'' of this document, as part of the discussion as to how each of the 15 changes satisfy the criteria in 10 CFR 52.63(a).

Changes To Address Compliance With the AIA Rule

Westinghouse requested changes to the AP1000 design in order to comply with the requirements of the AIA rule, 10 CFR 50.150. The NRC confirmed that Westinghouse has adequately described key AIA design features and functional capabilities in accordance with the AIA rule and conducted an assessment reasonably formulated to identify design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. In addition, the NRC determined that there will be no adverse impacts from complying with the requirements for consideration of aircraft impacts on conclusions reached by the NRC in its review of the original AP1000 design certification. The NRC's bases for approval of these changes are set forth in the FSER for the AP1000 amendment. As a result of these changes, the AP1000 design will achieve the Commission's objectives of enhanced public health and safety and enhanced common defense and security through improvement of the facility's inherent robustness to the impact of a large commercial aircraft at the design stage.

AP1000 Design Control Document Changes Since Revision 18

Introduction

The NRC staff's (staff's) review of DCD Revision 18 (ADAMS Accession No. ML103260072) identified a few areas where the DCD wording should be revised for clarity, to resolve internal inconsistencies, or to provide updated versions of referenced technical reports. In addition, three technical issues were noted: a load combination for the shield building, the method used to evaluate tank sloshing, and containment peak pressure analysis error correction. As a result of these activities, Westinghouse submitted Revision 19 of the DCD on June 13, 2011 (ADAMS Accession No. ML11171A315), and this is the version of the DCD that is being certified by this final rule. The NRC has determined that none of the changes from Revision 18 to Revision 19 of the DCD require an additional opportunity for public comment. These changes, which are organized into five subject areas, are discussed below.

The NRC has also determined, in its review of Revision 19, that three of the five subject areas must be identified as Tier 2* matters in the Section VIII of the final rule. The NRC has determined that none of the three new Tier 2* designations in Section VIII.B.6 of the rule require an additional opportunity for public comment. The bases for the NRC's determinations are set forth below.

DCD Structural Design Information and Shield Building Tier 2* Information

Revision 18 of the DCD moved some design details regarding structures, including the shield building, from supporting Westinghouse documents into the DCD itself. Some of the details were marked as Tier 2*, based upon initial NRC staff comments. For example, information about penetrations was brought out of TR–9 into the DCD, and the shield building structural description was added to Section 3.8.4 in Revision 18.

The advanced final safety evaluation report (AFSER) included a confirmatory item to verify that the DCD appropriately reflected all necessary details regarding the structural design and shield building, and clearly showed which design details were to be Tier 2* (see AFSER Section 3.8.4 under ADAMS Accession No. ML103430502). The staff was able to close the confirmatory item after Westinghouse submitted Revision 19 of the DCD by verifying the appropriate structural details were in the DCD and the design details were identified as Tier 2*. These DCD revisions enhanced the description of the design and were not a result of changes to the design itself. Westinghouse report GLR–603, submitted on March 28, 2011 (ADAMS Accession No. ML110910541), was the nonproprietary version of the report that presented shield building information to be made Tier 2*, in addition to the DCD information separately added to Section 3.8 and Appendix 3H. The scope of the report was materials, connection details, and tie bar spacing.

Use of steel composite modules was the heart of the revised shield building design, including the NRC's determination that existing consensus standards are not techinically applicable in all respects to the analysis for such modules. This was a key factor in the NRC conclusion that design details about the shield building are Tier 2* so

that any future changes to that information by the COL would receive prior staff review and approval. The staff considered the existing rule language as it relates to Tier 2* designation for structural information. For example, the existing rule includes use of ACI–349, definition of critical locations and thicknesses, nuclear island structural dimensions, and design summary of critical sections. Some of the critical sections are within the shield building, and ACI–349 was part of the design criteria. However, the staff concluded, during the course of final rule preparation, that the rule would be more clear if the use of steel composite module details that are designated in the DCD as Tier 2* was explicitly stated in the final rule (at Section VIII.B.6.c) and requested that Westinghouse designate this information at Tier 2* in Revision 19 of the DCD. Westinghouse included this change in Revision 19. As a result of the Tier 2* markings, a conforming change is being made to the final rule language to Section VIII.B.6.c about the categories of Tier 2* information that would expire at fuel load.

The NRC does not believe that the DCD changes or the designation of this information as Tier 2* in the final rule require re-noticing. The material was publicly available in referenced reports, the staff's intention that the composite steel module design be designated Tier 2* was clear at the time of the public comment period, and there were no comments regarding the extent of Tier 2* inclusion in Revision 18.

Implementation of Revision 18 Commitments for the Shield Building

Load Combinations for Shield Building

In the NRC staff's follow-up to an apparent editorial error in a table in the Westinghouse shield building report, the staff determined that Westinghouse had not documented in its calculations the numerical combination of the loads for external temperature conditions (minus 40 degrees F) and a safe-shutdown earthquake (SSE). On April 12, 2011, the staff requested Westinghouse to document in the shield building report the numerical combination of loads for extreme ambient thermal loads and SSE loads, as specified in DCD Table 3.8.4–1 for steel structures and Table 3.8.4–2 for concrete structures. See meeting summary dated May 17, 2011 (ADAMS Accession No. ML111440298). By letter dated June 15, 2011, Westinghouse responded to this request (ADAMS Accession No. ML111950098), and concluded that the current design is acceptable when the load combinations are explicitly analyzed. The analysis results are discussed in detail in Revision 4 of the shield building report. Changes were made to the DCD to reflect the results of this load combination analysis, but the changes did not involve any changes to the methodology or the design of the shield building. The specific DCD changes were the addition of Section 3.8.4.5.5 to discuss the load combination analysis, and updating of tables of results in Appendix 3H. No change to the language of the AP1000 DCR in 10 CFR part 52, Appendix D was made as a result of the DCD changes.

The NRC does not believe these DCD changes require re-noticing because Revision 18 of the DCD stated that the design would be verified using the required load combinations, and these load combinations had previously been approved by the NRC for use in AP1000 analyses similar to those for the shield building elements requiring reanalysis. There was no change to the methodology or the actual design of the shield building was needed, and there was no change to the language of the AP1000 DCR. The also NRC notes that the June 16, 2011 ''petition'' (filed by John Runkle) that requested the NRC terminate the rulemaking specifically raised the three technical issues in Revision 19, including the load combination topic.

Passive Containment Cooling Water Storage Tank

During the analysis of the thermal plus earthquake load combination for the passive containment cooling water storage tank (located on top of the shield building), Westinghouse determined that it had not performed an analysis of hydrodynamic loads using an equivalent static analysis as stated in Westinghouse's response (ADAMS Accession No. ML102650098) to an action item from the NRC's shield building report review (documented in AFSER Chapter 3, ADAMS Accession No. ML103430502). Instead, the analysis had been done by response spectrum analysis. Both the equivalent static method and the response spectrum method had previously been approved by the NRC for use in the AP1000 design for structural analyses as described in Revision 18 of the DCD. This issue was discussed in a May 17, 2011, public meeting (see meeting summary dated May 26, 2011 (ADAMS Accession No. ML111430775)). In response, Westinghouse performed the analysis with the equivalent static method and presented the results in the revised shield building report and in DCD Revision 19 as follows. The use of the equivalent static method for the tank is discussed in Section 3.7 and Appendix 3G, and a table and figure were added to Appendix 3H. The revised shield building report included the results of the load combination for the containment cooling water storage tank using the equivalent static analytical method, which demonstrated that the design remained adequate when evaluated using the equivalent static analytical method. No change to the language of the AP1000 DCR in 10 CFR Part 52, Appendix D was made as a result of the DCD changes.

The NRC does not believe these DCD changes require renoticing. Revision 18 of the DCD stated that the design would be verified through the use of the equivalent static method, and that method had been previously approved by the NRC for AP1000 analyses equivalent to that peformed for the containment cooling water tank. No change to the actual design of the tank was needed, and there was no change to the language of the AP1000 DCR. The NRC also notes that one of the petitions (dated June 16, 2011) that the NRC is responding to in the comment response document specifically raised this issue and the NRC has provided an answer similar to that described above.

Debris Limits

In its December 20, 2010, letter on long-term core cooling (ADAMS Accession No. ML103410348), the ACRS concluded that the regulatory requirements for long-term core cooling for design-basis accidents have been adequately met, based on cleanliness requirements specified in the amendment. In particular, the amount of latent debris that might be present in the containment is an important parameter. The ACRS further stated that any future proposed relaxation of the cleanliness requirements will require substantial additional data and analysis. In their January 24, 2011, (ADAMS Accession No. ML110170006) report on the Vogtle COL application, which references the AP1000 design, the ACRS recommended that the containment interior cleanliness limits on latent debris should be included in the Technical Specifications (TSs) for the Vogtle plant.

In a letter dated February 23, 2011 (ADAMS Accession No. ML110590455), Westinghouse proposed DCD markups to designate information in Section 6.3 including debris sources such as latent debris (and the amount of fiber) as Tier 2*. Revision 19 of the DCD includes changes to mark selected information as Tier 2*.

The NRC made a conforming change to the final rule language to provide a new item as Section VIII.B.6.b(7), ''Screen design criteria,'' for this new type of Tier 2* information. The NRC believes that inclusion of debris limits in the AP1000 DCD as Tier 2* information, rather than including such limits in each plant referencing the AP1000, represents a better regulatory approach for achieving the intent of the ACRS. Inclusion of debris limits in the AP1000 and its designation as Tier 2* would ensure that there is consistency across all referencing plants with repect to debris control, and ensures NRC regulatory control of any future relaxations of the limits, as discussed in the staff's March 3, 2011, response to the ACRS (ADAMS Accession No. ML110350198).

The NRC does not believe that this change to the DCD marking or to the final rule language requires renoticing because the ACRS letter, the staff response, and the Westinghouse letter, were all publicly available during the comment period, and the public had a fair opportunity to comment on this matter. In this regard, the staff notes that the April 6, 2011, ''petition'' (filed by John Runkle) that requested the NRC to suspend the AP1000 amendment rulemaking, included discussion about this topic with specific reference to the ACRS letter (ADAMS Accession No. ML11108A077). Numerous other comment submissions pointed to this petition as part of their comments. This lends support to the NRC's view that the public had adequate notice and an opportunity to comment on this matter. In addition, the inclusion of debris limits as Tier 2* represents a new limitation, not present in the prior revisions of the AP1000 DCD, which will require a referencing COL holder to use debris limits as specified in the AP1000 DCD. Given that the designation of the debris limits as Tier 2* represents a new restriction agreed to by Westinghouse, a matter on which the NRC received public comment, the staff does not believe that an additional opportunity for public comment need be provided on the inclusion of debris limits in Revision 19 of the DCD and the designation of those limits as Tier 2*.

Heat Sinks and Containment Pressure Analysis

In its December 13, 2010, letter on the AP1000 design certification, the ACRS identified an error in the previously certified Revision 15 of the DCD (ADAMS Accession No. ML103410351) concerning the containment cooling analysis. The error affected the time at which steady-state film coverage is achieved on the exterior of the containment vessel. In a February 5, 2011, letter, the NRC staff agreed with the ACRS, and indicated that Westinghouse agreed that the error existed and should be corrected. The letter also indicated that the NRC staff would monitor Westinghouse's corrective actions and review any needed revisions to the DCD (ADAMS Accession No. ML103560411).

In the course of correcting the steady-state film coverage error, after the proposed rule was published, Westinghouse identified other errors and modeling updates in supporting analyses that affected the calculated post-accident peak containment pressure (the highest peak pressure in the event of a large break loss-of-coolant accident). The net impact of correcting the steady-state film error and the subsequent Westinghouse-identified errors and modeling updates was an increase in calculated peak containment pressure from 57.8 psig to 59.2 psig, which would have exceeded the 59 psig post-accident peak containment pressure acceptance criterion in the existing AP1000 DCR.

Therefore, as part of the revised analysis to account for all the identified errors, Westinghouse relied upon a limited number of existing structural elements (gratings) within the containment as heat sinks, in order to remain within the 59 psig post-accident peak containment pressure acceptance criterion. Westinghouse's revised analysis used the NRC-approved methodology in the existing AP1000 DCR containment pressure calculation, and the method for crediting heat sink capacity as described in Westinghouse documents WCAP–15846 (proprietary) and WCAP–15862 (nonproprietary) ''WGOTHIC Application to AP600 and AP1000,'' Revision 1, March 2004, which are incorporated by reference in the previously certified Revision 15 of the DCD. In addition, the Westinghouse-revised analysis used the NRC-approved 59 psig post-accident peak containment pressure acceptance criterion in the existing AP1000 DCD, Revision 15.

The staff safety evaluation of the Westinghouse revised analysis is included in Sections 23.X and 23.Y of the FSER (ADAMS Accession No. ML112061231). Table 6.2.1.1–10 of Revision 19 of the DCD includes the credited elements. The ACRS reviewed the Westinghouse corrections, and agreed that Westinghouse's revised analysis continues to demonstrate that the containment will be able to withstand the post-accident peak containment pressure (ADAMS Accession No. ML11256A180), and that the reevaluated pressure is based on a sufficiently conservative methodology. The final AP1000 rule language designates this ''heat sink data for containment analysis'' by adding it as a new Tier 2* item in Section VIII.B.6.b(8). The NRC decided to control any future changes to the credited elements by designating the material as Tier 2* because the geometry and location of the heat sinks could impact their effectiveness.

The NRC does not believe that the revisions to Table 6.2.1.1–10 of Revision 19 of the DCD require renoticing for several reasons. The gratings to be credited as heat sinks were already part of the approved AP1000 design and were not part of the proposed amendment to the AP1000 DCR described design. Thus, the actual DCD did not involve any new design elements being added. The use of heat sinks as part of the containment pressure calculation and the method for crediting heat sink capacity were described in the DCD Revision 15. The criterion for evaluating the acceptability of the change continues to be the calculated post-accident peak containment pressure of 59 psig. Therefore, the revised Westinghouse analysis did not involve the use of any previously unapproved design methodologies or acceptance criteria; the methodology used and the acceptance criterion (59 psig post-accident peak containment pressure) is in the already-approved AP1000 DCR. Finally, crediting of the gratings as heat sinks in the revised analysis did not introduce any new safety issues not previously addressed. Therefore, the NRC does not believe that opportunity for public comment need be provided on the rule language change.

The NRC does not believe that the designation of the heat sink as Tier 2* requires renoticing. As discussed above, the Tier 2* change is a direct result of the Westinghouse revised analysis that does not warrant an additional opportunity for public comment. The designation of this information as Tier 2* adds a new limitation, not present in the prior revisions of the AP1000 DCD, which limits a referencing combined license applicant/holder to alter the heat sink information for the grating and all other heat sinks credited in the containment peak pressure analysis. Given that the designation of the heat sink information as Tier 2* represents a new restriction agreed to by Westinghouse, the staff does not believe that opportunity for public comment need be provided on the Westinghouse revised analysis and the designation of the heat sink information as Tier 2*.

B. Changes to Appendix D

1. Scope and Contents (Section III)

The purpose of Section III is to describe and define the scope and contents of this design certification and to set forth how documentation discrepancies or inconsistencies are to be resolved. Paragraph A is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic TSs into this appendix. The NRC is updating the revision number of the DCD that is incorporated by reference to the revision Westinghouse provided to the NRC in its application for amendment to this DCR. In this final rule, the revision of the DCD that is incorporated by reference is Revision 19.

The effect of this incorporation by reference is that the incorporated material has the same legal status as if it were published in the **Federal Register** and in NRC's regulations at 10 CFR part 52. This material, like any other properly issued regulation, has the force and effect of law. The AP1000 DCD was prepared to meet the technical information contents of application requirements for design certifications under 10 CFR 52.47(a) and the requirements of the OFR for incorporation by reference under 1 CFR part 51. One requirement of the OFR for incorporation by reference is that the applicant for the design certification (or amendment to the design certification) makes the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph A identifies a Westinghouse representative to be contacted to obtain a copy of the AP1000 DCD.

The AP1000 DCD is electronically accessible under ADAMS Accession No. ML11171A500, at the OFR, and at *www.regulations.gov* by searching under Docket ID NRC–2010–0131. Copies of the generic DCD are also available at the NRC's PDR. Questions concerning the accuracy of information in an application that references Appendix D will be resolved by checking the master copy of the generic DCD in ADAMS. If a generic change (rulemaking) is made to the DCD by the revision process provided in Section VIII of Appendix D, then, at the completion of the rulemaking process, the NRC would request approval of the Director, OFR, for the revised incorporation by reference and revise its copies of the generic DCD, provide a revised copy to the OFR, and notify the design certification applicant to change its copy. The Commission requires that the design certification applicant maintain an up-to-date copy of the master DCD under Section X.A.1 of Appendix D because it is likely that most applicants intending to reference the standard design will obtain the generic DCD from the design certification applicant. Plant-specific changes to and departures from the generic DCD will be maintained by the applicant or licensee that references Appendix D in a plant-specific DCD under Section X.A.2 of Appendix D.

The NRC is also making a change to paragraph D. Paragraph D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the design certification application or the FSER for the certified standard design. The revision renumbers paragraph D as paragraph D.1, clarifies this requirement as applying to the initial design certification, and adds a similar paragraph D.2 to indicate that this is also the case for an inconsistency between the generic DCD and the amendment application and the NRC's associated FSER for the amendment.

2. Additional Requirements and Restrictions (Section IV)

Section IV of this appendix sets forth additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph A sets forth the information requirements for these applicants. Paragraph A.3 requires the applicant to physically include, not simply reference, the proprietary information (PI) and safeguards information (SGI) referenced in the AP1000 DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements. The NRC revised paragraph A.3 to indicate that a COL applicant must include, in the plant-specific DCD, the sensitive unclassified non-safeguards information (SUNSI) (including PI) and SGI referenced in AP1000 DCD. This revision addresses a wider class of information (SUNSI) to be included in the plant-specific DCD, rather than limiting the required information to PI. The requirement to include SGI in the plant-specific DCD would not change.

The NRC also added a new paragraph A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Paragraph A.4 requires that a COL applicant referencing Appendix D to 10 CFR Part 52 include, as part of its application, a demonstration that an entity other than Westinghouse is qualified to supply the AP1000 certified design unless Westinghouse supplies the design for the applicant's use. In cases where a COL applicant is not using Westinghouse to supply the AP1000 certified design, this information is necessary to support any NRC finding under 10 CFR 52.73(a) that the entity is qualified to supply the certified design.

3. Applicable Regulations (Section V)

The purpose of Section V is to specify the regulations applicable and in effect when the design certification is approved (*i.e.,* as of the date specified in paragraph A, which is the date of publication of this rule in the **Federal Register**). The NRC is redesignating paragraph A as paragraph A.1 to indicate that this paragraph applies to that portion of the design that was certified under the initial design certification. The NRC is further adding a new paragraph A.2, similar to paragraph A.1, to indicate the regulations that would apply to that portion of the design within the scope of this amendment, as approved by the Commission and signed by the Secretary of the Commission.

4. Issue Resolution (Section VI)

The purpose of Section VI is to identify the scope of issues that were resolved by the Commission in the original certification rulemaking and, therefore, are ''matters resolved'' within the meaning and intent of 10 CFR 52.63(a)(5).

Paragraph B presents the scope of issues that may not be challenged as a matter of right in subsequent proceedings and describes the categories of information for which there is issue resolution. Paragraph B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954 (the Act), as amended, that are associated with the information in the NRC's FSER related to certification of the AP1000 standard design (ADAMS Accession No. ML112061231) and the Tier 1 and Tier 2 information and the rulemaking record for Appendix D to 10 CFR part 52, are resolved within the meaning of 10 CFR 52.63(a)(5). These issues include the information referenced in the DCD that are requirements (*i.e.,* ''secondary references''), as well as all issues arising from PI and SGI, which are intended to be requirements. Paragraph B.2 provides for issue preclusion of PI and SGI.

The NRC revised paragraph B.1 to extend issue resolution to the information contained in the NRC's FSER (Supplement No. 2), Appendix 1B of Revision 19 of the generic DCD, and the rulemaking record for this amendment. In addition, the NRC revised paragraph B.2 to extend issue

resolution to the broader category of SUNSI, including PI, referenced in the generic DCD.

The NRC also revised paragraph B.7, which identifies as resolved all environmental issues concerning severe accident mitigation design alternatives (SAMDAs) arising under the National Environmental Policy Act of 1969 (NEPA) associated with the information in the NRC's final EA for the AP1000 design and Appendix 1B of the generic DCD (Revision 15) for plants referencing Appendix D to 10 CFR part 52 whose site parameters are within those specified in the SAMDA evaluation. The NRC revised this paragraph to identify all resolved environmental issues concerning SAMDA associated with the information in the NRC's final EA for this amendment and Appendix 1B of Revision 19 of the generic DCD for plants referencing Appendix D to 10 CFR part 52 whose site parameters are within those specified in the SAMDA evaluation.

Finally, the NRC is revising paragraph E, which provides the procedure for an interested member of the public to obtain access to SUNSI (including PI) and SGI for the AP1000 design in order to request and participate in proceedings, as identified in paragraph B, involving licenses and applications that reference Appendix D to 10 CFR part 52. The NRC is replacing the current information in this paragraph with a statement that the NRC will specify at an appropriate time the procedure for interested persons to review SGI or SUNSI (including PI) for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to Appendix D to 10 CFR part 52 in which interested persons have a right to request an adjudicatory hearing. The NRC will follow its current practice of establishing the procedures by order when the notice of hearing is published in the **Federal Register** (*e.g.,* Florida Power and Light Co., Combined License Application for the Turkey Point Units 6 and 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation (75 FR 34777; June 18, 2010); Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility) (74 FR 38052; July 30, 2009)).

In the four currently approved design certifications (10 CFR part 52, Appendices A through D), paragraph E presents specific directions on how to obtain access to PI and SGI on the design certification in connection with a license application proceeding referencing that DCR. The NRC is changing this because these provisions were developed before the terrorist events of September 11, 2001. After September 11, 2001, Congress changed the statutory requirements governing access to SGI, and the NRC revised its rules, procedures, and practices governing control and access to SUNSI and SGI. The NRC now believes that generic direction on obtaining access to SUNSI and SGI is no longer appropriate for newly approved DCRs. Accordingly, the specific requirements governing access to SUNSI and SGI contained in paragraph E of the four currently approved DCRs will not be included in the DCR for the AP1000. Instead, the NRC will specify the procedures to be used for obtaining access at an appropriate time in the COL proceeding referencing the AP1000 DCR. The NRC will include the new rule language in any future amendments or renewals of the currently existing DCRs, as well as in new (*i.e.,* initial) DCRs. However, the NRC will not initiate rulemaking to change paragraph E of the existing DCRs, in an effort to minimize unnecessary resource expenditures by both the original DCR applicant and the NRC.

5. Processes for Changes and Departures (Section VIII)

The purpose of Section VIII of this appendix is to set forth the processes for generic changes to, or plant-specific departures (including exemptions) from, the DCD. The Commission adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference this DCR. The change processes for the three different categories of Tier 2 information, namely, Tier 2, Tier 2*, and Tier 2* with a time of expiration, are presented in paragraph B.

Departures from Tier 2 that a licensee may make without prior NRC approval are addressed under paragraph B.5 (similar to the process in 10 CFR 50.59). The NRC is modifying Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC revised paragraph B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required by 10 CFR 52.47(a)(28) to address 10 CFR 50.150. In addition, the NRC redesignated paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and added a new paragraph B.5.d. Paragraph B.5.d requires an applicant or licensee who proposed to depart from the information required by 10 CFR 52.47(a)(28) included in the final safety analysis report (FSAR) for the standard design certification to consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The FSAR information required by the AIA rule, which is subject to this change control requirement, includes the descriptions of the design features and functional capabilities incorporated into the final design of the nuclear power facility and the description of how the identified design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1). The objective of the change controls is to determine whether the design of the facility, as changed or modified, is shown to withstand the effects of the aircraft impact with reduced use of operator actions. In other words, the applicant or licensee must continue to show, with the modified design, that the acceptance criteria in 10 CFR 50.150(a)(1) are met with reduced use of operator actions. The AIA rule does not require an applicant or a licensee implementing a design change to redo the complete AIA to evaluate the effects of the change. The NRC believes it may be possible to demonstrate that a design change is bounded by the original design or that the change provides an equivalent level of protection, without redoing the original assessment.

Consistent with the NRC's intent when it issued the AIA rule, under this section, plant-specific departures from the AIA information in the FSAR would not require a license amendment, but may be made by the licensee upon compliance with the substantive requirements of the AIA rule (*i.e.,* the AIA rule acceptance criteria). The applicant or licensee is required to document, in the plant-specific departure, how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1), in accordance with Section X of Appendix D to 10 CFR part 52. Applicants and

licensees making changes to design features or capabilities included in the certified design may also need to develop alternate means to cope with the loss of large areas of the plant from explosions or fires to comply with the requirements in 10 CFR 50.54(hh). The addition of these provisions to Appendix D to 10 CFR part 52 is consistent with the NRC's intent when it issued the AIA rule in 2009, as noted in the SOC for that rule (74 FR 28112; June 12, 2009).

Paragraph B.6 of Appendix D to 10 CFR Part 52 provides a process for departing from Tier 2* information. The creation of, and restrictions on changing, Tier 2* information resulted from the development of the Tier 1 information for the ABWR design certification (Appendix A to 10 CFR part 52) and the ABB–CE [ASEA Brown Boveri—Combustion Engineering] System 80+ design certification (Appendix B to 10 CFR part 52). During this development process, these applicants requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references these appendices. Also, many codes, standards, and design processes that would not be specified in Tier 1, but were acceptable for meeting ITAAC, were specified in Tier 2. The result of these actions was that certain significant information only exists in Tier 2 and the Commission did not want this significant information to be changed without prior NRC approval. This Tier 2* information was identified in the generic DCD with italicized text and brackets (see Table 1–1 of the AP1000 DCD Introduction for a list of the Tier 2* items). Although the Tier 2* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2* information could expire when the plant first achieves full power (100 percent), after the finding required by 10 CFR 52.103(g), while other Tier 2* information must remain in effect throughout the life of the facility. The factors determining whether Tier 2* information could expire after the first full power was achieved were whether the Tier 1 information would govern these areas after first full power and the NRC's determination that prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2* information listed in paragraph B.6.c would cease to retain its Tier 2* designation after full power operation is first achieved following the NRC finding under 10 CFR 52.103(g). Thereafter, that information would be deemed to be Tier 2 information that would be subject to the departure requirements in paragraph B.5. By contrast, the Tier 2* information identified in paragraph B.6.b would retain its Tier 2* designation throughout the duration of the license, including any period of license renewal.

The NRC is revising certain items designated as Tier 2*. As discussed in the proposed rule, the Commission is adding an item to Section VIII.B.6.b for reactor coolant pump type. In addition, a new item was added to paragraph B.5.b for RCP type. The NRC determined that certain specific characteristics of the RCP were significant to the safety review and that prior approval of changes affecting those characteristics would be required. This Tier 2* designation does not expire.

In the final rule, two additional items are being added to Section VIII.B.6.b. First, in its December 20, 2010, letter on long-term core cooling, the ACRS concluded that the regulatory requirements for long-term core cooling for designbasis accidents have been adequately met, based on cleanliness requirements specified in the amendment. In particular, the amount of latent debris that might be present in the containment is an important parameter. The ACRS further stated that any future proposed relaxation of the cleanliness requirements will require substantial additional data and analysis. In their January 24, 2011, report on the Vogtle COL application, which references the AP1000 design, the ACRS recommended that the containment interior cleanliness limits on latent debris should be included in the TSs. In a letter dated February 23, 2011, Westinghouse proposed DCD markups to designate information in Section 6.3 including debris sources such as latent debris (and the amount of fiber) as Tier 2*. The NRC believes this is a better approach to achieving the intent of the ACRS for regulatory control of any future relaxations of the limits and would thus require prior NRC approval, as discussed in the staff's March 3, 2011, response to the ACRS. Revision 19 includes DCD changes to mark selected information as Tier 2*. No changes to the content itself were made. The NRC made a conforming change to the final rule language to provide a new item as Section VIII.B.6.b(7), entitled ''Screen design criteria,'' for this new type of Tier 2* information.

The second change, which was also discussed in the December 13, 2010, ACRS letter report on the DC amendment, concerned an error ACRS identified in the previously certified Revision 15, concerning the containment cooling analysis. The error affected the time at which steady-state film coverage is achieved on the exterior of the containment vessel. In the corrected analysis, the calculated peak containment pressure for a LOCA increases somewhat, but remains below the design pressure. In the course of reviewing the correction of the error for the peak containment pressure, after the proposed rule was published, Westinghouse identified other errors in supporting analyses that affect the calculated post-accident peak containment pressure. The net impact is an increase in calculated peak containment pressure in the event of a large break LOCA (the highest peak pressure) of about 0.3 psi. As part of the revised analysis for all of the changes, Westinghouse relied upon a limited number of structural elements within the containment as heat sinks for the peak pressure analysis in order to maintain margin to the design limit. The NRC's safety evaluation is included in the FSER. Table 6.2.1.1–10 of Revision 19 of the DCD includes the credited elements. The final rule language designates this ''heat sink data for containment analysis'' by adding it as new Tier 2* in Section VIII.B.6.b(8). Because the geometry and location of the heat sinks could impact their effectiveness, the staff decided to control any future changes to the credited elements by designating the material as Tier 2*.

As discussed in the proposed rule, the NRC is clarifying some of the Tier 2* designations for structural requirements, with respect to Tier 2* information that expires at first full power operation. The item on human factors engineering (HFE) moved from paragraph B.5.b to paragraph B.5.c, with the effect that the Tier 2* designation on that information expires after full power operation is achieved rather than never expiring. In the final rule, an additional item (paragraph B.6.c(16)) is added to provide Tier 2* designation for certain details about the steel composite modules (as identified within the DCD); the designation expires at first full power operation. The NRC concludes that the details are the key elements of this unique design, and therefore warrant Tier 2* regulatory control.

The NRC also concluded that the Tier 2* designation is not necessary for the specific Code edition and addenda for the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), as listed in item VIII.B.6.c(2). At the time of the initial certification, the NRC determined that this information should be Tier 2*.

Subsequently, 10 CFR Part 50 was modified to include provisions in 10 CFR 50.55a(b)(1)(iii) to provide restrictions in the use of certain editions/addenda to the ASME Code, Section III, that the NRC found unacceptable. In addition, 10 CFR 50.55a(c)(3), (d)(2) and (e)(2), for reactor coolant pressure boundary, Quality Group B Components, and Quality Group C Components, respectively, provide regulatory controls on the use of later edition/addenda to the ASME Code, Section III, through the conditions NRC established on use of paragraph NCA–1140 of the Code. As a result, these rule requirements adequately control the ability of a licensee to use a later edition of the ASME Code and addenda such that Tier 2* designation is not necessary. Thus, the Tier 2* item in paragraph B.6.c(2) for ASME Code was modified to be limited to ASME Code piping design restrictions as identified in Section 5.2.1.1 of the AP1000 DCD and to include certain Code cases, including Code Case N–284–1, as discussed in Section 3.8.2.2 and other Code cases as designated in Table 5.2–3 of the DCD (Code Case N–284–1 is the only case currently specified in Appendix D to 10 CFR Part 52). The NRC retained the Tier 2* designation for applying ASME Code, Section III, Subsection NE to containment design, by moving this provision to the end of Section VIII.B.6.c(14). Section 3.8.2.2 of the DCD identifies the specific edition and addenda for containment design (2001 Edition of ASME Code, Section III, including 2002 Addenda) with the Tier 2* markings.

6. Records and Reporting (Section X)

The purpose of Section X is to set forth the requirements that apply to maintaining records of changes to and departures from the generic DCD, which would be reflected in the plant-specific DCD. Section X also sets forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. Paragraph A.1 requires that a generic DCD and the PI and SGI referenced in the generic DCD be maintained by the applicant for this rule. The NRC revised paragraph A.1 to replace the term ''proprietary information,'' or PI, with the broader term ''sensitive unclassified non-safeguards information,'' or SUNSI. Information categorized as SUNSI is information that is generally not publicly available and encompasses a wide variety of categories. These categories include information about a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as SGI or classified as National Security Information or Restricted Data (security-related information), which is required by 10 CFR 2.390 to be protected in the same manner as commercial or financial information (*i.e.,* they are exempt from public disclosure). This change is necessary because the NRC is approving PI and security-related information. This change also ensures that Westinghouse (as well as any future applicants for amendments to the AP1000 DCR who intend to supply the certified design) are required to maintain a copy of the applicable generic DCD, and maintain the applicable SUNSI (including PI) and SGI—developed by that applicant—that were approved as part of the relevant design certification rulemakings.

The NRC notes that the generic DCD concept was developed, in part, to meet OFR requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the PI and SGI were not included in the public version of the DCD. Only the public version of the generic DCD is identified and incorporated by reference into this rule. Nonetheless, the SUNSI for this amendment was reviewed by the NRC and, as stated in paragraph B.2, the NRC considers the information to be resolved within the meaning of 10 CFR 52.63(a)(5). Because this information is in the nonpublic version of the DCD, this SUNSI (including PI) and SGI, or its equivalent, is required to be provided by an applicant for a license referencing this DCR.

In addition, the NRC is adding a new paragraph A.4.a that requires the applicant for the AP1000 design to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). The NRC added a new paragraph A.4.b that requires an applicant or licensee who references this appendix to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). The addition of paragraphs A.4.a and A.4.b is consistent with the NRC's intent when it issued the AIA rule in 2009 (74 FR 28112; June 12, 2009).

C. Immediate Effectiveness of Final Rule; Provision of Actual Notice to Southern Nuclear Operating Company

The NRC is making this final rule immediately effective, and is also providing notice of this final rule (including the NRC-approved DCD, Revision 19) to Southern Nuclear Operating Company (SNOC). Under a provision of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), there ordinarily must be a 30-day waiting period before a new rule is effective, subject to certain exceptions, including ''good cause:''

> The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except: (1) A substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.

Consistent with the APA, 10 CFR 2.807 provides that the NRC may make a rule effective in less than 30 days after publication in the **Federal Register** upon making the good cause finding as noted in the third exception listed in 5 U.S.C. 553(d). For the following reasons, the NRC has determined that good cause exists for making this design certification rulemaking immediately effective.

Good cause can be demonstrated by any number of circumstances. Here the circumstances demonstrate that the basis for the 30-day waiting period—to allow those regulated by a new rule time to conform their activities to it—is absent. Several sources of guidance on Section 553(d) support the NRC's good cause finding for this rulemaking.

Specifically, in the legislative history of the 30-day provision, the final report of the House Committee on the Judiciary offered the following explanation of the ''good cause'' exception in 5 U.S.C. 553(d)(3):

> [The purpose of the 30-day delay is to] afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt * * *. Many rules * * * may be made operative in less than 30 days * * * because the parties subject to them may during the usually protracted hearing and decision procedures anticipate the regulation. (Senate Document (S. Doc. No.) 79–249, Administrative Procedure Act: Legislative History 259–60 (1946))

Additional guidance is found in the Attorney General's Manual on the APA, which provides:

> The requirement of publication not less than thirty days prior to the effective date may be shortened by an agency 'upon good

cause found and published with the rule'. This discretionary exception was provided primarily to take care of the cases in which the public interest requires the agency to act immediately or within a period less than thirty days. Senate Hearings (1941) pp. 70, 441, 588, 650, 812, 1506. *Where the persons concerned request that a rule be made effective within a shorter period, this circumstance would ordinarily constitute good cause.* Also, it is clear from the legislative history that for good cause an agency may put a substantive rule into effect immediately; in such event, the requirement of prior publication is altogether absent, and the rule will become effective upon issuance as to persons with actual notice, and as to others upon filing with the Division of the **Federal Register** in accordance with section 7 of the **Federal Register** Act. Senate Hearings (1941) pp. 594, 599, 1340, 1455. (U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act 37 (1947) (*emphasis added*))

In light of this background, the NRC believes that there is good cause for making this final rule amending the AP1000 DCR immediately effective.

On May 27, 2011, one of the first COL applicants to which this amended AP1000 DCR would potentially apply, SNOC, submitted a ''white paper'' that set forth alternatives to making the final AP1000 rule effective 30 days after publication (ADAMS Accession No. ML11152A189). Thereafter, SNOC submitted a July 20, 2011, letter (ADAMS Accession No. ML11210B421), indicating that making the certified design rule immediately effective would serve important policy objectives.[2] SNOC's letter thus requested Commission action. During the *Vogtle* uncontested, or ''mandatory,'' hearing held by the Commission on SNOC's applications for a COL and a limited work authorization (LWA), SNOC reiterated its request that the NRC issue the COL and LWA immediately upon Commission affirmation of the final rule amending the AP1000 DCR. Transcript of *Vogtle* COL Mandatory Hearing at 22–23, 350 (September 27, 2011; ADAMS Accession No. ML11305A228).

Here, SNOC, which is likely to use (and be bound by) the AP1000 DCR in the short-term if the Commission otherwise authorizes issuance of the COL, wishes the rule be made immediately effective. Given SNOC's longstanding awareness of and participation in the AP1000 rulemaking, it does not need the 30-day waiting period to come into compliance with the final rule. Under the Attorney General's Manual, *supra,* at 37, SNOC's request that the rule be made effective in a shorter time period constitutes good cause to waive the 30-day waiting period. As noted previously, the extensive process for consideration of this design certification rulemaking would clearly constitute a situation where ''the parties subject to [the regulation] may during the usually protracted hearing and decision procedures anticipate the regulation.'' S. Doc. No. 79–249, Administrative Procedure Act: Legislative History 259–60 (1946). In fact, that ''anticipation'' is clearly manifested in SNOC's use of the design certification rulemaking, as well as use by other applicants for COLs referencing the AP1000 DCR, which would occur only after the completion of a public process that includes NRC adjudicatory processes for each COL application. The determination of good cause regarding the effective date of the final AP1000 rule is separate from, and does not prejudge, the licensing determinations that are otherwise required in the COL proceedings.

Finally, the NRC is providing actual service of the final AP1000 rule (including the NRC-approved DCD, Revision 19) to SNOC concurrently with the NRC's transmission of the final rule to the OFR for publication.[3] Thus, either before, or simultaneous with, any issuance of a COL for *Vogtle* (and any other COL application referencing the AP1000, upon request), SNOC (and any other COL applicant referencing the AP1000, upon request) will have actual notice of the requirements of the final AP1000 rule and Revision 19 of the DCD for which their NRC-licensed activities under the COL must conform.

The immediately effective rule cannot be used by anyone until the agency has made the necessary health and safety findings and completed the environmental review processes that necessarily precede the issuance of a COL relying on the design certification rulemaking. Each finding necessary under the Atomic Energy Act would have been made through public rulemaking and the NRC's adjudicatory processes that serve to allow consideration of public input before the agency issues its determination on an application referencing the AP1000. The rule itself does not force anyone to take action immediately based on its effective date because it does not compel, but rather permits, action. Therefore, from the standpoint of regulatory efficiency, delaying issuance of a licensing decision when the decision is ready to be issued is not in the public interest, whether the decision is to deny or grant the requested license.

On October 14, 2011, counsel for several organizations who were previously admitted as Joint Intervenors in the contested portion of the *Vogtle* COL proceeding indicated that they would be adversely affected by the issuance of an immediately effective rule. Letter from Mindy Goldstein, Counsel for Southern Alliance for Clean Energy, Georgia Women's Action for New Directions, and Center for a Sustainable Coast (Goldstein Letter) (ADAMS Accession No. ML11287A054).[4] The Goldstein Letter states that SNOC has requested a waiver of 10 CFR 2.807 during the uncontested hearing, which the letter states is an improper forum, and that waiver of 10 CFR 2.807 would not afford them time to prepare for issuance of the Vogtle COL or LWA. The Goldstein Letter states that a waiver of 10 CFR 2.807 is required to be submitted under 10 CFR 2.335. The Goldstein Letter explains that when the DCR becomes effective, a COL and LWA will be issued, resulting in a nuclear power plant that will affect all persons located near the site. The *Vogtle* Joint Intervenors believe the 30-day effective period is necessary to determine whether they wish to appeal the rule and seek a stay of construction.

First, a waiver of 10 CFR 2.807 is not required to make a rule immediately effective; a rule can be made immediately effective pursuant to the requirements of 10 CFR 2.807. The Commission in this rulemaking has determined to use the good cause exception to the 30-day effective date for the rulemaking and thus, is acting consistently with the provisions of 10 CFR 2.807 rather than waiving its provisions.

Second, as noted previously in the discussion of the legislative history of the 30-day effective date provision, the primary purpose of the 30-day requirement is to allow affected persons time to comply with the new rule. The final rule amending the AP1000 design

[2] The letter by SNOC, requesting that the final rule amending the AP1000 DCR be made effective before 30 days after **Federal Register** publication, was filed on the docket for the Vogtle Electric Generating Plant, Units 3 and 4 (Docket Nos. 52–025–COL and 52–026–COL) (*Vogtle*). SNOC's request is more appropriately addressed in this rulemaking proceeding to amend the AP1000 DCR.

[3] The NRC would also provide actual notice of the final AP1000 rule to any other COL applicant upon request. On the date of the transmission of the final rule package to the OFR, the NRC will issue an announcement of its transmission and make the final rule package as transmitted to the OFR available on the NRC Web site.

[4] Because the Goldstein Letter was submitted in response to SNOC's request, which is being considered in this AP1000 design certification rulemaking, the NRC is, in its discretion, considering the Goldstein Letter here as well. Therefore, the NRC need not address the matters raised in the Goldstein Letter with respect to SNOC's compliance with the adjudicatory requirements in 10 CFR 2.335.

certification is focused on the conduct of regulatory activities licensed by the NRC. But, the *Vogtle* Joint Intervenors are neither current NRC licensees who must comply with the final rule amending the AP1000 rule, nor applicants for NRC licenses referencing the final AP1000 rule. Thus, the final AP1000 rule imposes no substantive legal obligations on them. The NRC does not believe that the Goldstein Letter describes any legally-cognizable harm within the scope of protection afforded to third parties by the APA's 30-day waiting period provision. That an immediately effective AP1000 rule may facilitate issuance of a COL for the Vogtle plant does not appear to adversely affect the rights or capability of any public stakeholder to do what they would otherwise do if the AP1000 rule were made effective 30 days after publication in the **Federal Register**. Whether the AP1000 rule is immediately effective or not does not change any public stakeholder's legal rights or options; it merely affects the timing of asserting such rights or exercising those options.

Further, the Commission is not aware of any regulatory history indicating that the purpose of the 30-day effective date is tied to or affects appeal rights. Regardless of the immediate effectiveness of the rule, the *Vogtle* Joint Intervenors may seek legal action on the immediately effective rule in Federal court, or they may file an appropriate motion in the *Vogtle* COL proceeding if they satisfy the requirements in 10 CFR Part 2 to reopen the record and submit late-filed contentions. *See* 10 CFR 2.309, 2.326. Thus, an immediately effective AP1000 rule does not foreclose, or render moot, challenges to the rule, including stay remedies. For these reasons, the NRC concludes that making the final AP1000 rule immediately effective would not adversely affect these organizations or any other public stakeholders.

In sum, the NRC finds good cause for making the final rule amending the AP1000 DCR immediately effective upon publication in the **Federal Register**. Therefore, the NRC is making the final rule immediately effective. In addition, there is sufficient reason to provide prompt actual notice of this final rule (including the NRC-approved DCD, Revision 19) to SNOC (and potentially to any other combined license applicant referencing the amended AP1000 DCR in its application).

IV. Section-by-Section Analysis

The following discussion sets forth each amendment to the AP1000 DCR being made in this final rule. All section and paragraph references are to the provisions in the amendment to Appendix D to 10 CFR part 52, unless otherwise noted.

A. Scope and Contents (Section III)

The NRC is amending Section III, Scope and Contents, to revise paragraph A to update the revision number of the DCD, from Revision 15 to Revision 19, approved for incorporation by reference by the Office of the Federal Register; update the contact information of the Westinghouse representative to be contacted should a member of the public request a copy of the generic DCD; and update other locations (*e.g.,* the NRC's PDR) where a member of the public could request a copy of or otherwise view the generic DCD.

The NRC is revising paragraph D to establish the generic DCD as the controlling document in the event of an inconsistency between the DCD and either the application or the FSER for the certified standard design. This clarification further distinguishes between the conflict scenarios presented in paragraphs D.1 (for the initial certification of the design) and D.2 (for Amendment 1 to the design).

B. Additional Requirements and Restrictions (Section IV)

The NRC is amending Section IV, Additional Requirements and Restrictions, to set forth additional requirements and restrictions imposed upon an applicant who references Appendix D to 10 CFR part 52. Paragraph A sets forth the information requirements for these applicants. The NRC is revising paragraph A.3 to replace the term ''proprietary information'' with the broader term ''sensitive unclassified non-safeguards information.''

The NRC is also adding a new paragraph A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use.

C. Applicable Regulations (Section V)

The NRC is revising paragraph A to distinguish between the regulations that were applicable and in effect at the time the initial design certification was approved (paragraph A.1) and the regulations that are applicable and in effect as of the effective date of the final rule (paragraph A.2).

D. Issue Resolution (Section VI)

The NRC is amending Section VI, Issue Resolution, by revising paragraph B.1 to provide that all nuclear safety issues arising from the Act that are associated with the information in the NRC's FSER (NUREG–1793), the Tier 1 and Tier 2 information (including the availability controls in Section 16.3 of the generic DCD), and the rulemaking record for Appendix D to 10 CFR Part 52 are resolved within the meaning of 10 CFR 52.63(a)(5). These issues include the information referenced in the DCD that are requirements (*i.e.,* secondary references), as well as all issues arising from SUNSI (including PI) and SGI, which are intended to be requirements. This paragraph is revised to extend issue resolution beyond that of the previously certified design to also include the information in Supplement No. 2 of the 2011 FSER (Supplement 1 supported the initial certification) and the rulemaking record associated with Amendment 1 to the AP1000 design.

The NRC is revising paragraph B.2 to replace the term ''proprietary information'' with the broader term ''sensitive unclassified non-safeguards information.''

Paragraph B.7 is revised to extend environmental issue resolution beyond that of the previously certified design to also include the information in Amendment 1 to the AP1000 design and Appendix 1B of Revision 19 of the generic DCD.

A new paragraph E is added to allow the NRC to specify at the appropriate time the procedures for interested persons to obtain access to PI, SUNSI, and SGI for the AP1000 DCR. Access to such information is for the sole purpose of requesting or participating in certain specified hearings, such as (1) the hearing required by 10 CFR 52.85 where the underlying application references Appendix D to 10 CFR Part 52; (2) any hearing provided under 10 CFR 52.103 where the underlying COL references Appendix D to 10 CFR part 52; and (3) any other hearing relating to Appendix D to 10 CFR Part 52 in which interested persons have the right to request an adjudicatory hearing.

E. Processes for Changes and Departures (Section VIII)

The NRC is revising Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC is revising the introductory text of paragraph B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required

by 10 CFR 52.47(a)(28) to address aircraft impacts.

In addition, the NRC is redesignating paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and adding a new paragraph B.5.d. Paragraph B.5.d requires an applicant referencing the AP1000 DCR, who proposes to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, to consider the effect of the changed feature or capability on the original 10 CFR 50.150(a) assessment.

The NRC is revising certain items designated as Tier 2*. As discussed in the proposed rule, the NRC is adding an item to Section VIII.B.6.b for RCP type. In addition, a new item is added to paragraph B.5.b for RCP type. The NRC determined that certain specific characteristics of the RCP were significant to the safety review and that prior approval of changes affecting those characteristics would be required. This Tier 2* designation does not expire.

In the final rule, two additional items are added to Section VIII.B.6.b. Section VIII.B.6.b(7) provides Tier 2* designation for certain analysis assumptions related to latent debris and the effects on screens and fuel assemblies in post-LOCA conditions where debris is transported to the recirculation sump and into the in-containment refueling water storage tank. Finally, new paragraph VIII.B.6.b(8) is added to include the containment heat sinks credited in the peak pressure analysis. The Tier 2* designation for the requirements in this section of the rule does not expire.

As discussed in the proposed rule, the NRC is clarifying some of the Tier 2* designations for structural requirements, with respect to Tier 2* information that expires at first full power operation. The item on HFE moved from paragraph B.5.b to paragraph B.5.c, with the effect that the Tier 2* designation on that information expires after full power operation is achieved rather than never expiring. In the final rule, an additional item (paragraph B.6.c(16)) is added to provide Tier 2* designation for certain details about the steel composite modules (as identified within the DCD); the designation expires at first full power operation.

Finally, the NRC also concluded that the Tier 2* designation was not necessary for the specific Code edition and addenda for the ASME Code as listed in paragraph VIII.B.6.c(2). Thus, the item in paragraph VIII.B.6.c(2) for ASME Code was modified to be limited to piping and welding restrictions identified in Section 5.2.1.1, and to include certain Code cases, N–284–1 is discussed in Section 3.8.2.2 and other code cases designated as Tier 2* are listed in Table 5.2–3. The NRC retained the Tier 2* designation for applying ASME Code Section III to containment design, by moving this provision to the end of Section VIII.B.6.c(14). Section 3.8.2.2 identifies the specific edition and addenda for containment design (2001 Edition of ASME Code, Section III, including 2002 Addenda).

F. Records and Reporting (Section X)

The NRC is amending Section X, Records and Reporting, to revise paragraph A.1 to replace the term ''proprietary information'' with the broader term ''sensitive unclassified non-safeguards information.'' Paragraph A.1 is revised to require the design certification amendment applicant to maintain the SUNSI, which it developed and used to support its design certification amendment application. This would ensure that the referencing applicant has direct access to this information from the design certification amendment applicant, if it has contracted with the applicant to provide the SUNSI to support its license application. The AP1000 generic DCD and the NRC-approved version of the SUNSI would be required to be maintained for the period that Appendix D to 10 CFR part 52 may be referenced.

The NRC is also adding a new paragraph A.4.a, which requires Westinghouse to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). This provision, which is consistent with 10 CFR 50.150(c)(3), would facilitate any NRC inspections of the assessment that the NRC decides to conduct.

Similarly, the NRC is adding a new paragraph A.4.b, which requires an applicant or licensee who references Appendix D to 10 CFR Part 52 to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal).

V. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Act or the provisions of this section. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with the particular State's administrative procedure laws. Category ''NRC'' regulations do not confer regulatory authority on the State.

VI. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

Document	PDR	Web	ADAMS
SECY–11–0145, ''Final Rule—AP1000 Design Certification Amendment''	X	X	ML112380823
AP1000 Final Rule Environmental Assessment	X	X	ML113480019
AP1000 Final Rule Public Comment Response Document	X	X	ML113480018
SECY–11–0002, ''Proposed Rule—AP1000 Design Certification Amendment''	X	X	ML103000397
AP1000 Proposed Rule **Federal Register** Notice	X	X	ML103000412
AP1000 Proposed Rule Environmental Assessment	X	X	ML103000415
NUREG–1793, Supplement 2 to Final Safety Evaluation Report for Revision 19 to the AP1000 Standard Design Certification (publicly available)	X	X	ML112061231
NUREG–1793, Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design, September 2004	X	X	ML043570339
NUREG–1793, Supplement 1 to Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design	X	X	ML053410203

Document	PDR	Web	ADAMS
Emergency Petition to Suspend All Pending Reactor Licensing Decisions and Related Rulemaking Decisions Pending Investigation of Lessons Learned From Fukushima Daiichi Nuclear Power Station Accident, April 14–18, 2011	X	X	ML111040355 ML111110862
AP1000 Design Control Document (DCD), Revision 19, Transmittal Letter	X	X	ML11171A315
AP1000 DCD, Revision 19 (Public Version)	X	X	ML11171A500
Redacted Version of Dissenting View on AP1000 Shield Building Safety Evaluation Report With Respect to the Acceptance of Brittle Structural Model to be Used for the Cylindrical Shield Building Wall, December 3, 2010	X	X	ML103370648
AP1000 Containment Cleanliness—DCD Markup for Revision 19, February 23, 2011	X	X	ML110590455
Interim Staff Guidance DC/COL–ISG–011, ''Finalizing Licensing-basis Information''	X	X	ML092890623
Design Changes Submitted by Westinghouse, Revision 18	X	X	ML100250873
AP1000 Technical Reports (Appendix)	X	X	ML103350501
TR–3, AP1000 Standard COL Technical Report Submittal of APP–GW–S2R–010, ''Extension of Nuclear Island Seismic Analysis to Soil Sites,'' Revision 5, February 28, 2011	X	X	ML110691050
TR–26, ''AP1000 Verification of Water Sources for Long-Term Recirculation Cooling Following a LOCA,'' Revision 8	X	X	ML102170123
TR–34, APP–GW–GLN–016, ''AP1000 Licensing Design Change Document for Generic Reactor Coolant Pump,'' Revision 0, November 17, 2006	X	X	ML063250306
TR–54, ''Spent Fuel Storage Racks Structure and Seismic Analysis,'' Revision 4	X	X	ML101580475
TR–65, ''Spent Fuel Storage Racks Criticality Analysis,'' Revision 2	X	X	ML100082093
TR–97, ''Evaluation of the Effect of the AP1000 Enhanced Shield Building Design on the Containment Response and Safety Analysis,'' Revision 3	X	X	ML11168A041
TR–98, AP1000 COL Standard Technical Report Submittal of APP–GW–GLN–098, ''Compliance with 10CFR20.1406,'' (Technical Report Number 98), Revision 0, April 10, 2007	X	X	ML071010536
TR-103, ''Fluid System Changes,'' Revision 2	X	X	ML072830060
TR–108, AP1000 Standard COL Technical Report Submittal of APP–GW–GLN–108, ''AP1000 Site Interface Temperature Limits,'' Revision 2, September 28, 2007	X	X	ML072750137
TR–111, AP1000 Standard COL Technical Report Submittal of APP–GW–GLN–111, ''Component Cooling System and Service Water System Changes Required for Increased Heat Loads,'' Revision 0, May 25, 2007	X	X	ML071500563
TR–134, AP1000 Standard COL Technical Report Submittal of APP–GW–GLR–134, ''AP1000 DCD Impacts to Support COLA Standardization,'' Revision 0, October 26, 2007	X	X	ML073120415
AP1000 Standard COL Technical Report Submittal of APP–GW–GLR–134, ''AP1000 DCD Impacts to Support COLA Standardization,'' Revision 1, December 12, 2007	X	X	ML073610541
AP1000 Standard COL Technical Report, APP–GW–GLR–134, ''AP1000 DCD Impacts to Support COLA Standardization,'' Revision 3, January 14, 2008	X	X	ML080220389
NRC Acceptance Review of AP1000 Design Certification Amendment Application, November 2, 2007	X	X	ML073090471
AP1000 Piping DAC/Component COL Information Item 3.9–2 Acceptance Issue, Revision 16, January 11, 2008	X	X	ML080150513
AP1000 License Report APP–GW–GLR–603, Revision 0, ''AP1000 Shield Building Design Details for Select Wall and RC/SC Connections''	X	X	ML110910541
AP1000 Design Control Document (DCD), Revision 18, Transmittal Letter	X	X	ML103480059
Westinghouse AP1000 DCD, Revision 18 (public version)	X	X	ML103480572
Advanced Final Safety Evaluation Report for Revision 18 to the AP1000 Standard Design Certification (publicly available)	X	X	ML103260072
AP1000 DCD Transmittal Letter, Revision 17	X	X	ML083220482
AP1000 DCD, Revision 17	X	X	ML083230868
AP1000 DCD Transmittal Letter, Revision 16	X	X	ML071580757
AP1000 DCD, Revision 16	X	X	ML071580939
NRC Notice of Acceptance, Revision 16	X	X	ML073600743
AP1000 DCD, Revision 15	X	X	ML053460400
December 13, 2010, ACRS Letter to Chairman (Report on FSER to AP1000 DCD)	X	X	ML103410351
December 20, 2010, ACRS Letter to Chairman (Long-Term Core Cooling)	X	X	ML103410348
January 19, 2011, ACRS Letter to EDO (Aircraft Impact)	X	X	ML110210462
January 24, 2011, ACRS Letter to EDO (Containment interior cleanliness limits on latent debris in Technical Specifications)	X	X	ML110350282
EDO response to January 24, 2011 ACRS Letter	X	X	ML110480429
May 17, 2011, ACRS Letter to EDO	X	X	ML11144A188
Regulatory History of Design Certification	X	X	ML003761550
Commission Memorandum and Order, CLI–11–05, September 9, 2011	X	X	ML11252B074
Commission Memo and Order on Petitions to Suspend adjudicatory, licensing, and rulemaking activities	X	X	ML112521039
ABWR Final Rule	X	X	ML111040636
ABWR Proposed Rule	X	X	ML102100129
Request for ACRS to Waive review of the AP1000 DCR final rule	X	X	ML112420188
ACRS Waiver of review of AP1000 DCR final rule	X	X	ML11266A070
Design Report for the AP1000 Enhanced Shield Building	X	X	ML111950098
SER Approving Rev. 1 of the Westinghouse Quality Systems Manual	X	X	ML11280A309
ACRS Letter on AP1000 Long-Term Cooling	X	X	ML103410348
ACRS Letter on Staff's review of Vogtle, including discussion of containment interior cleanliness	X	X	ML110170006
Staff's response to ACRS' January 24, 2011, Letter	X	X	ML110350198
Petition to Suspend AP1000 DCR Rulemaking	X	X	ML110970673
Green Ticket for Runkle Petition	X	X	ML11108A077
ACRS letter on AP1000 DCD Revision 19 and Staff's Review	X	X	ML11256A180
Petition to Suspend AP1000 DCR Rulemaking	X	X	ML111110851
Emergency Petition	X	X	ML111110862
Petition to Terminate the Rulemaking on Design Certification of the AP1000	X	X	ML11171A014

Document	PDR	Web	ADAMS
AP1000 Proposed Rule Package (Rule, FRN, and EA)	X	X	ML103000394
ISG–01, ''Seismic Issues Associated with High Frequency Ground Motion''	X	X	ML081400293
Green Ticket Containing Letter from Congressman Markey	X	X	ML110680273
Cover letter for Response to Congressman Markey, August 15, 2011	X	X	ML11080A015
Near-Term Task Force Review of Fukushima	X	X	ML111861807
SRM responding to Near-Term Task Force Report and Recommendations	X	X	ML112310021
Response to Congressman Markey Letter	X	X	ML112450407
Revision 19 to the AP1000 Design Control Document and the AP1000 Final Safety Evaluation Report	X	X	ML11256A180
Advanced Final Safety Evaluation Report, Section 3.8.4	X	X	ML103430502
Presentation Slides ''AP1000 Shield Building Design,'' Meeting with NRC Staff, May 17, 2011 (Proprietary and Non-Proprietary)	X	X	ML111440298
Summary of a Category 1 Meeting With Westinghouse Electric Company Regarding AP1000 Shield Building Design Methodology, May 17, 2011	X	X	ML111430775
G20100734/LTR–10–0528/EDATS: SECY–2010–0595—Ltr. Said Abdel-Khalik re: Report on the Final Safety Evaluation Report Associated with the Amendment to the AP1000 Design Control Document	X	X	ML103560411
Transmittal of WEC Shield Building Action Item 21	X	X	ML102650098
White Paper—Requirements for COL and LWA Issuance, Relative to the Finalization of Standard Design Certification Rulemaking	X	X	ML11152A189
G20110559/LTR–11–0429/EDATS: SECY–2011–0429—Ltr. Stephen E. Kuczynski re: Vogtle Electric Generating Plant Units 3 and 4 Combined License Application—Final Standard Design Certification Rulemaking for LWA–B Request	X	X	ML11210B421
Order (Adopting Proposed Transcript Corrections, Admitting Post-Hearing Responses, and Closing the Record of the Proceeding)	X	X	ML11305A228
Southern Nuclear Operating Company's Request to Waive the Requirements of 10 CFR 2.807	X	X	ML11287A054

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is approving an amendment to the AP1000 standard plant design for use in nuclear power plant licensing under 10 CFR parts 50 or 52. Design certifications (and amendments thereto) are not generic rulemakings establishing a generally applicable standard with which all parts 50 and 52 nuclear power plant licensees must comply. Design certifications (and amendments thereto) are NRC approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications (and amendments thereto) are initiated by an applicant for rulemaking, rather than by the NRC. For these reasons, the NRC concludes that the National Technology Transfer Advancement Act of 1995 does not apply to this final rule.

VIII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under NEPA, and the Commission's regulations in subpart A, ''National Environmental Policy Act; Regulations Implementing Section 102(2),'' of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' that this DCR is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the final EA, is that the Commission has made a generic determination under 10 CFR 51.32(b)(2) that there is no significant environmental impact associated with the issuance of an amendment to a design certification. This amendment to 10 CFR part 52 does not authorize the siting, construction, or operation of a facility using the amended AP1000 design; it only codifies the amended AP1000 design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate under NEPA as part of the application for the construction and operation of a facility referencing this amendment to the AP1000 DCR. In addition, as part of the final EA for the amendment to the AP1000 design, the NRC reviewed Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents in Appendix 1B of the AP1000 DCD Tier 2. According to 10 CFR 51.30(d), an EA for a design certification amendment is limited to the consideration of whether the design change, which is the subject of the proposed amendment renders a SAMDA previously rejected in the earlier EA to become cost beneficial, or results in the identification of new SAMDAs, in which case the costs and benefits of new SAMDAs and the bases for not incorporating new SAMDAs in the design certification must be addressed. Based upon review of Westinghouse's evaluation, the NRC concludes that the proposed design changes: (1) Do not cause a SAMDA previously rejected in the EA for the initial AP1000 design certification to become cost-beneficial; and (2) do not result in the identification of any new SAMDAs that could become cost beneficial.

The NRC prepared a final EA following the close of the comment period for the proposed standard design certification. With the issuance of this final rule, all environmental issues concerning SAMDAs associated with the information in the final EA and Appendix 1B of the AP1000 DCD Tier 2 will be considered resolved for plants referencing Amendment 1 to the AP1000 design whose site parameters are within those specified in SAMDA evaluation. The existing site parameters specified in the SAMDA evaluation are not affected by this design certification amendment.

The final EA, upon which the NRC's finding of no significant impact is based, and Revision 19 of the AP1000 DCD are available as discussed in Section IV, Availability of Documents. The NRC sent a copy of the EA and final rule to every State Liaison Officer and no comments were received.

IX. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0151.

The burden to the public for these information collections is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

XI. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant economic impact upon a substantial number of small entities. The final rule provides for certification of an amendment to a nuclear power plant design. Neither the design certification amendment applicant, nor prospective nuclear power plant licensees who reference this DCR, fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810). Thus, this rule does not fall within the purview of the Regulatory Flexibility Act.

XII. Backfitting and Issue Finality

The NRC has determined that this final rule meets the requirements of the backfit rule, 10 CFR 50.109, and the requirements governing changes to DCRs in 10 CFR 52.63(a)(1).

The final rule does not constitute backfitting as defined in the backfit rule (10 CFR 50.109) with respect to operating licenses under 10 CFR Part 50 because there are no operating licenses referencing this DCR.

Westinghouse requested many changes to the currently approved AP1000 DCD Revision 15 to correct spelling, punctuation, or similar errors, which result in text that has the same essential meaning. The NRC concludes that these Westinghouse-requested changes, which are editorial in nature, neither constitute backfitting as defined in 10 CFR 50.109(a)(1), nor are these changes inconsistent with the issue finality provisions of 10 CFR 52.63 or 10 CFR 52.83. The backfitting and issue finality provisions were not meant to apply to such editorial changes in as much as such changes would have insubstantial impact on licensees with respect to their design and operation, and are not the kind of changes falling within the policy considerations that underlie the backfit rule and the issue finality provisions of 10 CFR 52.63 and 10 CFR 52.83.

Westinghouse also made proposed changes to Revision 15 of the AP1000 DCD, which the NRC understands were the result of requests to Westinghouse from COL applicants referencing the AP1000 design, to achieve consistency in description and approach in different portions of the DCD. In the absence of a generic change to the AP1000, the referencing COL applicants stated to Westinghouse and the NRC that each would likely take plant-specific departures to address the inconsistency. While this could result in more consistency within any given COL application, it would result in inconsistencies among the different referencing COLs, which is inconsistent with the overall standardization goal of 10 CFR part 52. Accordingly, the NRC concludes that the Westinghouse-requested changes to the AP1000 to address consistency do not constitute backfitting under the backfit rule (in as much as they are voluntary) and are not otherwise inconsistent with the issue finality provisions of 10 CFR 52.63 and 52.83.

Westinghouse also proposed numerous substantive changes to the AP1000 design described in Revision 15 of the DCD, including, but not limited to, minor component design details, replacement of a design feature with another having similar performance (*e.g.,* turbine manufacturer, power for the auxiliary boiler), and changes allowing additional capability for operational flexibility (*e.g.,* liquid waste holdup tanks, unit reserve transformer). Westinghouse included within its application a detailed list of each DCD content change and the basis for concluding that one or more of the criteria in 10 CFR 52.63(a)(1) are satisfied for each change.

In the course of the NRC review of the technical changes proposed by Westinghouse, the NRC considered the basis offered by Westinghouse and made conclusions about whether the criteria of 10 CFR 52.63(a) were satisfied. These conclusions are included in the chapters of the FSER under ADAMS Accession No. ML112061231. The NRC concluded that all of these changes met at least one of the criteria in 10 CFR 52.63(a) and are not otherwise inconsistent with the issue finality provisions of 10 CFR 52.63 and 52.83. Fifteen of the most significant changes are discussed below, to show that each of the 15 substantive changes to the AP1000 certified design meet at least one of the criteria in 10 CFR 52.63(a)(1)(i) through (a)(1)(vii) and, therefore, do not constitute a violation of the finality provisions in that section.

A. 10 CFR 52.63 Criterion (a)(1)(iv): Provides the Detailed Design Information To Be Verified Under Those ITAAC, Which Are Directed at Certification Information (i.e., DAC)

Title: Removal of Human Factors Engineering Design Acceptance Criteria from the Design Control Document.

Item: 1 of 15.

Description of Change: The ITAAC Design Commitments for HFE are in Tier 1, Table 3.2–1. In Revision 17 of the AP1000 DCD, Westinghouse proposed deletion of the Human Factors DAC (Design Commitments 1 through 4) and provided sufficient supporting documentation to meet the requirements of these ITAAC. Design Commitment 1 pertains to the integration of human reliability analysis with HFE design. Design Commitment 2 pertains to the HFE task analysis. Design Commitment 3 pertains to the human-system

interface. Design Commitment 4 pertains to the HFE program verification and validation implementation. The information developed by Westinghouse to satisfy these ITAAC is included in Chapter 19 of the DCD.

Location within the Safety Evaluation (SER) where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with the HFE DAC are in Sections 18.7.6 (Design Commitment 1), 18.5.9 (Design Commitment 2), 18.2.8 (Design Commitment 3), and 18.11 (Design Commitment 4) of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): The additional information included in Tier 2 provides detailed design information on human factors design that would otherwise have to be addressed through verification of implementation of the human factors DAC. Therefore, the changes to the DCD eliminate the need for DAC on human factors and meet the finality criteria in 10 CFR 52.63(a)(1)(iv).

Title: Change to Instrumentation and Control DAC and Associated ITAAC.

Item: 2 of 15.

Description of Change: In the proposed revision to DCD Chapter 7, Westinghouse chose the Common Q platform to implement the Protection and Safety Monitoring System (PMS) and removed all references to the Eagle 21 platform. This design change, coupled with the development of other information about the PMS system definition design phase, was the basis for Westinghouse's proposed removal of its Tier 1, Chapter 2, Section 2.5.2, Design Commitment 11(a) Design Requirements phase from Table 2.5.2–8, ''Inspections, Tests, Analyses, and Acceptance Criteria,'' for the PMS.

In its proposed revision to the DCD in Chapter 7, Westinghouse altered its design for the Diverse Actuation System (DAS) by implementing it with Field Programmable Gate Array (FPGA) technology instead of microprocessor-based technology. Additional information about the design process for the DAS was added as the basis for Westinghouse's proposed completion of its Tier 1, Chapter 2, Section 2.5.1, Design Commitments 4(a) and 4(b) Design Requirements and System Definition phases from Table 2.5.1–4 ''Inspections, Tests, Analyses, and Acceptance Criteria'' for the DAS.

Location within the Safety Evaluation (SER) where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with I&C DAC and ITAAC are in Sections 7.2.2.3.14, 7.2.5, 7.8.2, 7.9.2, and 7.9.3 of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Westinghouse provided additional information that incorporates the results of the design process implementation for the PMS and DAS (which both support completion of Design Commitment 11(a) from Table 2.5.2–8 and 4a and 4b from Table 2.5.1–4, respectively) into the DCD. The additional information included in Tier 2 provides detailed design information on I&C design that would otherwise have to be addressed through verification of implementation of the I&C DAC. Therefore, the changes to the DCD eliminate the need for DAC on I&Cs and meet the finality criteria in 10 CFR 52.63(a)(1)(iv).

B. 10 CFR 52.63 Criterion (a)(1)(vii): Contributes to Increased Standardization of the Certification Information

The changes in the AP1000 amendment generally fall into one of two categories: (1) Changes that provide additional information or a greater level of detail not previously available in the currently-approved version of the AP1000 DCD (Revision 15); or (2) changes requested by COL applicants referencing the AP1000 who would plan to include these changes in their application as departures if they were not approved in the AP1000 DCR amendment. The Commission concludes that both categories of changes meet the 10 CFR 52.63 criterion of ''contributes to increased standardization.'' The bases for the Commission's conclusions, including each category of change, are discussed below.

Additional and More Detailed Information

Westinghouse proposes that the DCD be changed by adding new, more detailed design information that expands upon the design information already included in the DCD. This information would be used by every COL referencing the AP1000 DCR. Incorporating these proposed changes into the AP1000 DCR as part of this amendment contributes to the increased standardization of the certification information by eliminating the possibility of multiple departures. Therefore, these changes enhance standardization, and meet the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Changes for Which COL Applicants Would Otherwise Request Departures

Westinghouse proposes several changes to its DCD with the stated purpose of contributing to increased standardization. Westinghouse represents that these changes were requested by the lead COL applicants currently referencing the AP1000. The NRC, in meetings with these applicants as part of the ''Design-Centered Working Group'' process for jointly resolving licensing issues, confirmed that these applicants requested these changes and committed to pursue plant-specific departures from the AP1000 if Westinghouse did not initiate such changes to the AP1000 DCR. Such departures may be pursued by individual COL applicants (and licensees) as described in part VIII, ''Processes for Changes and Departures'' of the AP1000 DCR (Appendix D to 10 CFR part 52). Incorporating these proposed changes into the AP1000 DCR as part of this amendment contributes to the increased standardization of the certification information by eliminating the possibility of multiple departures. Therefore, all Westinghouse-initiated changes for the purpose of eliminating plant-specific departures enhance standardization, and meet the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Minimization of Contamination (10 CFR 20.1406(b)).

Item: 3 of 15.

Description of Change: In DCD Section 12.1.2.4, Westinghouse discussed features incorporated into the amended design certification to demonstrate compliance with 10 CFR 52.47(a)(6), which requires that a design certification application include the information required by 10 CFR 20.1406(b), which was adopted in 2007 as part of the general revisions to 10 CFR Part 52. This regulation requires design certification applicants whose applications are submitted after August 20, 1997, to describe how the design will minimize, to the extent practicable, contamination of the facility and the environment, facilitate decommissioning and minimize the generation of radioactive waste. The DCD changes are documented in Westinghouse Technical Report 98, ''Compliance with 10 CFR 20.1406'' (APP–GW–GLN–098), Revision 0 (ADAMS Accession No. ML071010536). Westinghouse evaluated contaminated piping, the SFP air handling systems, and the radioactive waste drain system to show that piping and components utilize design features that will prevent or mitigate the spread of contamination within the facility or the environment. Westinghouse has incorporated modifications and features such as elimination of underground radioactive tanks, RCPs without mechanical seals, fewer embedded pipes, less radioactive

piping in the auxiliary building and containment vessel, and monitoring the radwaste discharge pipeline to demonstrate that the AP1000 design certification, as amended, will be in compliance with the subject regulation and Regulatory Guidance (RG) 4.21, ''Minimization of Contamination and Radioactive Waste Generation: Life-Cycle Planning'' (June 2008).

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features are in Section 12.2 of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1)(vii): Inclusion in the DCD of the more detailed information about the features for minimization of contamination provides additional information to be included in the DCD for the AP1000 that increases standardization of the AP1000 design. Thus, the changes meet the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Extension of Seismic Spectra to Soil Sites and Changes to Stability and Uniformity of Subsurface Materials and Foundations.

Item: 4 of 15.

Description of Change: In AP1000 DCD Tier 2, Sections 2.5.2 and 3.7, Westinghouse extended the AP1000 design to sites with five soil profiles, ranging from hard rock to soft soil, for Category I structures, systems, and components. The certified design included only hard rock conditions. To support the technical basis for the extension, Westinghouse provided: Seismic analysis methods, procedures for analytical modeling, soil-structure interaction analysis with three components of earthquake motion, and interaction of non-seismic Category I structures with seismic Category I structures. Also, in DCD Section 2.5.4, Westinghouse extended the AP1000 design with ''Stability and Uniformity of Subsurface Materials and Foundations,'' where the DCD presents the requirements related to subsurface materials and foundations for COL applicants referencing AP1000 standard design. The site-specific information includes excavation, bearing capacity, settlement, and liquefaction potential. On February 28, 2011, Westinghouse submitted Revision 5 to TR–03, ''Extension of Nuclear Island Seismic Analysis to Soil Sites,'' and summarized the report in DCD Appendix 3G, to provide more detail about its analyses.

*Location within the SER where the changes are principally described:*The details of the NRC's evaluation of Westinghouse's design features associated with extension of seismic spectra to soil sites are in Section 3.7 of the FSER. The details of the NRC's evaluation of Westinghouse's design features associated with stability and uniformity of subsurface materials and foundations are in Sections 2.5.2 and 2.5.4 of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Westinghouse submitted a change to the DCD that provides the seismic design and supporting analysis for a range of soil conditions representative of expected applicants for a COL referencing the AP1000 design. As a result, the certified design can be used at more sites without the need for departures to provide site-specific analyses or design changes, thus leading to a more uniform analysis and seismic design for all the AP1000 plants. Including in the DCD the information demonstrating adequacy of the design for seismic events for a wider range of soil conditions is a change that provides additional information leading to increased standardization of this aspect of the design. In addition, the change reduces the need for COL applicants to seek departures from the current AP1000 design in as much as most sites do not conform to the currently approved hard rock sites. Therefore, the change increases standardization and meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Long-Term Cooling.

Item: 5 of 15.

Description of Change: DCD Tier 2, Section 6.3.8, describes the changes to COL information items related to containment cleanliness and verification of water sources for long-term recirculation cooling following a LOCA. The COL information item related to verification of water sources for long-term recirculation cooling following a LOCA was closed based on Westinghouse TR–26, ''AP1000 Verification of Water Sources for Long-Term Recirculation Cooling Following a LOCA,'' APP–GW–GLR–079 (ADAMS Accession No. ML102170123) and other information contained in DCD Chapter 6. Section 6.3.2.2.7 describes the evaluation of the water sources for long-term recirculation cooling following a LOCA, including the design and operation of the AP1000 PCCS debris screens. DCD Tier 1, Section 2.2.3, includes the associated design descriptions and ITAAC.

The COL information item requires a cleanliness program to limit the amount of latent debris in containment consistent with the analysis and testing assumptions.

Location within the SE where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with long-term cooling in the presence of LOCA-generated and latent debris and General Design Criteria 35 and 38 are in Subsection 6.2.1.8 of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Inclusion in the DCD of the design and analysis information that demonstrates adequacy of long-term core cooling provides additional information leading to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Control Room Emergency Habitability System.

Item: 6 of 15.

Description of Change: DCD Tier 2, Section 6.4, has undergone significant revision. Westinghouse redesigned its main control room emergency habitability system to meet control room radiation dose requirements using the standard assumed in-leakage of 5 cubic feet per minute in the event of a release of radiation. The changes include the addition of a single-failure proof passive filter train. The flow through the filter train is provided by an eductor downstream of a bottled air supply. These changes were prompted by Westinghouse's proposal to revise the atmospheric dispersion factors from those certified in Revision 15 to larger values to better accommodate COL sites. As a result, other design changes were needed to maintain doses in the control room within acceptable limits.

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with radiation dose to personnel under accident conditions are in Section 6.4 of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Incorporation of design changes to the main control room ventilation systems would contribute to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Changes to the Component Cooling Water System.

Item: 7 of 15.

Description of Change: In Revision 18 to AP1000 DCD Tier 2, Westinghouse proposed changes to the design of the component cooling water system (CCWS) to modify the closure logic for system motor-operated containment isolation valves and install safety-class relief valves on system supply and return lines. The closure logic would close the isolation valves upon a high RCP bearing water temperature signal,

which might be indicative of a RCP heat exchanger tube rupture. This change would automatically isolate this potential leak to eliminate the possibility of reactor coolant from a faulted heat exchanger discharging to portions of the CCWS outside containment.

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with the CCWS are in Chapter 23, Section V, of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Westinghouse included changes to the component cooling water in the DCD. These changes will contribute to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Changes to Instrumentation and Control Systems.

Item: 8 of 15.

Description of Change: In AP1000 DCD Tier 2, Sections 7.1 through 7.3, Westinghouse completed planning activities related to the architecture of its safety related I&C protection system, referred to as the PMS. Westinghouse also proposed changes to the DCD to reflect resolution of PMS interdivisional data communications protocols and methods utilized to ensure a secure development and operational environment. A secure development and operational environment in this context refers to a set of protective actions taken against a predictable set of non-malicious acts (*e.g.,* inadvertent operator actions, undesirable behavior of connected systems) that could challenge the integrity, reliability, or functionality of a digital safety system. The establishment of a secure development and operational environment for digital safety systems involves: (i) Measures and controls taken to establish a secure environment for development of the digital safety system against undocumented, unneeded and unwanted modifications and (ii) protective actions taken against a predictable set of undesirable acts (*e.g.,* inadvertent operator actions or the undesirable behavior of connected systems) that could challenge the integrity, reliability, or functionality of a digital safety system during operations.

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with I&C systems are in Sections 7.1 through 7.3, and 7.9 of NRC's Chapter 7 FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Inclusion in the DCD of the more detailed information about the I&C architecture and communications provides additional information leading to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Changes to the Passive Core Cooling System—Gas Intrusion.

Item: 9 of 15.

Description of Change: In AP1000 DCD Tier 1 and Tier 2, Westinghouse proposed changes to the design of the PCCS to add manual maintenance vent valves and manual maintenance drain valves, and to reroute accumulator discharge line connections in order to address concerns related to gas intrusion. In addition, Westinghouse provided descriptions of surveillance and venting procedures to verify gas void elimination during plant startup and operations. These proposed changes are responsive to the actions requested by Generic Letter 2008–01, ''Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems.''

The passive core cooling system (PCCS) provides rapid injection of borated water, which provides negative reactivity to reduce reactor power to residual levels and ensures sufficient core cooling flow. Noncondensible gas accumulation in the PCCS has the potential to delay injection of borated water, which would impact the moderating and heat removal capabilities, thus providing a challenge to the primary fission product barrier and maintenance of a coolable core geometry. As part of its review, the NRC determined that the proposed changes in the design of the PCCS were acceptable for providing protection for design-basis events, such as LOCAs.

Location within the SER where the changes are principally described: The NRC's evaluation of proposed changes to the DCD associated with changes to the PCCS is in Chapter 23, Section L, of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Inclusion in the DCD of the design and analysis information that provides for venting of non-condensible gases provides additional information leading to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Integrated Head Package—Use of the QuickLoc Mechanism.

Item: 10 of 15.

Description of Change: In DCD Tier 2, Section 5.3.1.2, Westinghouse describes a revised integrated head package (IHP) design. The inclusion of eight QuickLoc penetrations in lieu of the forty-two individual in-core instrument thimble-tube-assembly penetrations on the reactor vessel head is a significant decrease in the number of reactor pressure vessel (RPV) closure head penetrations for access to in-core and core exit instrumentation. The QuickLoc mechanism allows the removal of the RPV closure head without removal of in-core and core exit instrumentation and, thus, decreases refueling outage time and overall occupational exposure. This head package design has been installed on a number of operating plants and, as noted, has several operational and safety advantages.

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with the (1) IHP and QuickLoc mechanism are in Section 5.2.3 of the FSER and (2) radiation protection pertaining to the addition of the integrated reactor head package and QuickLoc connectors are in Subsection 12.4.2.3 of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Inclusion in the DCD of the changes to the IHP would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Reactor Coolant Pump Design.

Item: 11 of 15.

Description of Change: In AP1000 DCD Tier 2, Subsection 5.4.1, Westinghouse proposed changes related to the RCP design. These changes include: Change to a single-stage, hermetically sealed, high inertia, centrifugal sealless RCP of canned motor design; use of an externally mounted heat exchanger; and change of the RCP flywheel to bimetallic construction. These DCD changes are documented in: TR–34, ''AP1000 Licensing Design Change Document for Generic Reactor Coolant Pump,'' APP–GW–GLN–016, November 2006 and in other documentation in response to NRC inquiries. The supporting documentation includes an analysis demonstrating that failure of the flywheel would not generate a missile capable of penetrating the surrounding casing, and, therefore, that such failure would not damage the reactor coolant pressure boundary.

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with the RCP design are in Section 5.4.1 of the NRC's Chapter 5 FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Inclusion in the DCD of the changes to the RCP would reduce the possibility of plant-specific departure requests by COL applicants referencing the AP1000 DCR. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Reactor Pressure Vessel Support System.

Item: 12 of 15.

Description of Change: The RPV structural support system of the AP1000 standard design is designed to provide the necessary support for the heavy RPV in the AP1000 standard design. The original anchorage design was bolting into embedded plates of the CA04 structural module. Subsection 3.8.3.1.1 of the AP1000 DCD Tier 2 would be changed to reflect modifications to the RPV support design. In the revised design, there are four support ''boxes'' or ''legs'' located at the bottom of the RPV's cold leg nozzles. The support boxes are anchored directly to the primary shield wall concrete base via steel embedment plates. This CA04 structural module is no longer used in the new design. The four RPV support boxes are safety-related and the design of the RPV associated support structures is consistent with the safe shutdown earthquake design of Seismic Category I equipment. Subsections 3.8.3.5.1 and 5.4.10.2.1 of the DCD are modified.

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with RPV supports are in Chapter 23, Section R, of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Inclusion in the DCD of the changes to the RPV supports contributes to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Spent Fuel Pool Decay Heat Analysis and Associated Design Changes.

Item: 13 of 15.

Description of Change: In AP1000 DCD Tier 2, Section 9.1.3, Westinghouse proposed changes to the SFP cooling system. Westinghouse proposed to increase the number of spent fuel storage locations from 619 to 889 fuel assemblies and implement the following associated design changes: (1) Increase in component cooling system (CCS) pump design capacity, (2) increase in the CCS supply temperature to plant components, and (3) changes in the CCS parameters related to the RCPs. The increase in the number of assemblies affects the decay heat removal/SFP heatup analyses. The supporting bases for these DCD changes are documented in: TR–111, ''Component Cooling System and Service Water System Changes Required for Increased Heat Loads,'' APP–GW–GLN–111, Revision 2, dated May 2007 (ADAMS Accession No. ML071500563); TR–103, ''Fluid System Changes,'' APP–GW–GLN–019, Revision 2, dated October 2007 (ADAMS Accession No. ML072830060); TR–108, ''AP1000 Site Interface Temperature Limits,'' APP–GW–GLN–108, Revision 2, dated September 2007 (ADAMS Accession No. ML072750137), and TR–APP–GW–GLR–097, ''Evaluation of the Effect of the AP1000 Enhanced Shield Building on the Containment Response and Safety Analysis,'' Revision 3, dated June 2011 (ADAMS Accession No. ML11168A041).

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with the SFP decay heat analysis are in Section 9.2.2 of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Inclusion in the DCD of the changes to the SFP decay heat analysis would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Spent Fuel Rack Design and Criticality Analysis.

Item: 14 of 15.

Description of Change: In DCD Tier 2, Section 9.1.2, Westinghouse proposed changes to the spent fuel racks: (1) To increase the storage capacity by 270 additional fuel assemblies, and (2) to integrate a new neutron poison into the rack design. These changes included a different rack design and associated structural analysis and a revised criticality analysis. These DCD changes are documented in TR–54, ''Spent Fuel Storage Racks Structure and Seismic Analysis,'' APP–GW–GLR–033, Revision 4, dated June 2, 2010 (ADAMS Accession No. ML101580475); and TR–65, ''Spent Fuel Storage Racks Criticality Analysis,'' APP–GW–GLR–029, Revision 2, dated January 5, 2010 (ADAMS Accession No. ML100082093).

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with the spent fuel rack design and criticality analysis are in Section 9.1.2 of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Inclusion in the DCD of the changes to the spent fuel rack design and criticality analysis would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Vacuum Relief System.

Item: 15 of 15.

Description of Change: In Revision 18 to AP1000 DCD Tier 2, Chapters 3, 6, 7, 9, and 16, Westinghouse proposed a change to the design of the containment, which adds a vacuum relief system to the existing containment air filtration system vent line penetration. The proposed vacuum relief system consists of redundant vacuum relief devices inside and outside containment sized to prevent differential pressure between containment and the shield building from exceeding the design value of 1.7 psig, which could occur under extreme temperature conditions.

Each relief flow path consists of a check valve inside containment and a motor operated butterfly valve outside of containment. The redundant relief devices outside containment share a common inlet line with redundant outside air flow entry points. The outlet lines downstream of the outside containment relief devices are routed to a common header connected to the vent line penetration. The redundant relief devices inside containment share a common inlet line from the vent line penetration and have independent discharge lines into containment.

Location within the SER where the changes are principally described: The details of the NRC's evaluation of Westinghouse's design features associated with the addition of the vacuum relief system are in Chapter 23, Section W, of the FSER.

Evaluation of the Criteria in 10 CFR 52.63(a)(1): Inclusion in the DCD of the introduction of a containment vacuum relief system would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Other Technical Changes

The above discussion on selected technical changes is illustrative of the NRC's consideration of applicability of the finality provisions to other technical changes proposed from Revision 15 of the DCD, which are reflected in Revision 19. As noted earlier, Westinghouse provided its proposed basis for each change as part of the application. The NRC concludes that the other technical changes meet one or more of the finality criteria and thus do not constitute a violation of the finality provisions of 10 CFR 52.63.

Changes Addressing Compliance With Aircraft Impact Assessment Rule (10 CFR 50.150)

The final rule amends the existing AP1000 DCR, in part, to address the requirements of the AIA rule. The AIA rule itself mandated that a DCR be revised, if not during the DCR's current term, then no later than its renewal to address the requirements of the AIA rule. In addition, the AIA rule provided that any COL issued after the effective date of the final AIA rule must reference a DCR complying with the AIA rule, or itself demonstrate compliance with the AIA rule. The AIA rule may therefore be regarded as inconsistent with the finality provisions in 10 CFR 52.63(a) and Section VI of the AP1000 DCR. However, the NRC provided an administrative exemption from these finality requirements when the final AIA rule was issued (74 FR 28112; June 12, 2009). Accordingly, the NRC has already addressed the backfitting implications of applying the AIA rule to the AP1000 with respect to the AP1000 and referencing COL applicants.

Conclusion

The amended AP1000 DCR does not constitute backfitting and is consistent with the finality provisions in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis or documented evaluation for this rule.

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 52.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 1. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

■ 2. In Appendix D to 10 CFR Part 52:
■ a. In Section III, revise paragraphs A and D;
■ b. In Section IV, revise paragraph A.3 and add paragraph A.4;
■ c. In Section V, redesignate paragraph A as paragraph A.1 and add a new paragraph A.2;
■ d. In Section VI, revise paragraphs B.1, B.2, B.7, and E;
■ e. In Section VIII, revise the introductory text of paragraph B.5.b, redesignate paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and add a new paragraph B.5.d, and revise paragraphs B.6.b and B.6.c; and
■ f. In Section X, revise paragraph A.1 and add a new paragraph A.4.

The revisions and additions read as follows:

Appendix D to Part 52—Design Certification Rule for the AP1000 Design

* * * * *

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic TSs in the AP1000 Design Control Document, Revision 19, (Public Version) (AP1000 DCD), APP–GW–GL–702, dated June 13, 2011, are approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Stanley E. Ritterbusch, Manager, AP1000 Design Certification, Westinghouse Electric Company, 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066, telephone (412) 374–3037. A copy of the generic DCD is also available for examination and copying at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are available for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, telephone (301) 415–5610, email *LIBRARY.RESOURCE@NRC.GOV*. The DCD can also be viewed online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html* by searching under ADAMS Accession No. ML11171A500. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

D. 1. If there is a conflict between the generic DCD and either the application for the initial design certification of the AP1000 design or NUREG–1793, ''Final Safety Evaluation Report Related to Certification of the Westinghouse Standard Design,'' and Supplement No. 1, then the generic DCD controls.

2. If there is a conflict between the generic DCD and either the application for Amendment 1 to the design certification of the AP1000 design or NUREG–1793, ''Final Safety Evaluation Report Related to Certification of the Westinghouse Standard Design,'' Supplement No. 2, then the generic DCD controls.

* * * * *

IV. Additional Requirements and Restrictions

A. * * *

3. Include, in the plant-specific DCD, the sensitive unclassified non-safeguards information (including proprietary information) and safeguards information referenced in the AP1000 DCD.

4. Include, as part of its application, a demonstration that an entity other than Westinghouse is qualified to supply the AP1000 design, unless Westinghouse supplies the design for the applicant's use.

* * * * *

V. Applicable Regulations

A. * * *

2. The regulations that apply to those portions of the AP1000 design approved by Amendment 1 are in 10 CFR parts 20, 50, 73, and 100, codified as of December 30, 2011, that are applicable and technically relevant, as described in the Supplement No. 2 of the FSER (NUREG–1793).

* * * * *

VI. Issue Resolution

* * * * *

B. * * *

1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER and Supplement Nos. 1 and 2, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3 of the DCD), and the rulemaking records for initial certification and Amendment 1 of the AP1000 design;

2. All nuclear safety and safeguards issues associated with the referenced sensitive unclassified non-safeguards information (including proprietary information) and safeguards information which, in context, are intended as requirements in the generic DCD for the AP1000 design;

* * * * *

7. All environmental issues concerning severe accident mitigation design alternatives

associated with the information in the NRC's EA for the AP1000 design, Appendix 1B of Revision 15 of the generic DCD, the NRC's final EA for Amendment 1 to the AP1000 design, and Appendix 1B of Revision 19 of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the severe accident mitigation design alternatives evaluation.

* * * * *

E. The NRC will specify at an appropriate time the procedures to be used by an interested person who wishes to review portions of the design certification or references containing safeguards information or sensitive unclassified non-safeguards information (including proprietary information, such as trade secrets or financial information obtained from a person that are privileged or confidential (10 CFR 2.390 and 10 CFR part 9)), for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

* * * * *

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD or one affecting information required by 10 CFR52.47(a)(28) to address 10 CFR 50.150, requires a license amendment if it would:

* * * * *

d. If an applicant or licensee proposes to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also document how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1) in accordance with Section X of this appendix.

* * * * *

6. * * *

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.

(2) Fuel principal design requirements.

(3) Fuel criteria evaluation process.

(4) Fire areas.

(5) Reactor coolant pump type.

(6) Small-break loss-of-coolant accident (LOCA) analysis methodology.

(7) Screen design criteria.

(8) Heat sink data for containment pressure analysis.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except under paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.

(2) American Society of Mechanical Engineers Boiler & Pressure Vessel Code (ASME Code) piping design and welding restrictions, and ASME Code Cases.

(3) Design Summary of Critical Sections.

(4) American Concrete Institute (ACI) 318, ACI 349, American National Standards Institute/American Institute of Steel Construction (ANSI/AISC)–690, and American Iron and Steel Institute (AISI), ''Specification for the Design of Cold Formed Steel Structural Members, Part 1 and 2,'' 1996 Edition and 2000 Supplement.

(5) Definition of critical locations and thicknesses.

(6) Seismic qualification methods and standards.

(7) Nuclear design of fuel and reactivity control system, except burn-up limit.

(8) Motor-operated and power-operated valves.

(9) Instrumentation and control system design processes, methods, and standards.

(10) Passive residual heat removal (PRHR) natural circulation test (first plant only).

(11) Automatic depressurization system (ADS) and core make-up tank (CMT) verification tests (first three plants only).

(12) Polar crane parked orientation.

(13) Piping design acceptance criteria.

(14) Containment vessel design parameters, including ASME Code, Section III, Subsection NE.

(15) Human factors engineering.

(16) Steel composite structural module details.

* * * * *

X. Records and Reporting

A. * * *

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes it makes to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain sensitive unclassified non-safeguards information (including proprietary information) and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

* * * * *

4.a. The applicant for the AP1000 design shall maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal).

b. An applicant or licensee who references this appendix shall maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal).

* * * * *

Dated at Rockville, Maryland, this 22nd day of December 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–33266 Filed 12–29–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0278; Directorate Identifier 2010–NE–10–AD; Amendment 39–16901; AD 2011–26–11]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) GE90–110B1 and GE90–115B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above, with certain part number (P/N) high-pressure compressor (HPC) stages 2–5 spools installed. This AD was prompted by an aborted takeoff caused by liberation of small pieces from the HPC stages 1–2 seal teeth and two shop findings of cracks in the seal teeth. This AD requires eddy current inspection (ECI) or spot fluorescent penetrant inspection (FPI) of the stages 1–2 seal teeth of the HPC stages 2–5 spool for cracks. This AD only allows installation of either HPC stator stage 1 interstage seals that are pregrooved or previously worn seals with acceptable wear marks to prevent heavy rubs. We are issuing this AD to detect cracks in the HPC stages 1–2 seal teeth due to heavy rubs that could result in failure of the seal of the HPC stages 2–5 spool, uncontained engine failure, and damage to the airplane.

DATES: This AD is effective February 3, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 3, 2012.

ADDRESSES: For service information identified in this proposed AD, contact General Electric, GE–Aviation, Room 285, 1 Neumann Way, Cincinnati, Ohio 45215; email: *geae.aoc@ge.com;* phone: (513) 552–3272; fax: (513) 552–3329. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. 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: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7747; fax: (781) 238–7199; email: *jason.yang@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 May 26, 2011 (76 FR 30573). That NPRM proposed to require ECI or spot FPI of the stages 1–2 seal teeth of the HPC stages 2–5 spool for cracks and to prohibit installation of HPC stator stage 1 interstage seals that are not pregrooved to prevent heavy rubs.

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.

Remove Reference to ''Uncontained Engine Failure and Damage to the Airplane''

Two commenters, Boeing Company (Boeing) and GE, wanted us to remove the reference to ''uncontained engine failure, and damage to the airplane'' from the Summary and Unsafe Condition paragraphs. GE claimed that all instances to date of material liberation have been contained. The commenters further stated that it has been demonstrated that once the crack reaches the aft tooth, it turns circumferentially, which minimizes the amount of material liberated.

We disagree. While all of the fractures to date have resulted in small pieces that are contained by the engine case, the direction that the crack will propagate cannot be determined with great certainty. Cracks propagating into the seal will result in a more substantial failure of the HPC stages 1–2 seal. Historical experience has shown that catastrophic failure of critical rotating engine parts can result in an uncontained engine failure that can damage the airplane. We did not change the AD based on this comment.

Request Change to Service Bulletin Reference

Two commenters, Boeing and GE, requested that we change the ''Previous Credit'' section by replacing ''SB GE90–100 S/B 72–0320, Revision 01, dated May 11, 2010 or earlier revision'' with ''SB GE90–100 S/B 72–0320, Revision 02, dated October 1, 2010, or earlier version.'' The commenters indicated that the NPRM (76 FR 30573, May 26, 2011) mandates accomplishment of GE Service Bulletin (SB) GE90–100 S/B 72–0320, Revision 02, dated October 1, 2010, and therefore it would be consistent to provide credit for accomplishment of GE SB GE90–100 S/B 72–0320, Revision 02, dated October 1, 2010, or an earlier revision.

We agree. We changed the reference in the service bulletin to Revision 02 in the Previous Credit paragraph.

Request To Allow Reinstallation of Previously Worn Seals

Three commenters, FedEx, Japan Airlines and All Nippon Airways, requested that the FAA allow the installation of previously worn seals. Use of these seals is allowed by GE SB GE90–100 S/B 72–0360.

We agree. We replaced the Installation Prohibition paragraph in the AD with a new paragraph called ''Installation of HPC Stator Stage 1 Interstage Seals'' to allow for the installation of previously worn seals. Refer to GE SB GE90–100 S/B 72–360, Revision 04, dated November 7, 2011, for seals eligible for installation.

Request Change in Installation Prohibition Section

FedEx requested that wording in the ''Installation Prohibition'' section that states ''do not install any HPC forward case unless it has an HPC stator stage 1 interstage seals, P/N 351–109–503–0'' be changed to ''allow the installation of previously worn seals and/or potential future (post-SB 72–0358) interstage seal configurations.'' FedEx indicated that the current wording unnecessarily prohibits the installation of any forthcoming design improvements to the interstage seals that GE might develop.

We partially agree. We agree with use of a previously worn interstage seal because a worn interstage seal could prevent the HPC stages 2–5 spool from cracking. We disagree with use of the phrase ''potential future (post-SB 72–0358) interstage seal configurations'' because the AD compliance section can only mandate the use of currently approved designs. We added a new paragraph called ''Installation of HPC Stator Stage 1 Interstage Seals,'' which allows for the installation of previously worn seals.

Remove Reference to Pregrooved Seals

GE stated that the AD requires the HPC module be reassembled with pregrooved seals. GE indicated that this requirement to use pregrooved seals is beyond the inspection requirements in GE90–100 S/B 72–0320. GE said that the inclusion of pregrooved seal references would cause disagreement with the ''Relevant Service Information'' and ''Previous Credit'' paragraphs which refer only to the inspection requirement in GE90–100 S/B 72–0320.

We disagree. This AD is issued to mitigate a safety issue caused by failure of the HPC stages 2–5 spool stages 1–2 seal. Reassembling the HPC module with a pregrooved seal would prevent the heavy rubs that result in HPC stages 2–5 spool stages 1–2 seal failure. We did not change the AD based on this comment.

Request Correction to Address

GE requested that its address in the Addresses paragraph be revised to correct a missing space.

We agree. We corrected the GE address in the Addresses paragraph of the AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 30573, May 26, 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 30573, May 26, 2011).

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

Costs of Compliance

We estimate that this AD affects 19 GE90–110B1 and GE90–115B engines installed on airplanes of U.S. registry. We also estimate that it will take about

2 work-hours per engine to perform the proposed actions, and that the average labor rate is $85 per work-hour. Required parts will cost about $9,857 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $190,513.

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):

2011–26–11 General Electric Company: Amendment 39–16901; Docket No. FAA–2011–0278; Directorate Identifier 2010–NE–10–AD.

(a) Effective Date

This AD is effective February 3, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GE90–110B1 and GE90–115B turbofan engines with high-pressure compressor (HPC) stages 2–5 spool, part number (P/Ns) 351–103–106–0, 351–103–107–0, 351–103–108–0, 351–103–109–0, 351–103–141–0, 351–103–142–0, 351–103–143–0, or 351–103–144–0, installed.

(d) Unsafe Condition

This AD was prompted by an aborted takeoff caused by liberation of small pieces from HPC stages 1–2 seal teeth and two shop findings of cracks in the seal teeth. We are issuing this AD to detect cracks in the HPC stages 1–2 seal teeth due to heavy rubs that could result in failure of the seal of the HPC stages 2–5 spool, uncontained engine failure, and damage to the airplane.

(e) Compliance

Comply with this AD when the HPC forward case half is removed from the engine after the effective date of this AD, unless the actions have already been done.

(f) Inspection

Perform an eddy current inspection (ECI) or a fluorescent penetrant inspection (FPI) of the HPC stages 1–2 seal teeth using paragraphs 3.B. or 3.C. of GE Service Bulletin (SB) GE90–100 S/B 72–0320, Revision 02, dated October 1, 2010.

(g) Remove Cracked Spools

Remove from service HPC stages 2–5 spool with cracked stages 1–2 seal teeth before further flight.

(h) Previous Credit

An ECI or FPI inspection performed before the effective date of this AD using GE SB GE90–100 S/B 72–0320, Revision 02, dated October 1, 2010, or earlier revision, satisfies the inspection requirement of this AD.

(i) Installation of HPC Stator Stage 1 Interstage Seals

(1) After the effective date of this AD, do not install or reinstall any HPC forward case unless it is equipped with either:

(i) HPC stator stage 1 interstage seals, P/N 351–109–503–0;

(ii) HPC stator stage 1 interstage seals, P/N 351–109–502–0, with the grooves on seals that meet the dimensional requirements defined in paragraph 3.D.(1) of GE SB GE90–100 S/B 72–360, Revision 04, dated November 7, 2011.

(iii) A mixture of the HPC stator stage 1 interstage seals listed in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

(k) Related Information

(1) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7747; fax: (781) 238–7199; email: *jason.yang@faa.gov,* for more information about this AD.

(2) GE Service Bulletins GE90–100 S/B 72–0320, Revision 02, dated October 1, 2010, and GE90–100 S/B 72–0360, Revision 04, November 7, 2011, pertain to the subject of this AD. Contact General Electric, GE–Aviation, Room 285, 1 Neumann Way, Cincinnati, Ohio 45215; email: *geae.aoc@ge.com*; phone: (513) 552–3272; fax: (513) 552–3329; for a copy of this service information.

(l) 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:

(i) General Electric Company (GE) Service Bulletin (SB) GE90–100 S/B 72–0320, Revision 02, October 1, 2010; and

(ii) GE SB GE90–100 S/B 72–0360, Revision 04, dated November, 7, 2011.

(2) For service information identified in this AD, contact General Electric, GE–Aviation, Room 285, 1 Neumann Way, Cincinnati, Ohio 45215; email: *geae.aoc@ge.com;* phone: (513) 552–3272; fax: (513) 552–3329.

(3) You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. 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 incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on December 15, 2011.

Thomas A. Boudreau,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–32832 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0919; Directorate Identifier 2010–NM–088–AD; Amendment 39–16903; AD 2011–27–02]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 airplanes. This AD was prompted by results from a damage tolerance analysis conducted by the manufacturer indicating that fatigue cracking could occur in wing rear spar and upper surface zones. This AD requires repetitive inspections for cracking of the wing rear spar and upper surface zones, and repair if necessary. We are issuing this AD to detect and correct such fatigue cracking, which could result in cracking that grows large enough to reduce the wing strength below certificated requirements and possibly cause fracture of the rear spar, resulting in extensive damage to the wing and possible fuel leaks.

DATES: This AD is effective February 3, 2012.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the AD as of February 3, 2012.

ADDRESSES: For service information identified in this AD, Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone (770) 494–5444; fax (770) 494–5445; email *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5554; fax: (404) 474–5606; email: *Carl.W.Gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on September 21, 2011 (76 FR 58416). That NPRM proposed to require repetitive inspections for cracking of the wing rear spar and upper surface zones, and repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 58416, September 21, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed.

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Models: L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, Zones 1A through 1E (Non-destructive Inspection).	21 work-hours × $85 per hour = $1,785 per inspection cycle.	$0	$1,785 per inspection cycle.	$3,570 per inspection cycle (2 airplanes).
Models: L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, Zone 1F (Detailed Inspection).	5 work-hours × $85 per hour = $425 per inspection cycle.	0	$425 per inspection cycle.	$850 per inspection cycle (2 airplanes).
Model: L–1011–385–3, Zones 1A through 1E (Non-destructive Inspection).	24 work-hours × $85 per hour = $2,040 per inspection cycle.	0	$2,040 per inspection cycle.	$4,080 per inspection cycle (2 airplanes).
Model: L–1011–385–3, Zone 1F (Detailed Inspection).	5 work-hours × $85 per hour = $425 per inspection cycle.	0	$425 per inspection cycle.	$850 per inspection cycle (2 airplanes).

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

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):

2011–27–02 Lockheed Martin Corporation/Lockheed Martin Aeronautics Company: Amendment 39–16903; Docket No. FAA–2011–0919; Directorate Identifier 2010–NM–088–AD.

(a) Effective Date

This AD is effective February 3, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 airplanes, certificated in any category, serial numbers 1002 through 1250 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD results from a damage tolerance analysis conducted by the manufacturer indicating that fatigue cracking could occur in wing rear spar and upper surface zones. We are issuing this AD to detect and correct such fatigue cracking, which could result in cracking that grows large enough to reduce the wing strength below certificated requirements and possibly cause fracture of the rear spar, resulting in extensive damage to the wing and possible fuel leaks.

(f) Compliance

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

(g) Inspections of Wing Rear Spar and Upper Surface Zones, and Corrective Actions

At the applicable time specified in paragraph (k) of this AD, do eddy current non-destructive inspections (NDI) and detailed inspections for cracking at the applicable zones specified in paragraph (g)(1) or (g)(2) of this AD, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–226, dated August 31, 2009. Repeat the inspections thereafter at the applicable interval specified in Table 1 of this AD.

(1) For Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 airplanes: Zones 1A through 1E, and Zone 1F.

(2) For Model L–1011–385–3 airplanes: Zones 3A through 3E, and Zone 3F.

(h) Additional Inspection if Cracking Is Found

Except as specified in paragraph (j) of this AD, if any cracking is detected during any inspection required by paragraph (g) of this AD: Before further flight, remove the fastener(s) at the suspect area, as defined in Lockheed Service Bulletin 093–57–226, dated August 31, 2009; and do a secondary eddy current inspection to detect cracking of fastener holes with suspected crack indications; in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–226, dated August 31, 2009.

(i) Repair

Except as specified in paragraph (j) of this AD, if a crack finding is confirmed by the inspection required by paragraph (h) of this AD and the cracking is within the allowable repair limits specified in Lockheed Martin Repair Drawing LCC–7622–369, Revision March 30, 1995: Before further flight, repair the cracking, in accordance with Lockheed Martin Repair Drawing LCC–7622–369, Revision March 30, 1995. If a crack finding confirmed by the inspection required by paragraph (h) of this AD is not within the allowable repair limits specified in Lockheed Martin Repair Drawing LCC–7622–369, Revision March 30, 1995: Before further flight, repair the cracking, in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(j) Exception to Service Bulletin

If any cracking is found during any inspection required by this AD, and Lockheed Service Bulletin 093–57–226, dated August 31, 2009; or Lockheed Martin Repair Drawing LCC–7622–369, Revision March 30, 1995; specifies contacting Lockheed for appropriate action: Before further flight, repair the cracking in accordance with a method approved by the Manager, Atlanta ACO, FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(k) Compliance Times for Inspections

Do the inspections required by paragraph (g) of this AD at the applicable time specified in table 1 of this AD.

TABLE 1—COMPLIANCE TIMES FOR INSPECTIONS

Airplane models and zones	Compliance time (whichever occurs later)		Repetitive interval (not to exceed)
L–1011–385–1 having accumulated fewer than 7,000 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E; (Non-destructive Inspection (NDI))	Within 7,000 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 1,000 flight cycles after the effective date of this AD.	1,100 flight cycles.
L–1011–385–1 having accumulated fewer than 7,000 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F; (Detailed Inspection).	Within 7,000 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 90 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	90 flight cycles.
L–1011–385–1 having accumulated 7,000 flight cycles or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E; (NDI).	Within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.	N/A	1,100 flight cycles.
L–1011–385–1 having accumulated 7,000 flight cycles or more after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F; (Detailed Inspection).	Within 90 flight cycles after the effective date of this AD.	Within 30 days after the effective date of this AD.	90 flight cycles.
L–1011–385–1–14 having accumulated fewer than 6,900 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E; (NDI).	Within 6,900 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 1,000 flight cycles after the effective date of this AD.	900 flight cycles.
L–1011–385–1–14 having accumulated fewer than 6,900 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F; (Detailed Inspection).	Within 6,900 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 90 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	90 flight cycles.
L–1011–385–1–14 having accumulated 6,900 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E; (NDI).	Within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.	N/A	900 flight cycles.
L–1011–385–1–14 having accumulated 6,900 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F; (Detailed Inspection).	Within 90 flight cycles after the effective date of this AD.	Within 30 days after the effective date of this AD.	90 flight cycles.

TABLE 1—COMPLIANCE TIMES FOR INSPECTIONS—Continued

L–1011–385–1–15 having accumulated fewer than 5,600 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E; (NDI).	Within 5,600 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 1,000 flight cycles after the effective date of this AD.	500 flight cycles.
L–1011–385–1–15 having accumulated fewer than 5,600 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F; (Detailed Inspection).	Within 5,600 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 60 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	60 flight cycles.
L–1011–385–1–15 having accumulated 5,600 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E; (NDI).	Within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.	N/A	500 flight cycles.
L–1011–385–1–15 having accumulated 5,600 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F; (Detailed Inspection).	Within 60 flight cycles after the effective date of this AD.	Within 30 days after the effective date of this AD.	60 flight cycles.
L–1011–385–3 having accumulated fewer than 8,400 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E; (NDI).	Within 8,400 flight cycles or 10 years after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215, whichever occurs first.	Within 1,000 flight cycles after the effective date of this AD.	1,200 flight cycles.
L–1011–385–3 having accumulated fewer than 8,400 flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F; (Detailed Inspection).	Within 90 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	Within 85 flight cycles or 30 days after the effective date of this AD, whichever occurs later.	85 flight cycles.
L–1011–385–3 having accumulated 8,400 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zones 1A through 1E; (NDI).	Within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.	N/A	1,200 flight cycles.
L–1011–385–3 having accumulated 8,400 or more flight cycles after the accomplishment of Lockheed Martin Service Bulletin 093–57–184, 093–57–196, or 093–57–215; as of the effective date of this AD; Zone 1F; (Detailed Inspection).	Within 85 flight cycles after the effective date of this AD.	Within 30 days after the effective date of this AD.	85 flight cycles.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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.

(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.

(m) Related Information

For more information about this AD, contact Carl Gray, Aerospace Engineer,

Airframe Branch, ACE–117A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5554; fax: (404) 474–5606; email: *Carl.W.Gray@faa.gov.*

(n) 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) Lockheed Service Bulletin 093–57–226, dated August 31, 2009, approved for IBR February 3, 2012.

(ii) Lockheed Martin Repair Drawing LCC–7622–369, Revision March 30, 1995, approved for IBR February 3, 2012. Only the first page of this document contains the manufacturer name, revision, and date of the document.

(2) For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; telephone (770) 494–5444; fax (770) 494–5445; email *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.*

(3) 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.

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

Issued in Renton, Washington, on December 19, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33243 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0948; Directorate Identifier 2009–NE–30–AD; Amendment 39–16906; AD 2010–06–12R1]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for Thielert Aircraft Engines GmbH models TAE 125–02–99 and TAE 125–01 reciprocating engines. That AD currently requires replacing the existing rail pressure control valve with an improved rail pressure control valve. This new AD requires the same actions but relaxes the initial compliance time from within 100 flight hours to within 600 flight hours for TAE 125–01 reciprocating engines. This AD was prompted by the determination that our AD was inadvertently more restrictive than European Aviation Safety Agency AD 2008–0128. We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

DATES: This AD is effective February 3, 2012.

ADDRESSES: For service information identified in this AD, contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany; phone: +49–37204–696–0; fax: +49–37204–696–55; email: *info@centurion-engines.com.* You may review copies of the referenced service information at the FAA, 12 New England Executive Park, Burlington, MA. 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: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7143; fax: (781) 238–7199; email: *alan.strom@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2010–06–12, Amendment 39–16236 (75 FR 12439, March 16, 2010). That AD applies to the specified products. The NPRM published in the **Federal Register** on October 18, 2011 (76 FR 64285). That NPRM proposed to require relaxing the initial compliance time from within 100 flight hours to within 600 flight hours for TAE 125–01 reciprocating engines.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM.

Clarification of the VRail Plug Modification

Since we issued the NPRM, we determined that the compliance paragraph describing the Vrail plug modification needed clarification. We changed paragraph (e)(1)(i) in the AD to describe what existing parts need to be removed and what part number needs to be installed.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD with the change described previously.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 370 TAE 125–01 and TAE 125–02–99 reciprocating engines installed on products of U.S. registry. We also estimate that it will take about 1.5 work-hours per engine to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $500 per engine. Based on these figures, we estimate the cost of the AD for initial replacement on U.S. operators to be $232,175.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–06–12, Amendment 39–16236, (75 FR 12439, March 16, 2010), and adding the following new AD:

2010–06–12R1 Thielert Aircraft Engines GmbH: Amendment 39–16906 ; Docket No. FAA–2009–0948; Directorate Identifier 2009–NE–30–AD.

(a) Effective Date

This airworthiness directive (AD) is effective February 3, 2012.

(b) Affected ADs

This AD revises AD 2010–06–12, Amendment 39–16236 (75 FR 12439, March 16, 2010).

(c) Applicability

This AD applies to Thielert Aircraft Engines GmbH (TAE) models TAE 125–01 and TAE 125–02–99 reciprocating engines.

(d) Reason

This AD was prompted by the determination that our AD was inadvertently more restrictive than European Aviation Safety Agency AD 2008–0128. We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

(e) Actions and Compliance

Unless already done, do the following actions.

(1) TAE 125–02–99 Reciprocating Engines

(i) For TAE 125–02–99 reciprocating engines, within 100 flight hours after the effective date of this AD, replace the existing rail pressure control valve with a rail pressure control valve P/N 05–7320–E000702. Modify the Vrail plug by removing the two existing single wire sealings and installing three new single wire sealings, P/N AMP–828904–1.

(ii) Guidance on the rail pressure control valve replacement and Vrail plug modification specified in paragraph (e)(1)(i) of this AD can be found in Thielert Repair Manual RM–02–02, Chapter 73–10.08, and Chapter 39–40.08, respectively.

(2) TAE 125–01 Reciprocating Engines

(i) For TAE 125–01 reciprocating engines, before 600 flight hours time-since-new, or within 100 flight hours after the effective date of this AD, whichever occurs later, replace the existing rail pressure control valve with a rail pressure control valve, P/N 02–7320–04100R3.

(ii) Guidance on the rail pressure control valve replacement specified in paragraph (e)(2)(i) of this AD can be found in Thielert Repair Manual RM–02–01, Chapter 29.0.

(3) TAE 125–02–99 and TAE 125–01 Engines, Repetitive Replacements of Rail Pressure Control Valves

Thereafter, for affected TAE 125–02–99 and TAE 125–01 engines, replace the rail pressure control valve with the same P/N valve within every 600 flight hours.

(f) Alternative Methods of Compliance (AMOCs)

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

(g) Related Information

(1) For related information, refer to MCAI EASA AD 2008–0128, dated July 9, 2008, EASA AD 2008–0215, dated December 5, 2008, Thielert Service Bulletin No. TAE 125–1008 P1, Revision 1, dated September 29, 2008, and Thielert Repair Manual RM–02–02. For a copy of the service information referenced in this AD, contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany; phone: +49–37204–696–0; fax: +49–37204–696–55; email: *info@centurion-engines.com.*

(2) For more information about this AD, contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7143; fax: (781) 238–7199; email: *alan.strom@faa.gov.*

(h) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on December 23, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–33514 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0996; Directorate Identifier 2011–NM–068–AD; Amendment 39–16899; AD 2011–26–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD was prompted by reports of excessive in-service wear damage of the thumbnail fairing edge seal, and of the panel rub strip and skin assembly of the fan cowl. This AD requires replacement of the thumbnail fairing edge seals on both sides of the engines with Nitronic 60 stainless steel alloy seals. We are issuing this AD to prevent failure of the fire seal, which could allow a fire in the fan compartment to spread beyond the firewall and reach the flammable fluid leakage zones, resulting in an uncontrolled fire.

DATES: This AD is effective February 3, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 3, 2012.

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

Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Chris Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6496; fax: (425) 917–6590; email: *chris.r.parker@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 was published in the **Federal Register** on October 5, 2011 (76 FR 61643). That NPRM proposed to require replacement of the thumbnail fairing edge seals on both sides of the engines with Nitronic 60 stainless steel alloy seals.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing supports the NPRM (76 FR 61643, October 5, 2011).

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 989 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace thumbnail faring edge seals	6 work-hours × $85 per hour = $510	$2,032	$2,542	$2,514,038

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):

2011–26–09: The Boeing Company: Amendment 39–16899; Docket No. FAA–2011–0996; Directorate Identifier 2011–NM–068–AD.

(a) Effective Date

This AD is effective February 3, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–54–1046, dated February 16, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

(e) Unsafe Condition

This AD was prompted by reports of excessive in-service wear damage of the thumbnail fairing edge seal, and of the panel rub strip and skin assembly of the fan cowl. We are issuing this AD to prevent failure of the fire seal, which could allow a fire in the fan compartment to spread beyond the firewall and reach the flammable fluid leakage zones, resulting in an uncontrolled fire.

(f) Compliance

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

(g) Replace the Thumbnail Fairing Edge Seals

Within 60 months after the effective date of this AD, replace the thumbnail fairing edge seals, on both the left side and the right side of engine 1 and engine 2, with new Nitronic 60 stainless steel alloy seals, in accordance

with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1046, dated February 16, 2011.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

For more information about this AD, contact Chris Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6496; fax: (425) 917–6590; email: *chris.r.parker@faa.gov.*

(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) Boeing Special Attention Service Bulletin 737–54–1046, dated February 16, 2011.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call (425) 227–1221.

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

Issued in Renton, Washington, on December 13, 2011.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–32678 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1023; Airspace Docket No. 11–AWP–15]

Amendment of Class E Airspace; Show Low, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Show Low Regional Airport, Show Low, AZ. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Show Low Regional Airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport.

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

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On October 17, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Show Low, AZ (76 FR 64041). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface, at Show Low Regional Airport, to accommodate IFR aircraft executing RNAV (GPS) standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Show Low Regional Airport, Show Low, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective

September 15, 2011 is amended as follows:

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

* * * * *

AWP AZ E5 Show Low, AZ [Modified]

Show Low Regional Airport, AZ
(Lat. 34°15′56″ N., long. 110°00′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Show Low Regional Airport and within 3 miles each side of the 038° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 10 miles northeast of the airport, and within 2.1 miles each side of the 085° bearing of the Show Low Regional Airport extending from the 6.7-mile radius to 7.9 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 34°35′00″ N., long. 109°51′00″ W.; to lat. 34°14′00″ N., long. 109°22′00″ W.; to lat. 33°49′00″ N., long. 110°36′00″ W.; to lat. 34°08′00″ N., long. 110°45′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on December 22, 2011.

William Buck,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–33564 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1014; Airspace Docket No. 11–AAL–19]

RIN 2120–AA66

Amendment of VOR Federal Airways V–320 and V–440; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends two VHF Omnidirectional Range (VOR) Federal airways in Alaska, V–320 and V–440, due to the relocation of the Anchorage VOR navigation aid. The FAA is taking this action to ensure the continued safe and efficient management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Effective date 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On Monday, November 7, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend VOR Federal airways V–320 and V–440 in Alaska, due to the relocation of the Anchorage VOR navigation aid (76 FR 68674). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Alaskan VOR Federal airways V–320 and V–440. The airway descriptions reflect the Anchorage VOR relocation from Fire Island, AK, to Ted Stevens Anchorage International Airport, Anchorage, AK. Specifically, the descriptions incorporate the new navigation aid location and updated radials used to describe the airway intersections to be used by air traffic control for instrument flight rules aircraft in the vicinity of Anchorage, AK.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Federal airways in Alaska.

Alaskan VOR Federal Airways are published in paragraph 6010(b) of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Alaskan VOR Federal Airways listed in this document will be published subsequently in the Order.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010b Alaskan VOR Federal airways.

* * * * *

V–320 [Amended]

From McGrath, AK; INT McGrath 121° and Kenai, AK 350° radials; INT Kenai 350° and Anchorage, AK 291° radials; Anchorage; INT

Anchorage 147° and Johnstone Point, AK, 271° radials; to Johnstone Point.

* * * * *

V–440 [Amended]

From Nome, AK; Unalakleet, AK; McGrath, AK; Anchorage, AK; INT Anchorage 147° and Middleton Island, AK 309° radials; Middleton Island; Yakutat, AK; Biorka Island, AK; to Sandspit, BC. The airspace within Canada is excluded.

Issued in Washington, DC, on December 23, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulation and ATC Procedure Group.

[FR Doc. 2011–33463 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT–OST–2010–0140]

RIN 2105–AD92

Enhancing Airline Passenger Protections: Full Fare Price Advertising Requirements

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule amending the time period for compliance with the full fare and other advertising requirements in 14 CFR 399.84 from January 24, 2012, to January 26, 2012.

DATES: The effective date for the amendment to 14 CFR 399.84, published April 25, 2011, at 76 FR 23110, and delayed July 28, 2011, at 76 FR 45181, was further delayed until January 26, 2012, at 76 FR 78145. The effective date of January 26, 2012 is confirmed.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), blane.workie@dot.gov (email).

SUPPLEMENTARY INFORMATION: The Department of Transportation's Office of the Secretary (OST) published a direct final rule with a request for comments in the **Federal Register** on December 16, 2011 (76 FR 78145). The direct final rule delayed the effective date of the full fare and other advertising requirements from January 24, 2012, to January 26, 2012, to provide regulatory relief to petitioner American Airlines by allowing the carrier and any other similarly situated carrier or ticket agent to avoid having to update full fare information in on-line reservations systems on a day of the week that is the petitioner's, and may be other carriers' and ticket agents', heaviest on-line traffic and revenue day. OST uses the direct final rulemaking procedure for non-controversial rules where OST believes that there will be no adverse public comment. The direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment was received by December 23, 2011, the full fare and other advertising requirements in 14 CFR 399.84 would become effective on January 26, 2011. No adverse comments were received, and thus this notice confirms that the direct final rule will become effective on that date.

Issued this 27th day of December 2011, in Washington, DC.

Susan Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2011–33595 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB61

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Delay of Effective Date

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: The Department of Labor (Department) is delaying the effective date of the Wage Methodology for the Temporary Non-agricultural Employment H–2B Program (the Wage Rule) to October 1, 2012 in response to recently enacted legislation that prohibits any funds from being used to implement the Wage Rule for the remainder of fiscal year (FY) 2012. The Wage Rule revised the methodology by which we calculate the prevailing wages to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status.

DATES: The effective date of the rule amending 20 CFR part 655, published January 19, 2011, at 76 FR 3452, delayed at 76 FR 45667, August 1, 2011, and further delayed at 76 FR 59896, September 28, 2011, and 76 FR 73508, November 29, 2011, is delayed further until October 1, 2012.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–(877) 889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Department of Labor (Department) published the Wage Methodology for the Temporary Non-agricultural Employment H–2B Program; Final Rule (the Wage Rule) on January 19, 2011, 76 FR 3452. The Wage Rule revised the methodology by which we calculate the prevailing wages to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status. The Department originally set the effective date of the Wage Rule for January 1, 2012. However, due to a court ruling that invalidated the January 1, 2012 effective date of the Wage Rule,[1] we issued a Notice of Proposed Rulemaking (NPRM) on June 28, 2011, which proposed that the Wage Rule take effect 60 days from the date of publication of a final rule resulting from the NPRM. 76 FR 37686, June 28, 2011. After a period of public comment, we published a Final Rule on August 1, 2011, which set the new effective date for the Wage Rule of September 30, 2011 (the Effective Date Rule).

Both the Wage Rule and the Effective Date Rule recently were challenged in two separate lawsuits[2] seeking to bar their implementation. In consideration

[1] *CATA* v. *Solis,* Civil Docket No. 09–240, Doc. No. 119, 2011 WL 2414555 (E.D. Pa. June 16, 2011).

[2] See *Louisiana Forestry Association, Inc., et al. (LFA)* v. *Solis, et al.,* Civil Docket No. 11–1623 (W.D. La, Alexandria Division); and *Bayou Lawn & Landscape Services, et al. (Bayou)* v. *Solis, et al.,* Civil Docket No. 11–445 (N.D. Fla., Pensacola Division).

of the two pending challenges to the Wage Rule and its new effective date, and the possibility that the litigation would be transferred to another court,[3] the Department issued a final rule, 76 FR 59896, September 28, 2011, postponing the effective date of the Wage Rule from September 30, 2011, until November 30, 2011, in accordance with the Administrative Procedure Act, 5 U.S.C. 705.

On November 18, 2011, President Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2012, which provides that ''[n]one of the funds made available by this or any other Act for fiscal year 2012 may be used to implement, administer, or enforce, prior to January 1, 2012 the [Wage Rule].'' Public Law 112–55, Div. B, Title V, § 546 (Nov. 18, 2011) (the November Appropriations Act). While the November Appropriations Act prevents the expenditure of funds to implement, administer, or enforce the Wage Rule before January 1, 2012, it did not prohibit the Wage Rule from going into effect, which was scheduled to occur on November 30, 2011. When the Wage Rule goes into effect, it will supersede and make null the prevailing wage provisions at 20 CFR 655.10(b) of the Department's existing H–2B regulations, which were promulgated under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes; Final Rule, 73 FR 78020, Dec. 19, 2008 (the H–2B 2008 Rule). The Department determined that allowing the Wage Rule to go into effect as planned on November 30, 2011, would therefore render the Department unable to issue prevailing wage determinations under the 2008 H–2B Rule, because it would no longer exist. Accordingly, the Department issued a final rule, 76 FR 73508, on November 29, 2011 which delayed the effective date of the Wage Rule until January 1, 2012.

On December 23, 2011, President Obama signed into law the Consolidated Appropriations Act, 2012, which provides that ''[n]one of the amounts made available under this Act may be used to implement the [Wage Rule].'' Similar to the November Appropriations Act, the December Appropriations Act prevents the expenditure of funds to implement the Wage Rule for the remainder of FY 2012, but it does not prohibit the Wage Rule from going into effect. If the Wage Rule were to go into ''effect'' on January 1, 2012, we would be unable to issue prevailing wage determinations under the 2008 H–2B rule and the H–2B program would have to be held in abeyance for the remainder of FY 2012, as we would be legally precluded from issuing prevailing wage determinations for the remainder of FY 2012. Because of the imminent threat that we will be unable to operate the H–2B program for the remainder of FY 2012, the Department considers this situation an emergency warranting the publication of a final rule under the good cause exception of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B) and 553(d)(3).

In order to avoid an operational hiatus during the remainder of FY 2012, the Department finds good cause to adopt this rule, effective immediately, and without prior notice and comment. See 5 U.S.C. 553(b)(B) and 553(d)(3). As such, a delay in promulgating this rule past the date of publication would be impracticable and unnecessary and disrupt the program to the detriment of the public interest.

Signed at Washington, DC, this 23rd day of December 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–33521 Filed 12–27–11; 4:15 pm]

BILLING CODE 4510–FP–P

[3] On September 19, 2011, the plaintiffs in the *CATA* litigation moved to intervene in the *LFA* litigation, and also moved to transfer venue over the litigation to the Eastern District of Pennsylvania, the court in which the *CATA* case remains pending. The plaintiffs' motion to intervene was granted by the U.S. District Court in the Western District of Louisiana on Sept. 22, 2011, but was denied by the U.S. District Court in the Northern District of Florida on Nov. 23, 2011. Additionally, the motion to transfer venue was granted by the U.S. District Court in the Western District of Louisiana on Dec. 12, 2011 but was denied by the U.S. District Court in the Northern District of Florida on Dec. 12, 2011.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB61

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Delay of Effective Date; Impact on Prevailing Wage Determinations

AGENCY: Employment and Training Administration, Wage and Hour Division, Labor.

ACTION: Guidance.

SUMMARY: The Department of Labor (we or the Department), as a result of Congressional appropriations language, recently delayed the effective date of the Wage Methodology for Temporary Non-agricultural Employment H–2B Program Final Rule (the Wage Rule) to January 1, 2012. This Notice provides additional guidance to those employers who have received from the Department either a supplemental or dual prevailing wage determinations based on a previous effective date of the new prevailing wage methodology. This guidance provides additional clarification regarding the wage payment requirements for employers participating in the H–2B Temporary Non-agricultural program.

DATES: This guidance is effective December 30, 2011.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). For further information concerning the Wage and Hour Division, contact Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–3510, Washington, DC 20210; Telephone (202) 693–0071 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY calling the toll-free Federal Information Relay Service at 1–(877) 889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Department published the Wage Rule on January 19, 2011, 76 FR 3452. The Wage Rule revised the methodology by which we calculate the prevailing wage to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification used in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status. We originally set the effective date of the Wage Rule for January 1, 2012. However, as a result of a court ruling that invalidated the January 1, 2012 effective date of the Wage Rule,[1] we issued a Notice of Proposed Rulemaking (NPRM) on June 28, 2011, proposing that the Wage Rule take effect 60 days from the date of publication of a final rule resulting from the NPRM. 76 FR 37686, Jun. 28, 2011. We published a Final Rule on August 1, 2011, which set the new effective date of September 30,

[1] *CATA* v. *Solis,* Civil Docket No. 09–240, Doc. No. 119, 2011 WL 2414555 (E.D. Pa. June 16, 2011).

2011 for the Wage Rule (the Effective Date Rule).

In anticipation of the revised effective date of the Wage Rule, the Department issued supplemental prevailing wage determinations to those employers granted labor certification for an H–2B application where work would be performed on or after September 30, 2011. Those supplemental determinations were provided to employers to enable them to meet their amended wage obligations.

Both the Wage Rule and the Effective Date Rule were challenged in two separate lawsuits [2] seeking to bar their implementation. In consideration of the two pending challenges to the Wage Rule and its new effective date, and the possibility that the litigation could be transferred to another court,[3] the Department issued a final rule, 76 FR 59896, Sep. 28, 2011, postponing the effective date of the rule from September 30, 2011, until November 30, 2011, in accordance with the Administrative Procedure Act, 5 U.S.C. 705.

Following the postponement of the effective date to November 30, 2011, and in anticipation of the new effective date, the Office of Foreign Labor Certification (OFLC) issued participating employers two simultaneous (or dual) wage determinations for work to be potentially performed before and after the new effective date of the Wage Rule. The first determination was based on the former regulations that applied until November 30, and the second determination was based on the new prevailing wage methodology set forth in the Wage Rule, that was to be effective for work performed on and after November 30, 2011.

On November 18, 2011, the President signed into law the Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. 112–55, Div. B, Title V, § 546 (Nov. 18, 2011) (the November Appropriations Act). The November Appropriations Act contains language preventing the expenditure of funds to implement, administer, or enforce the Wage Rule prior to January 1, 2012. Accordingly, the Department issued a final rule in the **Federal Register**, 76 FR 73508 (Nov. 29, 2011), again postponing the effective date of the rule, this time from November 30, 2011, until January 1, 2012. As a result, the Department issued in the first half of December 2011 prevailing wage determinations, with the advisory that additional determinations would be forthcoming.

On December 23, 2011, the President signed into law the Consolidated Appropriations Act, 2012, which provides that [''[n]one of the amounts made available under this Act may be used to implement the [Wage Rule].''] Because of the distinct possibility that we would be unable to operate the H–2B program for the remainder of FY 2012 if the effective date of the Wage Rule were not postponed, the Department determined that this situation constituted an emergency warranting the publication of a final rule under the good cause exception of the Administrative Procedure Act to delay the effective date of the Wage Rule to October 1, 2012. Consequently, the Department is publishing a final rule to extend the effective date of the Wage Final Rule to October 1, 2012. See the final rule delaying the effective date of the H–2B Wage Rule, published elsewhere in this issue of the **Federal Register**.

In light of the postponement of the effective date of the Wage Rule until October 1, 2012, the Department is hereby providing public notice that the wage determinations previously issued in anticipation of the effective date of, and in accordance with, the Wage Rule will not be effective until October 1, 2012, and will then apply only to work performed on or after that date, if applicable. In addition, we are hereby providing notice that those prevailing wage determinations issued under the Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes; Final Rule, 73 FR 78020, Dec. 19, 2008 (the 2008 H–2B Rule), which were listed as valid until either November 30, 2011 or December 31, 2011, are now valid for a period of 90 days beyond December 31, 2011, i.e. until March 30, 2012, and only apply to work performed on or before September 30, 2012.

Any employer who received an H–2B prevailing wage determination issued in anticipation of the September 30, 2011, November 30, 2011, or January 1, 2012 effective dates of the Wage Rule is not required to pay, and the Department's Wage and Hour Division will not enforce, the wage provided in those prevailing wage determinations issued in anticipation of the effective date of the Wage Rule for any work performed by H–2B workers or U.S. workers recruited in connection with the H–2B application process until October 1, 2012. Employers are expected to continue to pay at least the prevailing wage as provided in a prevailing wage determination issued under the 2008 H–2B Rule for any work performed before October 1, 2012. Further, employers who received a supplemental H–2B prevailing wage determination, or a prevailing wage determination issued in anticipation of the effective date of the Wage Rule, who are still employing H–2B workers employed under labor certifications issued in connection with those prevailing wage determinations, must pay at least the wage issued under the Wage Rule to any H–2B worker and any U.S. worker recruited in connection with the labor certification for work performed on or after October 1, 2012.

The Department is providing notice that, as a result of the December Appropriations Act, it is precluded from addressing issues raised in Center Director Review requests submitted by employers in connection with prevailing wage determinations issued in anticipation of the effective date of, and in accordance with, the Wage Rule.

Last, the Department in anticipation of questions from the filing community and as a measure of customer service has established the following email box for questions: *H2Bwagerule@dol.gov.*

Signed at Washington, DC, this 23rd day of December 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

Nancy Leppink,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 2011–33523 Filed 12–27–11; 4:15 pm]

BILLING CODE 4510–FP–P

[2] See *Louisiana Forestry Association, Inc., et al. (LFA)* v. *Solis, et al,* Civil Docket No. 11–1623 (WD LA, Alexandria Division); and *Bayou Lawn & Landscape Services, et al. (Bayou)* v. *Solis, et al.,* Civil Docket No. 11–445 (ND FL, Pensacola Division).

[3] On December 12, 2011, the *LFA* court granted a motion to transfer venue over the litigation to the Eastern District of Pennsylvania, the court in which the *CATA* case remains pending. However, the Bayou court denied the defendant's motion to transfer the *Bayou* litigation to the Eastern District of Pennsylvania the same day.

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 701

RIN 1240–AA02

Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: This final rule contains regulations implementing amendments to the Longshore and Harbor Workers' Compensation Act (LHWCA) by the American Recovery and Reinvestment Act of 2009 (ARRA), relating to the exclusion of certain recreational-vessel workers from the LHWCA's definition of ''employee.'' These regulations clarify both the definition of ''recreational vessel'' and those circumstances under which workers are excluded from LHWCA coverage when working on those vessels. The final rule also withdraws a proposed rule that would have codified current case law and the Department's longstanding view that employees are covered under the LHWCA so long as some of their work constitutes ''maritime employment'' within the meaning of the statute.

DATES: This rule is effective January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Gary A. Steinberg, Acting Director, Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 693–0031 (this is not a toll-free number). TTY/TDD callers may dial toll free 1–(800) 889–5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

On August 17, 2010, the Department issued a Notice of Proposed Rulemaking (NPRM) under the LHWCA, 33 U.S.C. 901 *et seq.,* proposing rules implementing amendments to LHWCA section 2(3)(F) governing recreational vessels. 75 FR 50718–30 (Aug. 17, 2010). The Department reissued the proposal on October 15, 2010, to implement a technical amendment to the title of 20 CFR chapter VI and to allow an additional 30 days for public comment. 75 FR 63425–27 (Oct. 15, 2010). The comment period closed on November 17, 2010.

As explained in the NPRM, 75 FR 50718–19, LHWCA section 2(3) defines ''employee'' to mean ''any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker * * *.'' 33 U.S.C. 902(3). The section then lists eight categories of workers who are excluded from the definition of ''employee'' and therefore excluded from LHWCA coverage. 33 U.S.C. 902(3)(A)–(H). Section 2(3)(F) in particular excluded from coverage ''individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length,'' provided that such individuals were ''subject to coverage under a State workers' compensation law.'' 33 U.S.C. 902(3)(F).

Section 803 of Title IX of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115, 127 (2009), amended the section 2(3)(F) exclusion. That provision now excludes ''individuals employed to build any recreational vessel under sixty-five feet in length, *or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel,''* and retains the state-workers'-compensation-coverage proviso. 33 U.S.C. 902(3)(F), as amended by Pub. L. 111–5 section 803, 123 Stat. 115, 187 (2009) (emphasis added).

The Department's proposed rules were intended to implement amended section 2(3)(F) and clarify its application in several respects. The proposed rules set standards for when the amendment applied, refined the definition of ''recreational vessel,'' clarified what types of recreational-vessel work may result in an individual being excluded from the definition ''employee,'' and revised the current regulatory definition of how recreational-vessel length is measured. The proposal also codified the Department's longstanding view that employees are covered under the LHWCA so long as some of their work constitutes ''maritime employment'' within the meaning of the statute. Finally, the Department included a summary of its initial regulatory flexibility analysis.

The Department received many written comments in response to the NPRM from a variety of sources connected to the recreational-vessel community. The commenters included Longshore claimant and employee groups, recreational vessel manufacturers, marina owners and operators, repair shop owners, insurance-industry members, members of Congress, and the Small Business Administration's Office of Advocacy. The Department has found these comments very helpful and, in several important respects, has revised the final rule in response.

II. General Response to Significant Comments and Explanation of Major Changes

A. The LHWCA ''Situs'' Test

As an initial matter, the Department notes that several comments responding to the NPRM appear to be based on the fundamental misunderstanding that these rules eliminate the LHWCA's ''situs'' requirement. For example, one commenter uses a hypothetical landlocked vessel manufacturing facility to illustrate how in its view the proposed rules would be unworkable. Similarly, several landlocked vessel manufacturers commented that the proposed rules would add to their costs of doing business, potentially resulting in a loss of jobs.

Neither the proposed nor the final rules eliminate the LHWCA's situs requirement for recreational-vessel workers. As explained in the NPRM, 75 FR 50723–24 (Aug. 17, 2010), the LHWCA imposes both a ''situs'' and a ''status'' requirement. *Northeast Marine Terminal Co.* v. *Caputo,* 432 U.S. 249, 256–265 (1977) (describing history of ''situs'' and ''status'' tests). The situs test considers whether the injury occurred on ''the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel.'' 33 U.S.C. 903(a); *Caputo,* 432 U.S. at 279. The status test considers whether the worker was ''engaged in maritime employment'' and therefore a covered ''employee'' when injured. 33 U.S.C. 902(3); *Caputo,* 432 U.S. at 265.

Because the ARRA amendment revised the definition of ''employee,'' the proposed rules chiefly pertain to the status test. But the regulations in no way eliminate the situs requirement. Thus, workers at completely landlocked recreational vessel manufacturing facilities, repair shops, boat dealers and the like (*i.e.,* facilities that do not meet the situs test) are not covered by the LHWCA, regardless of the section 2(3)(F) exclusion for recreational-vessel workers.

B. Exclusion for Marina Workers

A significant number of marinas and a marina trade association submitted comments in response to the NPRM. Most of these commenters expressed concern that the proposed rules would require marinas to purchase LHWCA insurance in addition to state workers' compensation insurance. The Department notes, however, that the LHWCA excludes from the term ''employee'' those ''individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance),'' provided the worker is subject to a state compensation law. 33 U.S.C. 902(3)(C).

This exclusion has rarely been tested in litigation, and the LHWCA does not define the term ''marina.'' Whether any particular facility is a marina and whether its workers are excluded under the terms of section 2(3)(C) is a highly fact-bound question. *See generally Keating* v. *City of Titusville,* 31 BRBS 187 (1997). But at least some of these marinas' workers would likely be excluded from LHWCA coverage under section 2(3)(C).

C. Definition of ''Recreational Vessel''

The Department received many comments addressing the proposed ''recreational vessel'' definition and has made several important changes to the final rule. The proposed definition incorporated the Coast Guard's standards for categorizing vessels as recreational and non-recreational. While the Department has retained those standards, the final rule contains two additional provisions designed to make the definition easier to apply. First, the final rule provides that manufacturers and builders may determine whether a vessel is recreational by the nature of the vessel's design rather than the end use of the vessel. And second, the rule includes within the definition of recreational vessels non-military vessels that are recreational by design and owned or chartered by federal, state or municipal governments. Both of these changes are explained in detail below. The Department believes that these changes answer many of the concerns raised by the commenters.

D. Walking In and Out of Qualifying Maritime Employment

The Department has decided to withdraw proposed § 701.303. This rule codified both the Director's longstanding position and controlling case law that the LHWCA covers a maritime employee if he or she regularly performs at least some duties that come within the ambit of the statute as part of his or her overall employment (*i.e.,* ''qualifying'' employment). 75 FR 50722 (Aug. 17, 2010). The rule also clarified that LHWCA coverage does not depend on whether the employee is performing qualifying maritime work or non-qualifying work at the time of injury. In discussing the proposal, the Department conducted an exhaustive review of the governing Supreme Court case law and noted the Court's ''bedrock principle that 'maritime employment' for LHWCA purposes is a unitary concept: Coverage is established whether or not the employee was performing a particular covered activity when injured so long as his overall employment includes 'some' qualifying maritime employment.'' 75 FR 50723, *quoting Caputo,* 432 U.S. at 265, 273. The Department viewed the rule as important to advising the regulated public of the LHWCA's coverage. 75 FR 50722.

The Department received many comments on the proposed regulation. A great number of these commenters saw proposed § 701.303 as an unwarranted expansion of the LHWCA's coverage and expressed great concern over the additional costs employers would incur if required to carry LHWCA insurance. Most of these comments focused on the nature of the facility (*e.g.,* repair shop, manufacturing plant) where recreational vessel work is performed or the identity of the employer, rather than on the nature of an employee's work at those facilities. The commenters stated that it would be difficult to ascertain when a particular facility or employer conducted sufficient LHWCA-covered operations to trigger LHWCA coverage for the entire facility. Stating that the ''some'' standard was too vague and would lead to litigation, the commenters urged the Department to adopt a bright-line rule that would be easy to administer and set a high threshold for coverage to comport with the purpose of the recreational-vessel exclusion. Most commenters proposed an 80%–20% split: So long as less than 20% of a facility's or employer's work was on commercial vessels and the remainder on recreational vessels, all work at the facility would be excluded from LHWCA coverage.

The comments misconstrue both the section 2(3)(F) exclusion and the import of proposed § 701.303. Some of the exclusions from the definition of ''employee'' in LHWCA section 2(3) focus on the nature of the employer. For instance, section 2(3)(B) excludes ''individuals *employed by* a club, camp, recreational operation, restaurant, museum, or retail outlet.'' 33 U.S.C. 902(3)(B) (emphasis added). *See Boomtown Belle Casino* v. *Bazor,* 313 F.3d 300, 303–04 (5th Cir. 2002) (holding that plain language of section 2(3)(B) exclusion turns ''on the nature of the employing entity, and not on the nature of the duties an employee performs''). But section 2(3)(F) excludes individuals based solely on the type of work they do: It excludes ''individuals *employed to* build * * * repair * * * or to dismantle * * * in connection with the repair'' of a recreational vessel. 33 U.S.C. 902(3)(F) (emphasis added). *Cf. Boomtown Belle Casino,* 313 F.3d at 303–04 (contrasting section 2(3)(B)'s recreational exclusion with section 2(3)(C)'s exclusion for certain marina employees based on their job duties). Thus, for recreational vessel workers, the statute focuses exclusively on the kind of work the employee performs and not on the identity of the employer or the type of facility where the work is performed. Those comments urging the Department to adopt an 80%–20% rule based on the nature of the work performed by a particular employer or at a particular facility as a whole are inconsistent with the statute's plain language.

Moreover, as noted, proposed § 701.303 was not intended to expand LHWCA coverage. Rather, the rule codified the Supreme Court's interpretation of the LHWCA. The Department stands by its analysis of the governing case law. Thus, even in the absence of a regulation, a worker who regularly performs at least some duties that come within the ambit of the LHWCA as part of his or her overall employment is covered under the LHWCA, even if the injury occurs while the worker was not performing qualifying maritime duties. *Caputo,* 432 U.S. at 273. So too is a worker who is injured while performing qualifying maritime duties, regardless of his or her other job duties, so long as that employment is not excluded under section 2(3). *See, e.g., Chesapeake and Ohio Ry. Co.* v. *Schwalb,* 493 U.S. 40, 47 (1989) (''It is irrelevant that an employee's contribution to the loading process is not continuous or that repair or maintenance is not always needed. Employees are surely covered when they are injured while performing a task integral to loading a ship.'').

Nevertheless, the Department has elected to withdraw the proposed rule. The Department appreciates the difficulties recreational-vessel employers and facilities face in determining whether their workers are performing LHWCA-covered activities in order to purchase the appropriate insurance. Further investigation into the industry's needs is warranted. Moreover, even though this rule would have an impact on the entire longshoring industry, the Department received only a few comments from individuals or groups with interests extending beyond the recreational-vessel segment of that industry. This result is not surprising because the NPRM chiefly involved implementation of the section 2(3)(F) exclusion for recreational-vessel workers. Given the rule's broad application, however, the Department is reluctant to promulgate the rule without input from the greater longshoring community.

E. Date of Injury Rules

In response to a number of persuasive comments, the final rule makes several changes and one addition to proposed § 701.504. This rule sets out standards for determining the date of injury, which governs whether the section 2(3)(F) amendment applies. The final rule makes the date of harmful or causative workplace exposure—rather than the date of death or manifestation—the date of injury for determining whether the amendment applies in cases of occupational disease, hearing loss, and death. The rule also adds a new section addressing date of injury for cumulative trauma, which fixes the date of injury as any date on which a workplace trauma worsened the individual's condition.

III. Section-by-Section Explanation

701.301

The Department proposed only technical revisions to this section to accommodate other substantive additions. In particular, the Department moved this section's lengthy definition of ''employee'' into a new § 701.302. No comments were received, and the rule is promulgated as proposed.

701.302

Proposed paragraph (c)(6) updated the paragraph in the definition of ''employee'' pertaining to the recreational vessel exclusion, which currently appears at § 701.301(a)(12)(i)(F), to incorporate the amended section 2(3)(F) language and cross-reference new §§ 701.501–701.505. No comments were received, and the rule is promulgated as proposed.

701.303

As discussed above, the Department has decided to withdraw this proposed regulation.

701.501

(a) The Department proposed an updated and refined definition of ''recreational vessel.'' The Department explained that the current regulations, promulgated in 1984, adopted the definition of recreational vessel from a statute administered by the Coast Guard. 75 FR 50721 (Aug. 17, 2010). That statute, and the Department's current regulations, define ''recreational vessel'' as a vessel ''manufactured or operated primarily for pleasure, or rented, leased or chartered by another for the latter's pleasure.'' 20 CFR 701.301(a)(12)(iii)(F) (2009). *See* 46 U.S.C. 2101(25); 51 FR 4273 (Feb. 3, 1986). Prior to the ARRA amendment, this definition was limited by length: Section 2(3)(F) excluded only those individuals who worked on recreational vessels under sixty-five feet in length. Because the ARRA amendment removed the vessel-length limitation for workers who either repair recreational vessels or dismantle them for repair, the Department noted that both employers and employees could more frequently encounter difficulties determining which vessels were recreational. 75 FR 50721. The Department also wanted to ensure that individuals who perform repair work on vessels that have a significant commercial purpose were not improperly excluded under amended section 2(3)(F). 75 FR 50721.

To accomplish these goals, the Department proposed using Coast Guard vessel categories to define a ''recreational vessel.'' Essentially, the Coast Guard deems the following to be recreational: Any unchartered passenger vessel used for pleasure and carrying no passengers-for-hire (*i.e.,* paying passengers); and any chartered passenger vessel used for pleasure with no crew provided and with fewer than twelve passengers, none of whom is for hire. All other passenger-carrying vessels fall into one of the following three non-recreational categories: Uninspected passenger vessel; small passenger vessel; and passenger vessel. 46 CFR 2.01–7; Navigation and Vessel Inspection Circular No. 7–94 (Sept. 30, 1994).

The Department noted that these categories were used in boating safety and environmental contexts, and thus would be generally known to the recreational boating community. *Id.* The categories also provided a clear, objective basis by which employers and employees could readily ascertain whether a vessel being repaired was a ''recreational vessel'' for LHWCA coverage purposes. The Department received many comments regarding this proposed rule and has made several significant changes to the final rule in response.

(b) Many comments state that the proposed ''recreational vessel'' definition is ambiguous. Some of the more specific criticisms state that the proposed definition would be difficult to apply in cases where a boat has multiple uses or is in-between uses, and where, over the course of its operations, the boat falls within different Coast Guard inspection categories. Some believe that the Coast Guard definitions are unfamiliar to boat builders and repairers.

The Department has revised the rule to clarify that the time for evaluating the vessel's use is when the vessel is being built, repaired or dismantled. But the final rule continues to use the Coast Guard classifications to identify recreational vessels. In general, the comments did not offer any constructive alternatives to using the Coast Guard classifications except to leave the ''recreational vessel'' definition unchanged. As set forth in the NPRM, the Department believes that the definition needs greater clarity so that employers and employees may properly evaluate both their obligations and their rights under the LHWCA.

The Coast Guard categories set a bright-line rule for determining whether any particular vessel is recreational. Presumably, a vessel's owner or operator is familiar with its use and whether the vessel is inspected or uninspected under the Coast Guard standards. An employer's simple inquiry may be all that is necessary to resolve the question. Further, as noted in the NPRM, some outward indicia point to a vessel's non-recreational status. For instance, passenger vessels and small passenger vessels must display certificates of inspection, and uninspected passenger vessels are subject to certain safety requirements and must have a licensed operator. These indicia of non-recreational status will make it easier for employers and employees to recognize vessels that should not be considered ''recreational vessels'' for purposes of the section 2(3)(F) exclusion.

(c) One commenter suggests simplifying the rule by describing the vessel categories excluded from the definition of ''recreational vessel'' rather than cross-referencing the Coast Guard statutes. The Department has not adopted this suggestion. Outside of the manufacturing and building context, a vessel's use at the time the repair or dismantling led to the compensable injury determines its recreational status. Using the general Coast Guard categories will allow the definition of ''recreational vessel'' to remain current and consistent with the term as used in the recreational boating industry. The Department has made a technical revision to the language in proposed § 701.501(c) to simplify it. No change in meaning is intended by this revision.

(d) Many comments state the proposed definition would unduly burden employers by requiring them to investigate their customers' vessel usage in order to determine whether the boat is recreational. Another comment urges a rule that uses the intent of the owner in buying a vessel instead of its actual use. Others question the feasibility and fairness of holding employers to account

for usage of a boat when off their premises.

The Department does not believe a change in this requirement is necessary. Since 1984, the regulatory ''recreational vessel'' definition has required employers to determine whether a vessel is ''manufactured or operated primarily for pleasure.'' 20 CFR 701.301(a)(12)(iii)(F) (2009). To the Department's knowledge, making this inquiry has not proved to be problematic. In fact, two commenters stated that for insurance purposes, they track how much work they do on commercial vessels and how much on recreational vessels. That would only be possible by evaluating whether the vessels they service are used for pleasure. Moreover, using a standard other than usage could lead to the improper exclusion of workers from LHWCA coverage. As one commenter pointed out, vessels manufactured to recreational-vessel standards may in fact be used entirely for commercial purposes. *See, e.g., Munguia* v. *Chevron U.S.A. Inc.,* 999 F.2d 808, 809–10 (5th Cir. 1993) (noting that employer maintained a fleet of small vessels, including Lafitte skiffs, Boston whalers, and Jo-boats, solely to allow its employees to service an oil-production field located on water). Retaining the ''primarily for pleasure'' touchstone and looking to the vessel's use avoids the problem of improperly excluding a worker from LHWCA coverage.

(e) Several comments from recreational-vessel manufacturers object to defining a recreational vessel by the vessel's end use because a manufacturer typically does not know it. Instead, manufacturers usually build to recreational-vessel standards established by the Coast Guard and market their products through retail sales channels. These commenters ask the Department to adopt a specific rule defining recreational vessels for manufacturers building new vessels or doing warranty work along the following lines: ''recreational vessel * * * means a vessel which by design and construction is intended by the manufacturer to be operated primarily for pleasure * * * (rather than for commercial or military purposes).'' In a related vein, one comment urges the Department to hold the manufacturer responsible for producing evidence regarding the relevant percentage of end-user purposes to establish that its purported intent is legitimate.

The Department has revised the final rule to accommodate the manufacturers' concerns. A recreational-vessel manufacturer or builder is usually in a different position than entities that service, repair and dismantle vessels while in use because the manufacturer may not know either the purchaser's identity or the vessel's actual use. Thus, the final rule provides that a vessel being manufactured or built (including warranty service) is a recreational vessel when intended, based on design and construction, to be for ultimate recreational use. The final rule also places the burden on the manufacturer or builder to prove that the vessel or vessels under construction are built in accordance with applicable recreational-vessel standards. Because recreational-vessel manufacturing facilities are typically landlocked, the Department does not expect this change in the final rule to have a significant impact on the number of employees covered by the LHWCA.

(f) Some commenters urge the Department to base the recreational-vessel definition on a vessel's design or construction for repairers as well as for manufacturers, because repair work on vessels that are recreational by design is less hazardous than other maritime work covered by the LHWCA. The statutory language does not support this result. In setting forth section 2(3)(F), Congress described the vessels subject to its exclusion simply as ''recreational,'' a term which naturally denotes a form of usage. Manufacturers receive the benefit of a different definition solely because of the impracticality of a usage-based definition. Indeed, the statute from which the current regulatory definition is derived, 46 U.S.C. 2101(25), offers a bifurcated approach under which some vessels may be recreational if they are ''manufactured'' for pleasure, and others if they are ''operated'' for pleasure, thus suggesting that the definition might vary depending on the setting. In a repair setting, where a vessel's operations are ascertainable, usage is the more appropriate approach.

(g) One comment states that paragraphs (a) and (b) of the proposed definition are in tension because a vessel used ''primarily for pleasure'' may still have incidental use as a passenger vessel or other commercial purpose that renders the vessel non-recreational under the Coast Guard categories set forth in paragraph (b). This commenter suggests that the regulation be rewritten so that incidental non-recreational use does not make the boat non-recreational for purposes of the section 2(3)(F) exclusion. While agreeing that a bright line may be necessary to determine recreational status, the commenter suggests looking to Coast Guard registration or state registration, whether a vessel is routinely engaged in various forms of commercial activity, and whether it falls within the Coast Guard definition of a non-recreational vessel less than 20% of the time. Other commenters echo this incidental use concern.

The Department agrees that occasional non-recreational use does not alter the vessel's core recreational purpose and should not take a vessel outside of the ''recreational vessel'' definition. To clarify this point and to resolve the tension the commenter notes between paragraphs (a) and (b), the final rule provides that a vessel remains recreational unless it falls within the designated Coast Guard vessel categories on a more than infrequent basis during the time the vessel is in operation.

(h) A few comments note that some repairers work on a small number of government-operated boats which resemble recreational vessels in design aspects. Examples given of government-owned vessels serviced include fish and wildlife enforcement boats, public-safety boats, and recreational vessels used by police in undercover operations. The commenters observe that they would have to discontinue this work (which they often perform at a discounted rate as a service to their communities) if repairing this small number of vessels would bring them under LHWCA coverage.

The Department agrees that servicing publicly owned or bareboat-chartered vessels that would otherwise be considered recreational generally should not be considered commercial work subject to LHWCA coverage. The final rule changes the definition of ''recreational vessel'' to accommodate this approach.

The final rule reflects a framework used in maritime and environmental statutes to define public vessels. *See* 33 U.S.C. 1321(4) (definition of public vessel for environmental protection statute); 46 U.S.C. 2101(24) (definition of public vessel for Coast Guard statute); *Blanco* v. *U.S.,* 775 F.2d 53, 57–60 (2d Cir. 1985) (discussing ''public vessels'' as defined in various maritime statutes). This definition requires that the governmental entity own or charter the vessel and use it for a non-commercial and non-military purpose. It encompasses the various kinds of government vessels that the commenters seek to have excluded from LHWCA coverage: Firefighting vessels, police vessels, some Coast Guard vessels, sheriff's office vessels, and state natural-resource-department vessels. But to ensure the definition is not over-expansive, vessels owned or chartered

by a governmental entity that are not of conventional recreational vessel construction or design, or that perform a traditionally commercial service (such as ferrying passengers), or that are military in nature are not considered public vessels.

To identify the governmental entity that must own or operate a vessel in order for it to be eligible for ''public vessel'' status, the final rule uses the phrase ''the United States, or by a State or political subdivision thereof.'' The Department intends this phrase to be construed broadly, and to include entities such as a State's municipalities that meet the well-established factor-based inquiry for determining whether a public entity is a subdivision. *See Wheaton* v. *Golden Gate Bridge, Highway & Transportation District,* 559 F.3d 979, 981–82 (9th Cir. 2009).

701.502

(a) The Department proposed this rule to clarify what types of recreational-vessel work were covered both before and after the ARRA amendment. 75 FR 50721–22. The rule also made clear that the amendment did not have retroactive effect and that its application was based on the worker's date of injury. The section further defined the terms ''length,'' ''repair'' and ''dismantle.'' Finally, the rule cross-referenced § 701.303 and provided that workers who engaged in both excluded recreational vessel work and qualifying maritime work were covered by the LHWCA.

(b) Proposed paragraph (a) established that with respect to injuries before the amendment's effective date, February 17, 2009, a worker employed to repair, build, or dismantle any recreational vessel less than sixty-five feet in length is not an ''employee'' under the LHWCA, provided he or she is covered under a state workers' compensation law for such work. 75 FR 50729. On or after the amendment's effective date, a worker employed to build any recreational vessel under sixty-five feet in length, or repair or dismantle for repair any recreational vessel of any length is not an ''employee'' under the LHWCA, again provided he or she is covered under a state workers' compensation law. *Id.* This paragraph also establishes that the amendment only operates prospectively from its effective date. In the accompanying preamble, the Department noted that building recreational vessels sixty-five feet in length or greater and dismantling recreational vessels of any length (except in connection with a repair) was LHWCA-covered employment post-amendment. 75 FR 50722. The Department believed that this paragraph's provisions were consistent with congressional intent and the rules of statutory construction.

No comments found fault with this section, and several offered approval of some aspects of it, including the non-retroactivity of the amendment, the state workers' compensation proviso, and the treatment of dismantling of vessels. Accordingly, paragraph (a) is promulgated as proposed.

(c) Proposed paragraph (b)(1) defined vessel ''length,'' notably excluding bow sprits, bumpkins, rudders, outboard motor brackets, handles and other similar fittings, attachments and extensions from the vessel-length measurement. It also defined ''repair'' and ''dismantle''. 75 FR 50729. In establishing these definitions, the Department relied on common-sense and industry-familiar definitions to make these concepts clearer and more objective, with the goal of avoiding future litigation. 75 FR 50722.

Several comments supported the changes to the definition of length. There were no comments critical of these definitions. Thus, the final rule is promulgated as proposed.

(d) The Department has made a technical change to the final definition of ''dismantle'' in paragraph (b)(3). As explained in the NPRM, 75 FR 50721–22, section 2(3)(F) originally excluded workers employed to ''dismantle'' recreational vessels less than sixty-five feet in length. This unqualified term would have excluded workers who dismantled a vessel at the end of the vessel's life. The amended statute, however, excludes only those workers who dismantle recreational vessels ''in connection with the repair of such vessel.'' Given this express limitation, the Department concluded that workers governed by the amended statute would not be excluded from LHWCA coverage when employed to dismantle obsolete recreational vessels. Although § 701.502(a)(1) and (2) make this distinction clear, proposed paragraph (b)(3)'s definition of ''dismantle'' does not. Accordingly, the Department has added the language ''if the date of injury is on or after February 17, 2009'' to paragraph (b)(3)'s last phrase.

(e) Proposed paragraph (c) essentially reiterated the walking-in-and-out rule that was set forth more fully in proposed § 701.303, *i.e.,* it stated that a worker engaged part of the time in excepted recreational vessel work and part of the time in qualifying work is covered by the LHWCA. 75 FR 50729. Because the Department has withdrawn § 701.303, paragraph (c) has been deleted from the final rule.

701.503

This proposed rule reiterated the basic thrust of the amendment—to amend the recreational vessel exclusion—and set forth the amendment's effective date based on congressional intent and governing principles of statutory construction. No negative comments were received on the proposed rule, and it remains unchanged in the final regulation.

701.504

(a) In the NPRM, the Department defined what date constitutes the ''date of injury'' for different kinds of claims. 75 FR 50720, 50729–30 (Aug. 17, 2010). The date of injury is the date at which a legally recognized harm occurs to a worker, giving rise to a compensation claim. It is the relevant point in time for determining whether the section 2(3)(F) amendment applies to a given claim: If the date of injury is on or after the amendment's effective date, February 17, 2009, then the amendment's provisions apply to a claim; otherwise, the pre-amendment statute governs. The NPRM set forth different rules for traumatic injury, occupational disease, hearing loss and death claims.

(b) *Traumatic injury.* For traumatic injury, proposed paragraph (a)(1) defined the date of injury as the date the worker is harmed. One comment generally supported this provision; no negative comments were received. Accordingly, this paragraph is promulgated as proposed.

(c) *Occupational disease.* For occupational disease, proposed paragraph (a)(2) adopted the manifestation date—*i.e.,* the date that the individual actually became aware of a disabling, work-related condition—to define the date of injury. The Department reasoned that this approach was consistent with judicial precedent and other statutory language making the manifestation date relevant for various purposes. 75 FR 50720.

While a few comments offered general support for the proposed rule with respect to occupational disease, other comments strongly questioned the proposed rule's approach. Several comments pointed out that linking the date of injury to disease manifestation inappropriately borrows from statute-of-limitations contexts and is otherwise unfair and contrary to the position taken by the Department in the past. Instead, one comment urged using a rule that makes the date of exposure to harmful stimuli the relevant date for determining the ARRA amendment's applicability.

The Department agrees with these comments and the final rule makes the

date of injurious exposure the date of injury for occupational diseases. Such an approach is both fairer and more consistent with the position taken by the Department in the past.

Using an exposure date is far less arbitrary than using a manifestation date for occupational diseases. The causative physiological harm occurs when an employee is exposed to the noxious substance, even though the deleterious effects might not be felt until years later; in addition, the date the disease's symptoms manifest may vary greatly among individuals. Indeed, under a rule that makes manifestation the date of injury, similarly-situated employees may be treated differently: An employee who was both exposed and developed symptoms before the amendment would be accorded pre-amendment coverage, while one who was exposed pre-amendment but happened to develop symptoms after the amendment's effective date would not.

And, as the comments allude to, using the exposure date as the date of injury affords workers, insurers, and employers the benefit of their legal expectations. Employees going to work on vessels that were covered pre-amendment did so with the expectation that they would benefit from LHWCA coverage for harmful on-the-job exposures, regardless of when those exposures manifested themselves in the form of a debilitating disease. Concomitantly, employers paid for insurance coverage in the event of harm to an employee caused by on-the-job exposure—whether harm from the exposure was realized immediately or in the long-run.

As the comments also note, the Department has previously recognized the fundamental fairness of a rule that makes the date of exposure determinative for gauging the effective date of an amendment. Analyzing whether the District of Columbia Workmen's Compensation Act of 1928, D.C. Code 36–501 *et seq.,* which extended LHWCA coverage to private workers in the District from 1928 to 1982, should continue to apply to claims based on employment events prior to that Act's repeal, the Department concluded that, ''for the purpose of determining whether a workers' compensation statute applies to such an injury ('coverage'), the relevant legal provisions are those in effect at the time of the employment exposure to the conditions that cause the disease.'' 51 FR 4270, 4272 (Feb. 3, 1986). The Department reasoned that ''[w]orkers' compensation laws operate upon the employment relationship. The occurrence of an event or events in the course of that relationship is the foundation of any compensation-law liabilities that arise thereafter. The insurance requirement that is a socially and practically critical aspect of compensation legislation attaches to the conduct of covered employment.'' Because insurers are responsible for diseases resulting from exposure during the terms of their policies, a manifestation rule would unfairly ''relieve[] [insurance carriers] of liabilities they contracted to bear.'' *Id.* at 4272–73.

Based on this analysis, the Department has reconsidered the reasoning it gave in the NPRM to support adopting a manifestation rule in occupational disease claims. Although cases the Department cited have applied the manifestation rule to determine the applicability of the 1972 amendments to the LHWCA, which expanded the categories of workers covered by the LHWCA, those cases relied on congressional intent specific to those amendments. In *SAIF Corp./Oregon Ship* v. *Johnson,* 908 F.2d 1434, 1439 (9th Cir. 1990), the court worried that an exposure rule would be contrary to Congress' intent to maximally expand LHWCA coverage. In order to conform to congressional intent, the court held that the manifestation date determined the amendments' coverage, because such a rule swept in the greatest number of workers. *Id.; see also Insurance Company of North America* v. *Dep't of Labor,* 969 F.2d 1400, 1404 (2d Cir. 1992) (describing *SAIF* as holding that ''the manifestation rule best comports with the LHWCA's 'paramount goal' of compensating workers for lost earning capacity stemming from occupational diseases'').

The ARRA amendments present a different scenario. Under the ARRA amendment, a manifestation rule could result in fewer LHWCA-covered employees. But there is no evidence that Congress intended to exclude the largest number of workers possible from LHWCA coverage. Rather, by expanding the recreational-vessel exclusion via the ARRA amendment, Congress primarily sought to relieve businesses from paying for duplicative state workers' compensation and LHWCA insurance coverage for recreational-vessel workers. *See* H. Rpt. 111–4, at 49 (Jan. 26, 2009). A manifestation rule does not serve that purpose. When the harmful exposure occurred while working on a covered vessel pre-amendment, the insurance in place at the time would cover that injury. Any expense to businesses for pre-amendment exposures has already been incurred, and an exposure rule does not impose any new prospective LHWCA financial obligations. Thus, there is no basis to believe that Congress wished to deny workers the legal remedy in place when they were exposed to an injurious stimulus.

In the NPRM, the Department cited other provisions of the LHWCA making manifestation the date of injury in a statute of limitations context. 75 FR 50720. *See* 33 U.S.C. 912, 913. But as the comments point out, this analogy was inapt. The definition of date of injury in a statute of limitations context is designed to preserve the ability to file a claim for individuals who might not have notice of their right to compensation until manifestation. The date of injury in the context of a statutory amendment serves a far different goal: Satisfying congressional intent and ensuring that the legitimate expectations of the parties with respect to coverage are met.

One comment questioned how the last-employer rule would operate under the proposed manifestation-date rule. *See generally Travelers Ins. Co.* v. *Cardillo,* 225 F.2d 137 (2d Cir. 1955). The commenter noted concern about how the liable employer and insurance carrier would be identified in claims involving exposure at both covered and non-covered employment, and in cases with multiple employers. Because the final rule adopts date of exposure as the date of injury, current precedent provides clear guidance on the questions the commenter raised. The Department adheres to the well-established rule that the employee is eligible for LHWCA benefits if some of the exposure leading to the occupational disease occurred while covered under the Act. *See Newport News Shipbuilding and Dry Dock Co.* v. *Stilley,* 243 F.3d 179, 183–84 (4th Cir. 2001). In cases where the harmful exposure spans both an employee's covered pre-amendment work and his or her exempt post-amendment work, or spans covered commercial vessel work and exempt recreational vessel work, the employee will be eligible for benefits based on the covered work. The last employer for whom the employee performed covered work and that exposed him or her to a harmful stimulus is responsible for LHWCA benefits payable when injury results. *See generally Avondale Industries, Inc.* v. *Director, Office of Workers' Compensation Programs,* 977 F.2d 186 (5th Cir. 1992) (setting forth last covered employer rule).

(d) Hearing loss. For hearing loss cases, proposed paragraph (a)(3) adopted the audiogram date—*i.e.,* the date that the individual received a diagnosis quantifying hearing loss via

an audiogram—to define the date of injury. The Department offered similar reasons to those offered in support of a manifestation rule in occupational disease cases, and additionally pointed out the difficulty of pinpointing a date of exposure in hearing loss cases.

Although some comments offer general support for the proposed rule, other comments raise compelling questions similar to those raised concerning the date of injury for occupational disease cases. One commenter questions the fairness of an audiogram-date rule for hearing loss claims. For the same reasons the Department has now adopted an exposure rule in occupational disease cases, the Department also adopts an exposure rule for hearing loss cases as well. Such a rule is less arbitrary, recognizes that the genesis of the injury is when the exposure occurs, and is fair to all parties by giving them the benefit of an insurance contract that covers injuries based on when the exposure occurred.

The comments suggest, and the Department agrees, that the reasoning set forth in the NPRM for using an audiogram rule is unpersuasive. There, the Department posited that an audiogram date was a better measure than an exposure rule for determining the ARRA amendment's applicability because of the difficulty in determining a precise date of harmful exposure. However, although exposure in hearing-loss claims typically occurs over an extended period of time, determining a single precise date is not necessary to administration of an exposure rule, and current law provides ample tools for handling claims involving exposure over periods of time. If some or all exposures occurred prior to February 17, 2009, the amendment would simply not apply with respect to a disability resulting from those exposures. And a worker would be eligible for full benefits if any of the exposure occurring during LHWCA-covered employment resulted in a hearing loss. *See Port of Portland* v. *Director, Office of Workers Compensation Programs,* 932 F.2d 836, 839–40 (9th Cir. 1991). Moreover, pursuant to the last-covered-employer rule, the most recent employer, if any, for whom the claimant performed LHWCA-covered work at which he or she suffered harmful exposure would be responsible for benefits. *See id.*

(c) *Death claims.* For death claims, proposed paragraph (a)(4) adopted the date of death as the date of injury for determining the amendment's application. The Department based this proposal on court precedent applying the law in place at the time of death in death benefit cases.

Although some comments expressed general support for the proposed rule, others urged the Department to use the date of the harmful workplace exposure or event that ultimately led to death as the date of injury, arguing that such a rule was more equitable. For essentially the same reasons stated above in the discussion of occupational disease cases, the Department agrees. Notably, as one comment suggests, in death cases, businesses have already paid and insurers have received the appropriate premiums to cover the death based on a causative workplace event that occurred while a worker was in covered employment.

In the proposal, the Department relied on *Insurance Company of North America* v. *Dep't of Labor,* 969 F.2d 1400, 1406 (2d Cir. 1992), and similar cases for the proposition that death should be the date of injury. However, although the court held that the time of one's death was the date of injury for determining the applicability of the 1972 amendments, it observed that the goal of the 1972 amendments was ''an expansion * * * of the class of persons entitled to benefits under the Act.'' *Id.* Here, the core purpose of the ARRA amendment is sparing businesses from the expense of duplicative state workers' compensation and LHWCA insurance coverage. One simply cannot infer that Congress sought to deny LHWCA benefits where workers were injured while covered by the LHWCA, but died post-amendment, given that employers would have already paid for LHWCA insurance coverage for a death resulting from an injury while a worker was performing LHWCA-covered employment.

(d) *Cumulative trauma.* In the NPRM, the Department did not specifically address the date of injury in claims involving cumulative trauma. One comment urged that the final rule address this issue. To avoid any confusion on this subject, the Department agrees, and the final rule adds a new paragraph for cumulative trauma injuries. The rule states that the date of injury is any date on which a work-related trauma occurs that contributes to the cumulative condition. *See Metro. Stevedore Co.* v. *Crescent Wharf and Warehouse Co.,* 339 F.3d 1102, 1105–06 (9th Cir. 2003) (a trauma that worsens a cumulative condition is generally compensable). If, however, the injury is the result of a natural progression of an earlier trauma, then the date of the earlier trauma is the date of injury.

(e) Proposed paragraph (b) and (c) set out the consequences of applying the date-of-injury to the ARRA amendment's effective date. If that date occurs before February 17, 2009, ARRA's effective date, then the pre-amendment section 2(3)(F) exclusion applies; if that date occurs on or after February 17, 2009, the post-amendment exclusion applies. The Department received no specific comments on these rules and they are promulgated without substantive change. To make these two paragraphs consistent, however, the Department has made a technical change to paragraph (c). The Department has replaced the phrase ''employee's eligibility,'' which appeared in the proposed rule, with the phrase ''individual's entitlement'' in the final rule.

701.505

The proposed rule provided that an employer may not stop paying compensation for an injury awarded prior to February 17, 2009, the ARRA amendment's effective date, even if that employee's work is excluded from coverage by the amendment. The Department proposed this paragraph in accordance with basic principles of finality and the presumption against retroactivity. The Department has received no specific comments on this section but has received some generally positive remarks on its interpretation of the non-retroactive character of the ARRA amendment. Thus, the proposed rule remains unchanged in the final regulation.

IV. Statutory Authority

Section 39(a) of the LHWCA (33 U.S.C. 939(a)) authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration and enforcement of the LHWCA and its extensions.

V. Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under the Proposed Rule

The final rule imposes no new collections of information.

VI. Executive Order 12866 (Regulatory Planning and Review)

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), entitled ''The Principles of Regulation.'' The Department has determined that the rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Moreover, because it is not a

significant rule within the meaning of the Executive Order, the Office of Management and Budget has not reviewed it.

VII. Small Business Regulatory Enforcement Fairness Act of 1996

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996, enacted as Title II of Public Law 104–121 §§ 201–253, 110 Stat. 847, 857 (1996), the Department will report promulgation of this final rule to both Houses of the Congress and to the Comptroller General prior to its effective date. The report will state that the Department has concluded that the rule is not a ''major rule'' as defined under 5 U.S.C. 804(2).

VIII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100,000,000.

IX. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*), requires an agency to prepare a regulatory flexibility analysis when it proposes regulations that will have ''a significant economic impact on a substantial number of small entities,'' or to certify that the proposed regulations will have no such impact, and to make the analysis or certification available for public comment.

The Department believes that the LHWCA itself accounts for most, if not all, of the costs imposed on the industry, and that this final rule does not directly add to those costs. The primary cost of the LHWCA lies in purchasing commercial insurance or qualifying as a self-insurer to insure covered workers. This requirement is imposed by statute. 33 U.S.C. 904, 932. By expanding the number of recreational vessel workers who will be excluded from coverage, the section 2(3)(F) amendment will generally reduce the recreational vessel industry's costs for purchasing workers' compensation insurance or, in the case of a self-insurer, providing compensation. This final rule simply seeks to make the potentially ambiguous language of the ARRA amendment clearer and more easily applied, and it does not deliberately seek to expand or contract businesses' eligibility for the recreational vessel exclusion. Moreover, to the extent comments have raised concerns that the proposed rule might be improved by making its provisions more easily workable for businesses without compromising the rule's underlying objective, the final rule, as discussed below, has accommodated such comments.

Nonetheless, because the recreational-vessel building and repair industries include many small firms, and because the comments raise issues concerning how the Department might maximize benefits to small businesses via rulemaking, the Department has evaluated how the ARRA amendment, as implemented in this final rule, might affect small businesses. The Department prepared an initial regulatory flexibility analysis (IRFA) before proposing this rule and included a summary of that analysis in the NPRM. 75 FR 50725–28 (Aug. 17, 2010). The Department incorporates those documents by reference into this final regulatory flexibility analysis.

Need for, and Objectives of, This Rule

The primary goal of this rule is to provide a clear, workable definition of ''recreational vessel.'' Because the ARRA amendment to section 2(3)(F) removed the sixty-five-foot limitation on what constitutes a recreational vessel for all purposes but construction, the amended exclusion presents more opportunities for confusion among vessel-repair enterprises and their workers about whether the boats they work on are ''recreational vessels'' within the meaning of the LHWCA. The Department determined that the current regulatory definition of ''recreational vessel'' does not provide adequate guidance to the industry and its employees, and therefore adopts this rule to more clearly define the term.

This definition, in turn, serves several purposes. It gives entities that build or repair vessels guidance regarding the classification of vessels their employees are working on so that they may insure themselves under the appropriate workers' compensation scheme (*i.e.,* the LHWCA or a state law). Similarly, the definition provides guidance to workers who might otherwise be unsure of their rights under the LHWCA. Finally, a clear definition reduces the possibility of litigation over the applicability of the section 2(3)(F) exclusion.[1]

The Director, Office of Workers' Compensation Programs, has the legal authority to issue this final rule. The LHWCA empowers the Secretary of Labor ''to make such rules and regulations * * * as may be necessary'' to administer the statute. 33 U.S.C. 939(a). The Secretary has delegated her authority to the Director, Office of Workers' Compensation Programs. Secretary's Order 10–2009 (Nov. 6, 2009). In addition, the Department, like any other administrative agency, possesses the inherent authority to promulgate regulations in order to fill gaps in the legislation that it is responsible for administering. *Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837, 843–44 (1984).

Response to Significant Issues Raised by Public Comments and the Small Business Administration's Office of Advocacy

(a) Comments from the Small Business Administration's Office of Advocacy (SBA) and the National Marine Manufacturers Association (NMMA) raise questions as to whether the IRFA utilized correct data to estimate the number of small businesses affected by this rule. The Department has fully addressed these comments in the following section regarding the estimate of the number of small entities to which the final rule will apply.

(b) Some commenters, including the SBA, assert that using the Coast Guard standards for classifying recreational vessels will expand the number of small businesses covered by the LHWCA, thereby increasing their costs. Because the term ''recreational vessel'' has been only generally defined in the past, it is impossible to ascertain the extent to which the revised definition will alter the exclusion's scope and thereby affect small entities. Moreover, the final rule retools the definition so that it involves significantly less verification effort, and to make the definition's scope clear so that businesses can avoid purchasing LHWCA insurance on a precautionary basis.

[1] As expressed in the NPRM, 75 FR 50725, the Department also anticipated that in the absence of a size limitation, more questions would be raised regarding coverage for workers who perform a combination of qualifying work (*e.g.,* building a seventy-foot recreational vessel) and non-qualifying work (*e.g.,* repairing a seventy-foot recreational vessel). The proposed rule sought to clarify how the LHWCA applies to workers engaged in qualifying maritime employment whose job duties also include tasks that do not come within the ambit of the LHWCA. As set forth above, however, the Department has withdrawn this proposed rule.

(c) Addressing proposed § 701.501, the NMMA comments that the definition of recreational vessel and its use of the Coast Guard standards is ambiguous and will impose additional costs on small businesses that may not be able to determine whether a vessel meets the definition and, as a result, may turn away important work rather than incur the costs associated with LHWCA insurance. The NMMA also posits that insurance firms will be less apt to write LHWCA policies on these businesses, again increasing costs. The NMMA further encourages the Department to adopt a different recreational-vessel definition for boat manufacturers that focuses on the manufacturer's intent in building the vessel rather than on its end use. The SBA similarly states that the Department should consider this regulatory alternative. In addition, a few small repair businesses note that under the proposed definition, they would have to turn away public-vessel work if performing such work made purchasing LHWCA insurance necessary.

The Department has set forth its full response to these and other comments pertaining to the recreational-vessel definition in the section-by-section analysis for § 701.501 above. The Department has made two important changes to the final recreational-vessel definition in response to these comments. These changes will help small businesses identify recreational vessels within the meaning of the section 2(3)(F) exclusion and make informed decisions regarding their need to obtain LHWCA insurance. First, the Department has promulgated an alternative definition for manufacturers and builders, which allows them to assess a vessel's recreational nature based on design and construction data reasonably available to them. Second, the final rule carves out an exception for public-purpose vessels so that businesses that repair these vessels in addition to other recreational vessels will not have to purchase LHWCA insurance.

(d) Addressing proposed § 701.303, many comments expressed the view that the Department should have considered alternative measures for determining coverage for workers who perform both qualifying maritime duties and non-qualifying work (walking-in-and-out of qualifying coverage). The commenters believed the rule would force businesses to secure expensive LHWCA insurance for their workers, instead of less expensive state workers' compensation insurance. In this regard, several commenters rejected the Department's suggestion that businesses could minimize the cost implications of the proposed rule by segmenting their workplaces into recreational and non-recreational vessel operations. 75 FR 50728. These commenters (mostly small businesses) noted that their staffs were too small to segregate in this fashion. Most commenters proposed an 80%–20% split as an alternative: So long as less than 20% of a facility's or employer's work was on commercial vessels and the remainder on recreational vessels, all work at the facility would be excluded from LHWCA coverage. The SBA also suggested that the Department adopt this alternative.

The Department has set forth its full response to these comments in subsection D of the General Response to Significant Comments and Explanation of Major Changes section above. For the reasons explained there, the Department is withdrawing proposed § 701.303 and has not promulgated it in this final rule.

Small Entities to Which the Final Rule Will Apply

(a) In the IRFA, the Department looked to available data to estimate the number of small entities that might be affected by the proposed rule. 75 FR 50725–27. The IRFA estimated that, in 2007, there were 1,102 recreational vessel building establishments, employing 53,466 workers, generating $11.1 billion in shipments, and with a payroll of $1.9 billion; and 1,837 recreational boat repair establishments, employing 12,203 workers, generating $1.6 billion in revenue, and with $436 million in annual payroll. These entities were predominantly estimated to be small businesses.

In reaching its conclusions, the IRFA recognized difficulties in finding well-tailored NAICS categories to capture the affected small businesses. The Department relied chiefly on two NAICS industry categories: (1) NAICS industry 336612 (Boat Building); and(2) NAICS industry 811490 (Other Personal and Household Goods Repair and Maintenance). The NAICS system is described in detail in the IRFA. 75 FR 50726.

(b) Several commenters, notably the NMMA and the SBA, state that the universe of affected small entities is larger than estimated in the IRFA. These commenters note that the IRFA did not look to several relevant NAICS categories in developing its profile of the small entities affected: NAICS industry 713930 (Marinas), NAICS industry 441222 (Boat Dealers), and NAICS industry 441221 (Personal Watercraft Dealers). These commenters also suggest that NAICS industry 811490 (Other Personal and Household Goods Repair and Maintenance) may be too broad to be useful in assessing the number of small recreational vessel repairers. The commenters assert that businesses falling into these categories are mostly small under the Small Business Association's size standards.

While there is data suggesting that the additional categories pointed to by the commenters consist mostly of small businesses, it is analytically impossible to determine a precise number that actually perform work on recreational vessels. Some dealers may simply sell boats without performing repairs, while some marinas may simply offer docking space, but not repair services. This difficulty is compounded by the fact that, as noted in the IRFA, 75 FR 50726 n.1, some marinas' workers are excluded from LHWCA coverage by section 2(3)(C) of the statute. Nonetheless, although these categories pose analytical difficulties, the Department notes that they likely include affected small businesses.

Based on industry surveys, the NMMA and the SBA state that in 2008, there were approximately 33,000 retail/repair businesses employing 217,788 individuals; and 5,284 marine manufacturers employing 135,900 individuals. The vast majority of these are claimed to be small businesses. However, this data does not distinguish businesses that solely conduct retail sales versus those that repair recreational vessels. The data also does not consider whether some portion of the manufacturers are landlocked—the comments made clear that some portion of this industry is not located on navigable waterways-and thus does not meet the LHWCA's situs requirement.

(c) The Department fully acknowledges the data put forward by comments, including the industry surveys and the additional NAICS categories. However, it is impossible to state, in this informational vacuum, the accuracy of this data relative to the Department's conclusions in the IRFA. In any event, assuming the larger number of affected small businesses suggested by the commenters is correct, this final rule maximizes, to the extent consistent with sound administration of the LHWCA, the benefit of the recreational vessel exemption for small businesses by adopting several alternative proposals raised by, or on behalf of, small businesses. Because the final rule addresses these substantive concerns and ensures that small business can take maximum advantage of the section 2(3)(F) recreational vessel exclusion, while nevertheless protecting those employees whose duties are

covered by the LHWCA, the Department believes that reaching a precise conclusion concerning the number of affected small businesses is not critical.

Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

The final rule does not directly impose any reporting or recordkeeping requirements on any entities, regardless of size. Nor do the rules impose other significant costs beyond those imposed by the LHWCA itself. The statute requires employers whose employees are covered by the LHWCA to secure the payment of compensation either by purchasing commercial insurance or qualifying as a Department-approved self-insurer. 33 U.S.C. 904, 932. The ARRA amendment to section 2(3)(F) significantly expanded the exclusion for recreational vessel workers, thereby reducing the number of workers considered employees for LHWCA coverage purposes. Thus, both small and large businesses that repair recreational vessels sixty-five feet or greater in length who had previously been required to purchase LHWCA insurance may be relieved of that obligation. Instead, these employers generally will only be required to purchase lower-cost state insurance for their workers who repair recreational vessels.

In preparing the IRFA, the Department surveyed the cost of purchasing LHWCA insurance and compared it to the cost of various states' workers' compensation insurance. On average, LHWCA insurance is 50–100 percent more expensive than state workers' compensation insurance. This range is based on data collected by the National Council on Compensation Insurance (NCCI), which discloses the premium or load that states impose on businesses that carry LHWCA insurance. Because the premium for both LHWCA and state workers' compensation coverage is calculated as a percentage of the employer's payroll, regardless of payroll size, the cost for both small establishments and larger employers is the same in relative terms.

One insurance broker who commented agreed with the Department's cost estimate. But the SBA's comment suggests that the increase in insurance costs will be higher than the Department's estimate, and individual comments suggest a wide range of potential cost increases. In positing that costs in the Maryland-Delaware-Virginia region will increase 200 to 300 percent, the SBA states that an increase from $20,000 to $53,000 would be a 265 percent change. By the Department's calculations, such a change would only be a 165 percent increase. Further, the state of Virginia imposes a 1.77 factor on each sector of the marine industry subject to the Longshore Act, while the state of Maryland imposes a 1.55 factor. Thus, the cost of LHWCA insurance in these regions is 55 to 77 percent greater than the cost of state workers' compensation insurance.

The comments, including SBA's, present anecdotal and geographically specific assertions on cost differences for LHWCA coverage. The Department acknowledges the possibility of such differences, including higher cost premiums, in different locations. However, the higher cost of LHWCA coverage, whatever it may be, is made less of a factor by the final rule's revisions to the proposal; as noted above, these revisions clarify the need for some businesses to carry LHWCA coverage and maximize the effect of the recreational vessel exemption to the extent feasible and permissible under the statute.

Several comments raise the prospect of a compliance-related burden, in that businesses will have to determine and document the nature of vessels they work on. But it is the statute itself that implicitly imposes this burden if employers wish to claim their workers are excluded from LHWCA coverage under section 2(3)(F). Moreover, the burden is a modest and unavoidable one. The stronger point made by some comments is that the proposed rule would make it more cumbersome to investigate and determine a vessel's status as recreational. The revisions made to the final recreational vessel definition should make this determination less burdensome to businesses.

Steps Taken To Minimize the Significant Economic Impact on Small Entities

The exemption for recreational-vessel workers is a creature of statute. All businesses, small or otherwise, must make determinations regarding their need to procure LHWCA or state workers' compensation insurance. The Department has fully explained the factual, policy and legal reasons for adopting the final rule—as well as its reasons for rejecting other significant alternatives—in the sections above titled General Response to Significant Comments and Explanation of Major Changes and Section-by-Section Analysis. As already explained, the Department adopted several alternatives suggested by the commenters that will serve to minimize the economic impact on small entities.

List of Subjects in 20 CFR Part 701

Longshore and harbor workers, Organization and functions (government agencies), Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR part 701 as follows:

PART 701—GENERAL; ADMINISTERING AGENCY; DEFINITIONS AND USE OF TERMS

■ 1. The authority citation for Part 701 is revised to read as follows:

Authority: 5 U.S.C. 301 and 8171 *et seq.;* 33 U.S.C. 939; 36 DC Code 501 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1331; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263; Secretary's Order 10–2009; Pub. L. 111–5 § 803, 123 Stat. 115, 187 (2009).

■ 2. In § 701.301, revise the preceding undesignated center heading and the section heading, remove paragraph (a)(12), and redesignate paragraphs (a)(13) through (16) as paragraphs (a)(12) through (15).

The revisions read as follows:

Definitions and Use of Terms

§ 701.301 What do certain terms in this subchapter mean?

* * * * *

■ 3. Add § 701.302 to read as follows:

§ 701.302 Who is an employee?

(a) *Employee* means any person engaged in maritime employment, including:

(1) Any longshore worker or other person engaged in longshoring operations;

(2) Any harbor worker, including a ship repairer, shipbuilder and shipbreaker; and

(3) Any other individual to whom an injury may be the basis for a compensation claim under the LHWCA as amended, or any of its extensions;

(b) The term does not include:

(1) A master or member of a crew of any vessel; or

(2) Any person engaged by a master to load or unload or repair any small vessel under eighteen tons net.

(c) Nor does this term include the following individuals (whether or not the injury occurs over the navigable waters of the United States) where it is first determined that they are covered by a state workers' compensation act:

(1) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work (but not longshore cargo checkers and cargo clerks);

(2) Individuals employed by a club (meaning a social or fraternal organization whether profit or nonprofit), camp, recreational operation (meaning any recreational activity, including but not limited to scuba diving, commercial rafting, canoeing or boating activities operated for pleasure of owners, members of a club or organization, or renting, leasing or chartering equipment to another for the latter's pleasure), restaurant, museum or retail outlet;

(3) Individuals employed by a marina, provided they are not engaged in its construction, replacement or expansion, except for routine maintenance such as cleaning, painting, trash removal, housekeeping and small repairs;

(4) Employees of suppliers, vendors and transporters temporarily doing business on the premises of a covered employer, provided they are not performing work normally performed by employees of the covered employer;

(5) Aquaculture workers, meaning those employed by commercial enterprises involved in the controlled cultivation and harvest of aquatic plants and animals, including the cleaning, processing or canning of fish and fish products, the cultivation and harvesting of shellfish, and the controlled growing and harvesting of other aquatic species; or

(6) Individuals employed to build any recreational vessel under sixty-five feet in length, or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel. For purposes of this paragraph, the special rules set forth at §§ 701.501 through 701.505 apply.

■ 4. Add a new undesignated center heading following § 701.401 and add § 701.501 to read as follows:

Special Rules for the Recreational Vessel Exclusion From the Definition of ''Employee''

§ 701.501 What is a recreational vessel?

(a) *Recreational vessel* means a vessel—

(1) Being manufactured or operated primarily for pleasure; or

(2) Leased, rented, or chartered to another for the latter's pleasure.

(b) In applying the definition in paragraph (a) of this section, the following rules apply:

(1) A vessel being *manufactured* or *built,* or being repaired under warranty by its manufacturer or builder, is a *recreational vessel* if the vessel appears intended, based on its design and construction, to be for ultimate recreational uses. The manufacturer or builder bears the burden of establishing that a vessel is recreational under this standard.

(2) A vessel being *repaired, dismantled for repair,* or *dismantled at the end of its life* is not a *recreational vessel* if the vessel had been operating, around the time of its repair or dismantling, in one or more of the following categories on more than an infrequent basis—

(A) ''Passenger vessel'' as defined by 46 U.S.C. 2101(22);

(B) ''Small passenger vessel'' as defined by 46 U.S.C. 2101(35);

(C) ''Uninspected passenger vessel'' as defined by 46 U.S.C. 2101(42);

(D) Vessel routinely engaged in ''commercial service'' as defined by 46 U.S.C. 2101(5); or

(E) Vessel that routinely carries ''passengers for hire'' as defined by 46 U.S.C. 2101(21a).

(3) Notwithstanding paragraph (b)(2) of this section, a vessel will be deemed recreational if it is a *public vessel, i.e.,* a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, at the time of repair, dismantling for repair, or dismantling, provided that such vessel shares elements of design and construction with traditional recreational vessels and is not normally engaged in a military, commercial or traditionally commercial undertaking.

(c) All subsequent amendments to the statutes referenced in paragraph (b)(2) of this section and the regulations implementing those provisions in Title 46 of the Code of Federal Regulations will apply when determining whether a vessel is recreational.

■ 5. Add § 701.502 to read as follows:

§ 701.502 What types of work may exclude a recreational-vessel worker from the definition of ''employee''?

(a) An individual who works on recreational vessels may be excluded from the definition of ''employee'' when:

(1) The individual's date of injury is before February 17, 2009, the injury is covered under a State workers' compensation law, and the individual is employed to:

(i) Build any recreational vessel under sixty-five feet in length; or

(ii) Repair any recreational vessel under sixty-five feet in length; or

(iii) Dismantle any recreational vessel under sixty-five feet in length.

(2) The individual's date of injury is on or after February 17, 2009, the injury is covered under a State workers' compensation law, and the individual is employed to:

(i) Build any recreational vessel under sixty-five feet in length; or

(ii) Repair any recreational vessel; or

(iii) Dismantle any recreational vessel to repair it.

(b) In applying paragraph (a) of this section, the following principles apply:

(1) ''Length'' means a straight line measurement of the overall length from the foremost part of the vessel to the aftmost part of the vessel, measured parallel to the center line. The measurement must be from end to end over the deck, excluding sheer. Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the measurement.

(2) ''Repair'' means any repair of a vessel including installations, painting and maintenance work. Repair does not include alterations or conversions that render the vessel a non-recreational vessel under § 701.501. For example, a worker who installs equipment on a private yacht to convert it to a passenger-carrying whale-watching vessel is not employed to ''repair'' a recreational vessel. Repair also does not include alterations or conversions that render a non-recreational vessel recreational under § 701.501.

(3) ''Dismantle'' means dismantling any part of a vessel to complete a repair but does not include dismantling any part of a vessel to complete alterations or conversions that render the vessel a non-recreational vessel under § 701.501, or render the vessel recreational under § 701.501, or, if the date of injury is on or after February 17, 2009, to scrap or dispose of the vessel at the end of the vessel's life.

■ 6. Add § 701.503 to read as follows:

§ 701.503 Did the American Recovery and Reinvestment Act of 2009 amend the recreational vessel exclusion?

Yes. The amended exclusion was effective February 17, 2009, the effective date of the American Recovery and Reinvestment Act of 2009.

■ 7. Add § 701.504 to read as follows:

§ 701.504 When does the recreational vessel exclusion in the American Recovery and Reinvestment Act of 2009 apply?

(a) *Date of injury.* Whether the amended version applies depends on the date of the injury for which compensation is claimed. The following rules apply to determining the date of injury:

(1) *Traumatic injury.* If the individual claims compensation for a traumatic injury, the date of injury is the date the employee suffered harm. For example, if the individual injures an arm or leg in the course of his or her employment, the

date of injury is the date on which the individual was hurt.

(2) *Occupational disease or infection.* Occupational illnesses and infections generally involve delayed onset of symptoms following exposure to a harmful workplace substance or condition. If the individual claims compensation for an occupational illness or infection, the date of injury is the date the individual was exposed to the substance or condition.

(3) *Hearing loss.* If the individual claims compensation for hearing loss, the date of injury is the date the individual was exposed to harmful workplace noise or other stimulus that is capable of causing hearing loss.

(4) *Death-benefit claims.* If the individual claims compensation for an employee's death, the date of injury is the date of the workplace event or incident that caused, hastened, or contributed to the death.

(5) *Cumulative trauma.* If the individual claims compensation for cumulative trauma, in which multiple traumas contribute to an overall medical condition, such as a neck condition resulting from repetitive motion, the date of injury is any date on which a workplace trauma worsened the individual's condition. A workplace event will not be deemed a contributing trauma if a corresponding worsening of the condition is due solely to its natural progression, rather than the workplace event.

(b) If the date of injury is before February 17, 2009, the individual's entitlement is governed by section 2(3)(F) as it existed prior to the 2009 amendment.

(c) If the date of injury is on or after February 17, 2009, the individual's entitlement is governed by the 2009 amendment to section 2(3)(F).

■ 8. Add § 701.505 to read as follows:

§ 701.505 May an employer stop paying benefits awarded before February 17, 2009 if the employee would now fall within the exclusion?

No. If an individual was awarded compensation for an injury occurring before February 17, 2009, the employer must still pay all benefits awarded, including disability compensation and medical benefits, even if the employee would be excluded from coverage under the amended exclusion.

Signed at Washington, DC, this 19th day of December 2011.

Gary A. Steinberg,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 2011–32880 Filed 12–29–11; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2011–D–0028]

Medical Devices; Ovarian Adnexal Mass Assessment Score Test System; Labeling; Black Box Restrictions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation classifying ovarian adnexal mass assessment score test systems to restrict these devices so that a prescribed warning statement that addresses a risk identified in the special controls guidance document must be in a black box and must appear in all labeling, advertising, and promotional material. The black box warning mitigates the risk to health associated with off-label use as a screening test, stand-alone diagnostic test, or as a test to determine whether or not to proceed with surgery.

DATES: *Effective Date:* January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Scott McFarland, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5543, Silver Spring, MD 20993–0002, (301) 796–6217.

SUPPLEMENTARY INFORMATION:

I. What is the background of this final rule?

A. Ovarian Adnexal Mass Assessment Score Test System

An ovarian adnexal mass assessment score test system is a device that measures one or more proteins in serum or plasma. It yields a single result for the likelihood that an adnexal pelvic mass in a woman for whom surgery is planned, is malignant. The test is for adjunctive use, in the context of a negative primary clinical and radiological evaluation, to augment the identification of patients whose gynecologic surgery requires oncology expertise and resources.

B. Identified Risk to Health

The ovarian adnexal mass assessment score test system is not indicated for use as a screening or diagnostic test for ovarian cancer. Off-label use of the test (*e.g.,* in patients who are not already identified as needing surgery for pelvic mass or without reference to an independent clinical/radiological evaluation of the patient), may lead to a high frequency of unnecessary further testing and surgery due to false positive results, or to delay in tumor diagnosis due to false negative results.

II. Why is FDA requiring black box warnings on ovarian adnexal mass assessment score test system labeling, advertising, and promotional material?

FDA has determined that in order to provide reasonable assurance of safety and effectiveness, it is necessary to restrict the ovarian adnexal mass assessment score test system to sale, distribution, and use with labeling, advertising, and promotional material that bears a warning statement in a black box that alerts users to the risk associated with off-label use as a screening test, stand-alone diagnostic test, or as a test to determine whether or not to proceed with surgery. In the **Federal Register** of March 23, 2011 (76 FR 16292 at 12694), FDA published a final rule that classified this device into class II and established as a special control the guidance entitled ''Class II Special Controls Guidance Document: Ovarian Adnexal Mass Assessment Score Test System'' that recommends a black box warning to address the risk of off-label use. In the **Federal Register** of March 23, 2011 (76 FR 16425), FDA published a notice of availability of this special controls guidance document. However, FDA believes it is necessary to require this warning in labeling and advertising by restricting the device under section 520(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(e)). In the **Federal Register** of March 23, 2011 (76 FR 16350 at 16352), FDA published a proposed rule to require the black box warning.

For devices that have significant risks that would make the devices unsafe if used inappropriately, FDA may require that the risks be explained in warning statements placed in a black box that is displayed prominently in the labeling, advertising, and promotional material to ensure awareness by the end user. Awareness of these important risks by the end user enables these devices to be used safely. In this case, a prominent black box warning, which alerts the user to the limitations of this device, is necessary in all labeling, advertising, and promotional materials to allow ovarian adnexal mass assessment score test system devices to be used safely. The prominent black box warning must read as follows:

PRECAUTION: The [test name] should not be used without an independent clinical/radiological evaluation and is **not** intended to be a screening test or to determine whether a patient should proceed to surgery. Incorrect use of the [test name] carries the risk of unnecessary testing, surgery, and/or delayed diagnosis.

III. What comments did FDA receive on this rule?

In the **Federal Register** of March 23, 2011 (76 FR 16350 at 16352), FDA announced the proposed rule to require the black box warning. Comments on the proposed rule were due by May 23, 2011. FDA received one comment in the docket for the proposed rule from a consumer. The comment supported the proposed rule.

IV. What is the legal authority for this final rule?

FDA is issuing this final rule under the authority of section 520(e) of the FD&C Act, which authorizes FDA to restrict sale, distribution, and use of devices upon certain conditions. FDA is also issuing this final rule under general device and administrative provisions of the FD&C Act (sections 501, 510, 513, 515, 520, and 701 (21 U.S.C. 351, 360, 360c, 360e, 360j, and 371, respectively)).

V. What is the environmental impact of this final rule?

FDA has determined under 21 CFR 25.34(b) and (f) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. What is the economic impact of this final rule?

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule strengthens existing cautions against misuse of a product, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

An ovarian adnexal mass assessment test system is a device that measures one or more proteins in serum to yield a single result for the likelihood that an adnexal pelvic mass in a woman is malignant. Such a test would identify women whose planned gynecologic surgery would benefit from referral to a gynecological oncologist, despite negative results from other clinical and radiographic tests for ovarian cancer.

In considering the appropriate level of regulatory oversight for this device, FDA concluded in classifying the device that general and special controls to minimize the risk of false positive and false negative results, and risks associated with improper off-label use would provide a reasonable assurance of safety and effectiveness of the ovarian adnexal mass assessment test system. The special controls guidance recommends use of a black box warning to minimize these risks. Without such a strong warning, ovarian adnexal mass assessment test systems might be used as a screening test, stand-alone diagnostic test, or as a test to determine whether or not to proceed with surgery. Off-label use of the test or the use of test results without consideration of other diagnostic testing and clinical assessment could pose a risk for morbidity and mortality due to nonreferral for oncologic evaluation and treatment.

In order to require the specific black box warning on labeling and on all advertising and promotional materials for the device, FDA is issuing this final rule under section 520(e) of the FD&C Act. Through this action, the Agency requires a black box warning on product labeling, advertising, and promotional materials for ovarian adnexal mass assessment test systems. This warning will make users aware of the limitations of this device and the serious risks associated with its misuse. With the addition of this black box warning to product labeling, advertising, and marketing materials, the Agency concludes there will be a reasonable assurance of the safety and effectiveness of ovarian adnexal mass assessment test systems.

The economic impact of this final rule is expected to be very small. We are aware of a single manufacturer producing a single product that will be affected by this black box warning. The manufacturer should be able to incorporate the warning in the course of developing its product labeling. The admonition against off-label use for this device already exists, so the addition of this type of warning is not expected to have a significant effect on the market for this product. The expected impact of this final rule on the market for this product would be a reduction in off-label use among the small number of users who would be undeterred by a less visible warning.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any

significant impact of a rule on small entities. This final rule would impose almost no cost on manufacturers. The black box warning will strengthen an existing admonition against off-label use and will not significantly affect usage. Impacts on any entities will be so small as to be difficult to quantify. For these reasons, the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VII. How does the Paperwork Reduction Act of 1995 apply to this final rule?

FDA concludes that labeling provisions of this final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the black box warning on all labeling, advertising, and promotional materials for ovarian adnexal mass assessment score test system devices is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public.'' (see 5 CFR 1320.3(c)(2)).

VIII. What are the federalism impacts of this final rule?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain State requirements ''different from or in addition to'' certain Federal requirements applicable to devices (21 U.S.C. 360k; See *Medtronic, Inc.* v. *Lohr,* 518 U.S. 470 (1996); *Riegel* v. *Medtronic, Inc.,* 552 U.S. 312 (2008)). This final rule creates a requirement under 21 U.S.C. 360k for a black box warning statement that must appear in all advertising, labeling, and promotional material for ovarian adnexal mass assessment score test systems.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA amends 21 CFR part 866 as follows.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. In § 866.6050 of subpart G, add new paragraph (c) to read as follows:

§ 866.6050 Ovarian adnexal mass assessment score test system.

* * * * *

(c) *Black box warning.* Under section 520(e) of the Federal Food, Drug, and Cosmetic Act these devices are subject to the following restriction: A warning statement must be placed in a black box and must appear in all advertising, labeling, and promotional material for these devices. That warning statement must read:

PRECAUTION: The [test name] should not be used without an independent clinical/radiological evaluation and is **not** intended to be a screening test or to determine whether a patient should proceed to surgery. Incorrect use of the [test name] carries the risk of unnecessary testing, surgery, and/or delayed diagnosis.

Dated: December 27, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33588 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Special Procedural Rules With Respect to Representation Cases Governing Periods When the National Labor Relations Board Lacks a Quorum of Members

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (the Board or the NLRB) is revising its rules governing the processing of representation cases during periods when the Board lacks a quorum of Members. This revision is being adopted to facilitate, insofar as it is possible, the normal functioning of the Agency when the number of Board Members falls below three, the number required to establish a quorum of the Board. See 29 U.S.C. 153(b); *New Process Steel* v. *NLRB,* 130 S.Ct. 2635 (2010). The effect of the revision is to enable the Agency to process some representation cases to the certification of a representative or the certification of the results of the election, while deferring Board consideration of parties' requests for review until a quorum has been restored.

DATES: Effective December 30, 2011.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street NW., Room 11600, Washington, DC 20570. Telephone (202) 273–1067 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The National Labor Relations Board is revising its rule requiring the automatic impoundment of ballots in representation cases when a party files a request for review. This rules revision is an addendum to the Board's December 14, 2011 rules revisions,

which added a new Subpart X to the NLRB's Rules and Regulations (29 CFR 102.178–102.181; see 76 FR 77699). The December 14 revisions covered the consideration of certain pleadings in unfair labor practice cases that require a quorum of Board Members for final action, during periods when the number of Board members falls below three, the number required to establish a quorum of the Board. See 29 U.S.C. 153(b); *New Process Steel* v. *NLRB,* 130 S.Ct. 2635 (2010). In representation cases, final action on requests for review by the Board also requires a three-member quorum. The instant rule revision, which adds 29 CFR 102.182 to the NLRB's Rules and Regulations, is being adopted to facilitate, as far as possible, the expeditious processing by the Agency of representation cases during periods in which the Board lacks a quorum. No Notice of Proposed Rulemaking (NPRM) is required with respect to this rules revision, as it falls under the Administrative Procedure Act's exception to the NPRM requirement for regulatory actions involving agency *organization, procedure, or practice.* See 5 U.S.C. 553. In addition, the Agency finds that notice and comment would be impracticable within the meaning of 5 U.S.C. 5553(b)(3)(B) before the Board loses a quorum on January 3, 2012, as now appears possible.

At present, the NLRB's Rules and Regulations provide only for the adjudication of representation cases and the issuance of decisions on review by the Board when it is composed of three or more members, which constitutes the Congressionally-designated quorum of the Board. In *New Process Steel* v. *NLRB, supra,* 130 S. Ct. 2635, the Supreme Court held that Congress empowered the Board to delegate its powers to no fewer than three members, and that, to maintain a valid quorum, a membership of three must be maintained. *Id.* at 2640. It can be anticipated that, from time to time, the number of individuals appointed by the President and confirmed by Congress to serve as members of the Board may fall below three. Current Section 102.67(b) of the NLRB's Rules and Regulations requires that all ballots cast in a representation election be impounded whenever the Board has not acted on a pending request for review, thus halting the processing of the representation case at the end of the voting, but before the ballots are counted. During periods when the Board lacks a quorum, the effect of the current rule would be to withhold information concerning the results of the election from employees and employers, who are usually eager to know the results, until the Board regains a quorum and rules on the request for review. The investigation and adjudication of objections and determinative challenges would be delayed during the same period. And in all likelihood the request for review would ultimately be denied, as are about 85% of requests for review currently filed. If the request for review is denied, the delay of the tally and any ensuing proceedings would have served no purpose whatsoever.

The Board has determined that the purposes of the National Labor Relations Act will best be served, and the Board's Congressional mandate will best be carried out, if its rules are revised to suspend, during any period the Board lacks a quorum, the second proviso of Section 102.67(b) of the NLRB's Rules and Regulations. Section 102.67(b) provides that a decision by the Regional Director upon the record shall set forth his findings, conclusions, and order or direction. The decision of the Regional Director shall be final: *Provided, however,* that within 14 days after service thereof any party may file a request for review with the Board in Washington, DC. The Regional Director shall schedule and conduct any election directed by the decision notwithstanding that a request for review has been filed with or granted by the Board. The filing of such a request shall not, unless otherwise ordered by the Board, operate as a stay of the election or any other action taken or directed by the Regional Director: *Provided, however,* that if a pending request for review has not been ruled upon or has been granted ballots whose validity might be affected by the final Board decision shall be segregated in an appropriate manner, and all ballots shall be impounded and remain unopened pending such decision.

Thus, suspension of the automatic impoundment of ballots during periods in which the Board lacks a quorum will permit Regional Directors promptly to tally the ballots cast by bargaining unit employees. The Board anticipates that the suspension of the automatic impoundment of ballots will serve the interests of the public and the parties in the speedy resolution of representation cases by avoiding extended and unnecessary delays in the tally of ballots. In addition, the Board anticipates that, in some cases the prompt tallying of ballots and recording the results of the election will cause parties to determine that it is unnecessary to pursue a request for review. In such cases, the choice of the bargaining unit employees will be effectuated expeditiously. Thus, the instant rules revision will provide the parties the opportunity to pursue numerous representation cases through to certification, while deferring consideration of requests for review by the Board until a quorum has been restored. The rules revision expressly preserves the Board's authority, based on a properly filed request for review, to revise or revoke any certification issued by a regional director. Member Brian E. Hayes voted against the rules revision.

Executive Order 12866

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, even if they did, the proposed changes in the Board's rules would not be classified as ''significant rules'' under Section 6 of Executive Order 12866, because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Unfunded Mandates Reform Act of 1995

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

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these rules will not have a significant economic impact on a substantial number of small business entities as they merely provide parties with avenues for expeditiously resolving certain representation cases before the Board.

Paperwork Reduction Act

These rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

Small Business Regulatory Enforcement Fairness Act

Because these rules relate to Agency procedure and practice and merely modify the Agency's internal processing of ballots in representation cases, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure; Labor-management relations.

Accordingly, the Board amends 29 CFR part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

Subpart X—Special Procedures When the Board Lacks a Quorum

■ 2. Add § 102.182 to subpart X to read as follows:

§ 102.182 Representation Cases Should Be Processed to Certification.

During any period when the Board lacks a quorum, the second proviso of § 102.67(b) regarding the automatic impounding of ballots shall be suspended. To the extent practicable, all representation cases should continue to be processed and the appropriate certification should be issued by the Regional Director notwithstanding the pendency of a request for review, subject to revision or revocation by the Board pursuant to a request for review filed in accordance with this subpart.

Signed in Washington, DC, on December 28, 2011.

Mark Gaston Pearce,

Chairman.

[FR Doc. 2011–33668 Filed 12–29–11; 8:45 am]

BILLING CODE P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 104

RIN 3142–AA07

Notification of Employee Rights Under the National Labor Relations Act

AGENCY: National Labor Relations Board.

ACTION: Final rule; delay of effective date.

SUMMARY: On August 30, 2011, the National Labor Relations Board (Board) published a final rule requiring employers, including labor organizations in their capacity as employers, subject to the National Labor Relations Act (NLRA) to post notices informing their employees of their rights as employees under the NLRA. (76 FR 54006, August 30, 2011.) On October 12, 2011, the Board amended that rule to delay the effective date from November 14, 2011, to January 31, 2012. (76 FR 63188, October 12, 2011.) The Board hereby further amends that rule to delay the effective date from January 31, 2012, to April 30, 2012. The purpose of this amendment is to facilitate the resolution of the legal challenges with respect to the rule.

DATES: This amendment is effective December 30, 2011. The effective date of the final rule published at 76 FR 54006, August 30, 2011, and amended at 76 FR 63188, October 12, 2011, is delayed from January 31, 2012 to April 30, 2012.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street NW., Washington, DC 20570, (202) 273–1067 (this is not a toll-free number), 1–(866) 315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: On August 30, 2011, the National Labor Relations Board published a final rule requiring employers, including labor organizations in their capacity as employers, subject to the National Labor Relations Act (NLRA) to post notices informing their employees of their rights as employees under the NLRA. The Board subsequently determined that in the interest of ensuring broad voluntary compliance with the rule concerning notification of employee rights under the National Labor Relations Act, further public education and outreach efforts would be helpful. Accordingly, the Board changed the effective date of the rule from November 14, 2011, to January 31, 2012, in order to allow time for such an education and outreach effort. On December 19, 2011, the U.S. District Court for the District of Columbia requested that the Board consider postponing the effective date of the rule in connection with a pending proceeding concerning the rule. The Board has determined that postponing the effective date of the rule would facilitate the resolution of the legal challenges that have been filed with respect to the rule. Accordingly, the Board has decided to change the effective date of the rule from January 31, 2012 to April 30, 2012.

Signed in Washington, DC, on December 23, 2011.

Mark Gaston Pearce,

Chairman.

[FR Doc. 2011–33571 Filed 12–29–11; 8:45 am]

BILLING CODE 7545–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0638; FRL–9612–8]

Approval and Promulgation of Air Quality Implementation Plans; California; Determinations of Failure To Attain the One-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to determine that three areas in California, previously designated nonattainment for the now-revoked one-hour ozone national ambient air quality standard (NAAQS), did not attain that standard by their applicable attainment dates: the Los Angeles-South Coast Air Basin Area (''South Coast''), the San Joaquin Valley Area (''San Joaquin Valley''), and the Southeast Desert Modified Air Quality Maintenance Area (''Southeast Desert''). These determinations are based on three years of quality-assured and certified ambient air quality monitoring data for the period preceding the applicable attainment deadline.

DATES: *Effective Date:* This rule is effective on January 30, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0638 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in

either location (*e.g.,* Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Doris Lo, (415) 972–3959, or by email at *lo.doris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. EPA's Proposed Action

On September 14, 2011 (76 FR 56694), EPA proposed to determine, under the Clean Air Act (CAA or ''Act''), that three areas previously designated nonattainment for the one-hour ozone NAAQS—the South Coast, the San Joaquin Valley, and the Southeast Desert—failed to attain the NAAQS for one-hour ozone by their applicable one-hour NAAQS attainment dates.

A. Background

Regulatory Context

The Act requires us to establish NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the Act). In 1979, we promulgated the revised one-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979).[1]

An area is considered to have attained the one-hour ozone standard if there are no violations of the standard, as determined in accordance with the regulation codified at 40 CFR section 50.9, based on three consecutive calendar years of complete, quality-assured and certified monitoring data. A violation occurs when the ambient ozone air quality monitoring data show greater than one (1.0) ''expected number'' of exceedances per year at any site in the area, when averaged over three consecutive calendar years.[2] An exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. For more information, please see ''National 1-hour primary and secondary ambient air quality standards for ozone'' (40 CFR 50.9) and ''Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, appendix H).

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991). The Act further classified these areas, based on the severity of their nonattainment problem, as Marginal, Moderate, Serious, Severe, or Extreme.

The control requirements and date by which attainment of the one-hour ozone standard was to be achieved varied with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while Severe and Extreme areas were subject to more stringent planning requirements and were provided more time to attain the standard. Two measures that are triggered if a Severe or Extreme area fails to attain the standard by the applicable attainment date are contingency measures [section 172(c)(9)] and a major stationary source fee provision [sections 182(d)(3) and 185]('major source fee program'' or ''section 185 fee program'').

Designations and Classifications

On November 6, 1991, EPA designated the South Coast[3] as ''Extreme'' nonattainment for the one-hour ozone standard, with an attainment date no later than November 15, 2010 (56 FR 56694). In its November 6, 1991 final rule, EPA designated the San Joaquin Valley[4] as ''Serious'' nonattainment for the one-hour ozone standard, but later reclassified the valley as ''Severe'' (66 FR 56476, November 8, 2001), and then as ''Extreme'' (69 FR 20550, April 16, 2004) for the one-hour ozone standard, with the same attainment date (November 15, 2010) as the South Coast. In its 1991 final rule, EPA designated the Southeast Desert[5] as ''Severe-17'' nonattainment for the one-hour ozone standard, with an attainment date no later than November 15, 2007.

Outside of Indian country,[6] the South Coast lies within the jurisdiction of the South Coast Air Quality Management District (SCAQMD). Similarly, with the exception of Indian country, San Joaquin Valley lies within the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). Likewise, excluding Indian country, the Los Angeles portion of the Southeast Desert lies within the Antelope Valley Air Quality Management District (AVAQMD), the San Bernardino County portion of the Southeast Desert lies within the Mojave Desert Air Quality Management District (MDAQMD), and the Riverside County portion of the Southeast Desert lies within the SCAQMD.

Under California law, each air district is responsible for adopting and implementing stationary source rules, such as the fee program rules required under CAA section 185, while the California Air Resources Board (CARB) adopts and implements consumer products and mobile source rules. The district and state rules are submitted to EPA by CARB.

Transition From One-Hour Ozone Standard to Eight-Hour Ozone Standard

In 1997, EPA promulgated a new, more protective standard for ozone based on an eight-hour average concentration (the 1997 eight-hour ozone standard). In 2004, EPA published the 1997 eight-hour ozone designations and classifications and a rule governing certain facets of implementation of the eight-hour ozone standard (herein referred to as the ''Phase 1 Rule'') (69 FR 23858 and 69 FR 23951, respectively, April 30, 2004).

[1] For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.12 ppm becomes 120 ppb (or between 120 to 124 ppb, when rounding is considered).

[2] An ''expected number'' of exceedances is a statistical term that refers to an arithmetic average. An ''expected number'' of exceedances may be equivalent to the number of observed exceedances plus an increment that accounts for incomplete sampling. *See,* 40 CFR part 50, appendix H. Because, in this context, the term ''exceedances'' refers to days (during which the daily maximum hourly ozone concentration exceeded 0.124 ppm), the maximum possible number of exceedances in a given year is 365 (or 366 in a leap year).

[3] The South Coast includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County (see 40 CFR 81.305).

[4] San Joaquin Valley includes all of Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare counties, as well as the western half of Kern County (see 40 CFR 81.305).

[5] The Southeast Desert covers the Victor Valley/Barstow region in San Bernardino County, the Coachella Valley region in Riverside County, and the Antelope Valley portion of Los Angeles County (see 40 CFR 81.305).

[6] ''Indian country'' as defined at 18 U.S.C. 1151 refers to: ''(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.''

Although EPA revoked the one-hour ozone standard (effective June 15, 2005), to comply with anti-backsliding requirements of the Act, eight-hour ozone nonattainment areas remain subject to certain requirements based on their one-hour ozone classification. Initially, in our rules to address the transition from the one-hour to the eight-hour ozone standard, EPA did not include contingency measures or the section 185 fee program among the measures retained as one-hour ozone anti-backsliding requirements.[7] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements (and certain others not relevant here) from its anti-backsliding requirements. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) reh'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review) (referred to herein as the *South Coast* case).

Thus, the Court vacated the provisions that excluded these requirements. As a result, States must continue to meet the obligations for one-hour ozone NAAQS contingency measures and, for Severe and Extreme areas, section 185 major source fee programs. EPA has issued a proposed rule that would remove those specific portions of *40 CFR 51.905(e)* that the court vacated, and that addresses contingency measures for failure to attain or make reasonable further progress toward attainment of the one-hour standard. See *74 FR 2936,* January 16, 2009 (proposed rule); *74 FR 7027,* February 12, 2009 (notice of public hearing and extension of comment period).

Rationale for Proposed Action

In our September 14, 2011 proposed rule, we explained that, after revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements that have been specifically retained. See *South Coast,* 47 F.3d 882, at 903. In keeping with this responsibility with respect to one-hour anti-backsliding contingency measures and section 185 fee programs for these three California areas, on September 14, 2011, EPA proposed to determine that each area failed to attain the one-hour ozone standard by its applicable attainment date.

[7] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

B. Technical Evaluation

A determination of whether an area's air quality meets the one-hour ozone standard is generally based upon three years of complete,[8] quality-assured and certified air quality monitoring data gathered at established State and Local Air Monitoring Stations (''SLAMS'') in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of an area. See 40 CFR 50.9; 40 CFR part 50, appendix H; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix H.

Under EPA regulations at 40 CFR 50.9, the one-hour ozone standard is attained at a monitoring site when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 micrograms per cubic meter) is equal to or less than 1, as determined by 40 CFR part 50, appendix H.[9]

In our September 14, 2011 proposed rule, EPA proposed to determine that the South Coast, the San Joaquin Valley, and the Southeast Desert failed to attain the one-hour ozone standard by their applicable attainment dates based on findings that the number of expected exceedances at sites in each of the three nonattainment areas was greater than one per year in the period prior to the applicable attainment date. These proposed determinations were based on three years of quality-assured and certified ambient air quality monitoring data in AQS for the 2008–2010 monitoring period for the South Coast and the San Joaquin Valley, and quality-assured and certified data in AQS for 2005–2007 for the Southeast Desert.

[8] Generally, a ''complete'' data set for determining attainment of the ozone is one that includes three years of data with an average percent of days with valid monitoring data greater than 90% with no single year less than 75%. See 40 CFR part 50, appendix I. There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the standard.

[9] The average number of expected exceedances is determined by averaging the expected exceedances of the one-hour ozone standard over a consecutive three calendar year period. See 40 CFR part 50, appendix H.

In so doing, in our September 14, 2011 proposed rule, we reviewed documents prepared by CARB and the local air districts in connection with the ozone monitoring networks as well as any applicable EPA technical systems audits to determine the comprehensiveness and reliability of the data reported to AQS and used by EPA to determine the attainment status of the areas with respect to the one-hour ozone standard. We then evaluated the ozone monitoring data contained in AQS from each area against the criterion discussed above to determine whether the areas attained the one-hour ozone standard by their applicable attainment dates.

With respect to the South Coast, based on the monitoring data from 29 ozone monitoring sites for the years 2008–2010, we found that, generally, the highest ozone concentrations in the South Coast occur in the northern and eastern portions of the area. We also determined that the highest three-year average of expected exceedances at any site in the South Coast Air Basin for 2008–2010 is 10.4 (at Crestline, a site located at 4,500 feet elevation in the San Bernardino Mountains). Because the calculated exceedance rate of 10.4 represents a violation of the one-hour ozone standard (a three-year average of expected exceedances less than or equal to 1), and taking into account the extent and reliability of the applicable ozone monitoring network, and the data collected therefrom, we proposed in our September 14, 2011 action to determine that the South Coast Air Basin failed to attain the one-hour ozone standard (as defined in 40 CFR part 50, appendix H) by the applicable attainment date (*i.e.,* November 15, 2010). Please see pages 56696–56698 in the September 14, 2011 proposed rule for additional information on the ozone monitoring network operating in the South Coast during the relevant period and the data collected therefrom.

With respect to the San Joaquin Valley, based on the monitoring data from 22 ozone monitoring sites for the years 2008–2010, we found that, generally, the highest ozone concentrations in San Joaquin Valley occur in the central (*i.e.,* in and around the city of Fresno) and the southern portions (*i.e.,* southeast of Bakersfield) of the area. We also determined that the highest three-year average of expected exceedances at any site in the San Joaquin Valley for 2008–2010 is 6.6 at Arvin, a site located with mountains to the east, west, and south. Because the calculated exceedance rate of 6.6 represents a violation of the one-hour ozone standard (a three-year average of expected exceedances less than or equal

to 1), and taking into account the extent and reliability of the applicable ozone monitoring network, and the data collected therefrom, we proposed in our September 14, 2011 action to determine that the San Joaquin Valley failed to attain the one-hour ozone standard (as defined in 40 CFR part 50, appendix H) by the applicable attainment date (*i.e.,* November 15, 2010). Please see pages 56698–56699 in the September 14, 2011 proposed rule for additional information on the ozone monitoring network operating in the San Joaquin Valley during the relevant period and the data collected therefrom.

With respect to the Southeast Desert, based on the monitoring data from nine ozone monitoring sites for the years 2005–2007, we found that, generally, the highest ozone concentrations in the Southeast Desert occur in the far southwestern portion of the area, near mountain passes through which pollutants are transported to the Southeast Desert from the South Coast Air Basin. We also determined that the highest three-year average of expected exceedances at any site in the Southeast Desert for 2005–2007 is 2.3 at Palm Springs in Riverside County and Hesperia in San Bernardino County. Because the calculated exceedance rate of 2.3 represents a violation of the one-hour ozone standard (a three-year average of expected exceedances less than or equal to 1), and taking into account the extent and reliability of the applicable ozone monitoring network, and the data collected therefrom, we proposed to determine in our September 14, 2011 proposed action that the Southeast Desert failed to attain the one-hour ozone standard (as defined in 40 CFR part 50, appendix H) by the applicable attainment date (*i.e.,* November 15, 2007). Please see pages 56699–56700 in the September 14, 2011 proposed rule for additional information on the ozone monitoring network operating in the Southeast Desert during the relevant period and the data collected therefrom.

C. Consequences

In our September 14, 2011 proposed rule, we explained that a final determination of a Severe or Extreme area's failure to attain by its one-hour ozone NAAQS attainment date would trigger the obligation to implement one-hour contingency measures for failure to attain under section 172(c)(9) and fee programs under sections 182(d)(3), 182(f), and 185. Section 172(c)(9) requires one-hour ozone SIPs, other than for ''Marginal'' areas, to provide for implementation of specific measures (referred to herein as ''contingency measures'') to be undertaken if the area fails to attain the NAAQS by the attainment date. Thus, in our September 14, 2011 proposed rules, we stated that a consequence of the proposed determinations, if finalized, would be to give effect to any one-hour ozone contingency measures that are not already in effect within the three subject California nonattainment areas.

Section 182(d)(3) requires SIPs to include provisions required under section 185, and section 185 requires one-hour ozone SIPs in areas classified as ''Severe'' or ''Extreme'' to provide that, if the area has failed to attain the standard by the applicable attainment date, each major stationary source of ozone precursors located in the area must begin paying a fee [computed in accordance with section 185(b)] to the State. Section 182(f) extends the section 185 requirements, among others, that apply to major stationary sources of VOCs to major stationary sources of NO_X unless EPA has waived such requirements for NO_X sources in the particular nonattainment area. Thus, in our September 14, 2011 proposed rules, we stated that another consequence of the determinations, if finalized, would be to give effect to the section 185 fee requirements to the extent they are not already in effect within the three subject California nonattainment areas.

Please see pages 56700–56701 in the September 14, 2011 proposed rule for additional information on the consequences of our proposed determinations in the three subject California one-hour ozone nonattainment areas.

II. Public Comments and EPA Responses

Our September 14, 2011 proposed rule provided a 30-day comment period. During this period, we received three comment letters: a letter from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) dated October 12, 2011; a letter from the South Coast Air Quality Management District (SCAQMD) dated October 13, 2011; and a letter from Earthjustice dated October 14, 2011. None of the commenters challenge EPA's proposed air quality determinations themselves, nor any aspect of the technical basis for the proposed determinations. Rather, they variously challenge the necessity, rationale, and statutory basis for the proposed actions and the consequences that they entail. We have summarized the comments from each commenter's letter and provide EPA's responses below.

San Joaquin Valley Unified Air Pollution Control District—Comments and Responses

SJVUAPCD Comment #1: The SJVUAPCD provides a number of grounds to support its argument that EPA should not make a determination that the San Joaquin Valley failed to meet its deadline for attaining the one-hour ozone standard. The District's reasons include: the one-hour ozone standard has been revoked; EPA's Phase 1 Ozone Implementation rule stated that EPA will no longer make findings of failure to attain for one-hour ozone nonattainment areas, citing 69 FR 23951, at 23984 (April 30, 2004); while certain provisions of EPA's April 2004 Ozone Implementation rule were vacated, the applicable provision related to findings of failure to attain was not challenged, and thus EPA remains bound by it.

EPA Response to SJVUAPCD Comment #1: Under EPA's April 30, 2004 Phase 1 Rule, EPA is no longer obligated, after revocation of the one-hour ozone standard, to determine pursuant to section 179(c) or 181(b)(2) of the CAA whether an area attained the one-hour ozone standard by that area's attainment date for the one-hour ozone standard. See 40 CFR 51.905(e)(2). EPA agrees that the relevant provision from EPA's Phase 1 Rule [*i.e.,* 40 CFR 51.905(e)(2)] was not challenged and has not been vacated, but disagrees that this provision precludes EPA from making the determinations that are the subject of this notice. First, although the provision states that the Agency is no longer obligated to make certain determinations, it does not prohibit the Agency from exercising its discretion to do so. However, more to the point, EPA is not today invoking the authority of section 179(c) to determine that the San Joaquin Valley failed to attain the one-hour ozone standard by the applicable attainment date. Rather, EPA is acting pursuant to its obligations to give effect to two specific one-hour ozone anti-backsliding requirements whose implementation is dependent on such determinations. In doing so, EPA is complying with the DC Circuit's directive to formulate the Agency's procedures to dovetail with the required anti-backsliding measures. For the reasons explained in our September 14, 2011 proposed rule and further below, EPA is acting pursuant to its authority under section 301(a) and also the relevant portion of section 181(b)(2).

SJVUAPCD Comment #2: The SJVUAPCD believes that EPA's action is unnecessary with respect to the San Joaquin Valley because the District's

one-hour ozone contingency measures take effect without further action by the District or EPA, and because, with respect to section 185 fees, the DC Circuit did not specify the mechanism that EPA must use to trigger section 185 fees, and the District's rule implementing section 185 has been proposed for approval by EPA.

EPA Response to SJVUAPCD Comment #2: EPA recognizes that the approved one-hour ozone plan for the San Joaquin Valley relies on existing State and federal on- and off-road road new engine standards to meet the contingency measure requirements in section 172(c)(9), 75 FR 10420, at 10432 (March 8, 2010) and that such standards are already being implemented and provide an estimated additional benefit in 2011 beyond the reductions from those measures in 2010 regardless of our determination of failure to attain the one-hour ozone standard for the San Joaquin Valley. EPA also recognizes that the District's rule (*i.e.,* District Rule 3170) that is intended to implement section 185 of the CAA in connection with the one-hour ozone standard does not condition its applicability upon EPA's determination of failure by the area to attain the one-hour ozone standard by the applicable attainment date and that the rule has been submitted to EPA for review.[10] EPA, however, believes that a determination of failure to attain the one-hour ozone standard is appropriate to eliminate any uncertainty as to whether such measures and rules must continue to be implemented in San Joaquin Valley for anti-backsliding purposes.

South Coast Air Quality Management District—Comments and Responses

SCAQMD Comment #1: SCAQMD asserts that there is no need for EPA to make the proposed determinations. SCAQMD believes that, with respect to the South Coast, there is no need for a ''trigger mechanism'' which would inform the area that, due to its failure to attain, the area must implement section 185 fees and contingency measures because the related section 185 fees rule (SCAQMD Rule 317) has been adopted and submitted to EPA and because the contingency measures have already been implemented.

EPA Response to SCAQMD Comment #1: We recognize that SCAQMD Rule 317 has already been adopted by the District and submitted to EPA by CARB as a revision to the California SIP. As is true for the corresponding SJVUAPCD rule, SCAQMD Rule 317 does not condition applicability on EPA making a determination of failure to attain the one-hour ozone standard (by the applicable attainment date), and thus, the rule is in effect regardless of EPA's determination herein. EPA has not yet acted to approve this SIP revision.

Furthermore, prior to today's action, there has been no final determination of the area's failure to attain, which is what establishes the requirement to implement a rule developed to comply with section 185. Without a dispositive determination that implementation is required, it would be difficult if not impossible to clearly establish and enforce the obligation, and to assess when it may cease. Moreover, because EPA has not yet taken final action to approve SCAQMD Rule 317, and if we were to disapprove the rule, or if we were to approve SCAQMD Rule 317, but find that the SCAQMD is not administering and enforcing the rule, EPA could be under an obligation to implement the fee program required under section 185 [see CAA section 185(d)]. Thus, in order to comply with the process set forth in section 185, and to provide a legal basis for the State and/or EPA as appropriate to collect fees, EPA must ensure that the necessary determination for application of section 185 has been made. Thus, EPA concludes that, in the circumstances presented, the agency must make the determination that triggers the obligation to implement section 185, and we do so today in this document.

Moreover, the Agency has grounds to make today's determination other than for purposes of implementing contingency measures. EPA's determination is also linked to implementation of anti-backsliding requirements under section 185. Thus, today's action is not aimed solely at one-hour ozone contingency measures.

SCAQMD Comment #2: Even if it were necessary for EPA to have a ''trigger mechanism'' to cause an area to implement its section 185 fee, or to implement contingency measures, the SCAQMD believes it is not necessary to use a formal determination of failure to attain. The SCAQMD states that there is nothing in the *South Coast* case that indicated that a formal determination of failure to attain is necessary and that, as a result, EPA could simply send the affected districts a letter informing them that those obligations had been triggered based on submitted monitoring data.

EPA Response to SCAQMD Comment #2: EPA's established practice for making a determination whether an area has attained, or failed to attain, the NAAQS is to conduct a rulemaking under the Administrative Procedure Act (APA), not to issue a letter, a list or some other informal document. In other words, if there has not been a rulemaking providing notice and an opportunity for comment, there has not been an attainment determination. EPA's longstanding practice in this regard was explicitly recognized and upheld more than a decade ago by the United States Court of Appeals for the DC Circuit. The Court rejected the Sierra Club's arguments that means other than rulemaking were sufficient for this purpose, especially when a determination results in additional obligations for an area. See *Sierra Club* v. *Whitman,* 285 F.3d 63, at 66 (DC Cir. 2002). In determining through notice and comment rulemaking that the South Coast failed to attain the one-hour ozone standard by the applicable attainment date, EPA is acting consistently with its established practice and applicable administrative procedure law in making such determinations.

SCAQMD Comment #3: The SCAQMD asserts that the CAA does not authorize EPA to make the proposed determinations. In support of this assertion, the SCAQMD argues that:

- While CAA sections 179(c) and 179(d) require EPA to determine whether an area attained the standard by the applicable attainment date and that a new attainment demonstration requirement is triggered by a determination of failure to attain the standard by the applicable attainment date under those provisions, the one-hour ozone standard has been revoked and, as a result, the one-hour ozone standard is no longer a ''standard'' for the purposes of section 179(c) and section 179(d);
- EPA's past statements, such as those from EPA's April 30, 2004 Phase 1 Rule, indicate that areas would no longer have the obligation to demonstrate attainment of the revoked one-hour ozone standard if the area had an approved one-hour ozone attainment demonstration; and
- The recent decision published by the U.S. Court of Appeals for the Ninth Circuit (*Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011) that appears to require EPA to assure that California demonstrate attainment of the one-hour ozone standard for the South Coast was rendered without consideration of the fact that the plan in issue there was aimed at attaining the one-hour ozone standard, which had been revoked by the time EPA acted on the plan, and that the decision is pending appeal and not yet final.

[10] EPA proposed approval of SJVUAPCD Rule 3170 at 76 FR 45212 (July 28, 2011).

EPA Response to SCAQMD Comment #3: In making today's final determinations, we are not acting pursuant to section 179(c) nor triggering the related requirements under section 179(d). Neither of these provisions was retained as a 1-hour ozone anti-backsliding requirement, and the relevant provisions of the anti-backsliding rule in this respect were not challenged. As explained in our September 14, 2011 proposed rule, we are acting here in accordance with our obligation to enforce specific one-hour ozone anti-backsliding requirements, and the DC Circuit's instruction to us in the *South Coast* case that we determine the process necessary for that purpose. Thus, as explained in our proposal and elsewhere in this notice, we are acting here pursuant to our general authority in section 301(a) and the relevant portion of section 181(b)(2) concerning attainment determinations (*i.e.,* not the portion concerning reclassifications, which the commenter correctly notes was not retained for anti-backsliding purposes), and for the purpose of effectuating the two anti-backsliding provisions that are triggered by a determination of failure to meet the attainment deadline—contingency measures and section 185 fees.

EPA believes that the Ninth Circuit's decision in the *Association of Irritated Residents* (*AIR*) case cited by SCAQMD has no bearing on the question raised in this rulemaking regarding whether EPA must invoke section 179 when it seeks to make a determination regarding 1-hour ozone contingency and fee anti-backsliding measures. The *AIR* case centers on EPA's duties under section 110(l) of the CAA when it reviews a SIP revision, particularly, a SIP revision that includes an attainment demonstration. It does not pertain to the issue raised in this rulemaking—whether section 179, though not preserved in EPA's anti-backsliding provisions, should nonetheless be tacked on for the first time here as an additional anti-backsliding requirement to impose yet further planning for a revoked standard. In contrast to *AIR,* which considers EPA's duty at the time it reviews a plan, the question raised in this rulemaking is not whether the plan's faults were known at the time of plan review. The question here regarding section 179(c) concerns only whether that section's provision, which was not preserved as an anti-backsliding requirement, can be applied to extract an additional round of planning based on a subsequent failure to attain. As EPA explains elsewhere in this notice, the answer is that it cannot. Section 179's requirement for additional planning was not included in the anti-backsliding measures that were exhaustively litigated, reviewed and dispositively determined by the DC Circuit. As noted, the exclusion of section 179, and in particular the additional planning requirements in section 179(d), from the list of applicable requirements that continue to apply for anti-backsliding purposes was not challenged and remains the current law. Above all, sections 179(c) and (d) are not necessary to the enforcement of any of the anti-backsliding requirements which *are* included.

SCAQMD Comment #4: SCAQMD acknowledges that EPA's proposal described the consequences of the determinations only in terms of section 185 fees and contingency measures, but is concerned that if EPA finalizes the proposed action, it will be used in an effort to compel SCAQMD to submit a plan to attain the revoked one-hour standard.

EPA Response to SCAQMD Comment #4: EPA's final determinations in this rulemaking are intended to effectuate only those 1-hour anti-backsliding requirements that have been specifically retained, and which are activated by a finding of failure to attain. For the reasons set forth at length elsewhere in these responses, EPA is not acting pursuant to section 179, and does not believe that section's provisions can be invoked to require additional rounds of planning for the revoked 1-hour standard. EPA and the states are implementing the one-hour standard, which has been revoked, by means of the specified one-hour anti-backsliding requirements. While EPA agrees that it must continue to make determinations of attainment or failure to attain the one-hour ozone standard by the applicable attainment date, it is for the sole purpose of ensuring implementation of those one-hour ozone anti-backsliding requirements (section 185 fees and contingency measures) and not to trigger new attainment demonstration plans or reclassifications for the revoked one-hour ozone standard. EPA's reasoning is elaborated further in its responses below to the comments of Earthjustice.

SCAQMD Comment #5: SCAQMD states that it has recently initiated the 2012 Air Quality Management Plan (AQMP) development process. SCAQMD anticipates that the 2012 AQMP will be submitted to EPA by the end of 2012 and will include a demonstration of attainment of the 24-hour $PM_{2.5}$ standard and an update to the ''black box'' commitment under CAA section 182(e)(5) for attainment of the 1997 8-hour ozone standard. SCAQMD asserts that this plan will necessarily include all feasible measures and believes that it is doubtful that additional measures could be identified solely for the purposes of addressing the revoked one-hour ozone standard. SCAQMD also asserts that the strategies for emissions reductions would essentially be the same for both the one and eight-hour ozone standards. SCAQMD argues that no separate additional plan for the revoked one-hour ozone standard should be required, since the 2012 plan for the eight-hour standard will evaluate future one-hour ozone design values and, all feasible measures are being taken, and the additional resource needed to prepare such a demonstration would divert resources away from the effort to demonstrate attainment with the current NAAQS. Thus, SCAQMD believes that requiring a new attainment demonstration for the one-hour ozone standard is not necessary and is overly burdensome given the upcoming 2012 AQMP.

EPA Response to SCAQMD Comment #5: As stated above, EPA believes that the anti-backsliding requirements applicable for the revoked 1-hour ozone standard are limited to those specified in EPA's regulations and the *South Coast* decision, and do not and should not compel additional planning for the one-hour standard here. We agree that requiring a new attainment demonstration for the one-hour ozone standard for the South Coast is not necessary or required by a final determination today that the South Coast failed to attain the one-hour ozone standard by the applicable attainment date. As set forth in our September 14, 2011 proposed rule and elsewhere in this document, we are making today's determination pursuant to our authority under CAA section 301(a) and also under the relevant portion of section 181(b)(2), in order to ensure implementation of only those measures specifically identified as one-hour ozone anti-backsliding requirements—in this case—contingency measures and section 185 fees.

SCAQMD Comment #6: SCAQMD requests that EPA clarify that a final determination of failure to attain does not trigger any obligation to submit an attainment demonstration for the revoked one-hour ozone standard.

EPA Response to SCAQMD Comment #6: In this final rule, EPA explains and responds to comments concerning the statutory basis and rationale set forth in our September 14, 2011 proposed rule for the determination of failure to attain the one-hour ozone standard by the applicable attainment date. EPA is taking this action under its authority to

ensure implementation of one-hour ozone anti-backsliding requirements under CAA section 301(a) and the relevant portion of section 181(b)(2). Thus, EPA is stating plainly that today's determination does not trigger any requirement for the State of California to prepare and submit a new attainment demonstration for the one-hour ozone standard under section 179(c) and (d) for any of the three subject California nonattainment areas. As EPA has stated elsewhere, a new additional attainment demonstration triggered by a failure to attain the one-hour ozone standard by the attainment date is not an ''applicable requirement'' for the purposes of anti-backsliding in 40 CFR 51.905 and 40 CFR 51.900(f).

SCAQMD Comment #7: The SCAQMD requests that EPA separate the Coachella Valley from the remainder of the Southeast Desert Air Basin and determine that the Coachella Valley has attained the one-hour ozone standard. SCAQMD acknowledges that the Coachella Valley still exceeded the revoked one-hour ozone standard in the three-year period before 2007, but believes that Coachella Valley can now show it has attained the revoked one-hour standard based on data from the 2008–2010 period.

EPA Response to SCAQMD Comment #7: The air quality determinations that are the subject of this rulemaking focus solely on whether the areas attained the one-hour ozone standard by the applicable attainment dates. Whether an area is currently attaining the standard is not relevant to these determinations. In the case of the South Coast and the San Joaquin Valley, the applicable attainment date was November 15, 2010, and the determination of whether the areas attained by the applicable attainment date is based on data from 2008–2010. For the Southeast Desert, the determination of whether the area met its attainment date is based on data for 2005–2007. As a Severe-17 area, the area's applicable attainment date for the one-hour ozone standard was November 15, 2007.

In today's rulemaking, EPA is not addressing current attainment of the one-hour ozone standard in these areas or making a determination regarding current attainment of any area. Should the SCAQMD wish to seek a revision of the boundary of the Southeast Desert one-hour ozone nonattainment area in order to establish a separate Coachella Valley one-hour ozone nonattainment area and a determination by EPA that this area is currently attaining the one-hour ozone standard, the SCAQMD should work with CARB to prepare and submit a request for a boundary redesignation under CAA section 107(d)(3)(D) and for a related attainment determination. EPA would then consider such requests in a separate rulemaking.

SCAQMD Comment #8: SCAQMD states that it believes that, for the sake of consistency and to avoid future litigation, EPA should make determinations similar to today's determinations for all areas in the United States that failed to attain the revoked ozone standard by their applicable attainment dates.

EPA Response to SCAQMD Comment #8: By mid-2012, EPA intends to make a determination of attainment or failure to attain the one-hour ozone standard for approximately 20 areas throughout the country, consisting of almost every one-hour ozone nonattainment area that was classified as Moderate or above on June 15, 2005 (the date of revocation of the one-hour ozone standard) and that is currently designated as nonattainment for the 1997 8-hour ozone standard. The only two exceptions, Portsmouth-Dover-Rochester, New Hampshire and Providence, Rhode Island were classified as ''Serious'' for the one-hour ozone standard, and thus not subject to section 185 fee requirements, and EPA has determined through rulemaking that they are attaining the 1997 eight-hour ozone standard. See 75 FR 64949 (October 21, 2010)(Providence, RI); and 76 FR 14805 (March 18, 2011) (Portsmouth-Dover-Rochester, NH).

The areas for which EPA has made determinations regarding attainment of the one-hour ozone standard, or for which EPA is committed to make determinations, are: South Coast (CA); San Joaquin Valley (CA); Southeast Desert (CA); Chicago-Gary-Lake County (IL–IN); Houston-Galveston (TX); Milwaukee-Racine (WI); New York-N. New Jersey-Long Island (NY–NJ–CT); Baltimore (MD); Baton Rouge (LA); Philadelphia-Wilmington-Trenton (PA–NJ–DE–MD); Sacramento Metro (CA); Ventura County (CA); Metropolitan Washington (DC–MD–VA); Beaumont-Port Arthur (TX); Boston-Lawrence-Worcester (MA–NH); Dallas-Fort Worth (TX); El Paso (TX); Greater Connecticut (CT); Springfield (Western MA); Atlantic City (NJ); and Poughkeepsie (NY).

Earthjustice—Comments and Responses

Earthjustice Comment #1: Earthjustice states that it assumes that EPA's failure to cite the relevant sections of the CAA and fully explain the implications of a failure to attain is an oversight because it contends that the requirements in CAA sections 179(c) and 181(b)(2) plainly mandate EPA to determine whether a nonattainment area attained the standard by the applicable attainment date.

EPA Response to Earthjustice Comment #1: For a number of reasons, EPA does not agree that it is compelled to act under the authority of CAA sections 179(c) and 181(b)(2) when making determinations for the revoked one-hour ozone standard. CAA section 179(c) requires, in relevant part, that EPA determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date. CAA section 179(c) applies to all of the NAAQS whereas CAA section 181(b)(2), in relevant part, largely mirrors section 179(c) and applies specifically to the ozone standard.

Both section 179(c) and 181(b)(2) refer to the ''standard,'' which doubtless applies to the NAAQS, but which does not clearly apply to a revoked standard, such as the one-hour ozone standard, which was revoked after promulgation of the 1997 eight-hour ozone standard, one year after the effective date of designations for the 1997 ozone standard. See 40 CFR 50.9(b). Based on an effective date of June 15, 2004 for designations for the eight-hour ozone standard (see 69 FR 23951, April 30, 2004), the date for revocation of the one-hour ozone standard was June 15, 2005. Because we are well past that date, the revoked one-hour ozone NAAQS no longer constitutes a ''standard'' for the purposes of sections 179(c) or 181(b)(2).

Moreover, not all CAA provisions that applied prior to revocation of the one-hour standard were preserved as anti-backsliding requirements. Only specified requirements were identified and retained as applicable requirements. While EPA's identification of these requirements was challenged in the *South Coast* litigation, the DC Circuit's decisions in that case disposed of those challenges and closed the door on the issue of what constitutes an anti-backsliding requirement. The provisions of the rule indicating that EPA would not be obligated to make determinations under section 179(c) for purposes of future planning or section 181(b)(2) for purposes of reclassifications were not challenged and stand as promulgated. Even more significantly, the consequences of determinations set forth in portions of those provisions—reclassification and additional one-hour planning—were not retained as anti-backsliding requirements. This aspect of the anti-backsliding regime was not challenged by litigants or addressed by the South Coast Court. The court vacated only those portions of EPA's implementation rule that it addressed in

its *South Coast* decision. In accordance with EPA's Phase 1 Ozone Implementation Rule, EPA is no longer obligated, after revocation of the one-hour ozone standard, to determine pursuant to section 179(c) or section 181(b)(2) of the CAA whether an area attained the one-hour ozone standard by that area's attainment date for the one-hour ozone standard. See 40 CFR 51.905(e)(2). While EPA remains obligated to ensure implementation of those one-hour ozone anti-backsliding measures that were retained as applicable requirements, EPA is not obligated to, and has elected not to apply section 179(c) to make determinations whether an area attained the one-hour ozone standard by the applicable attainment date. EPA is undertaking these determinations expressly and solely to give effect to the anti-backsliding requirements for contingency measures and section 185 fees that have been retained as applicable requirements and which are linked to such determinations, under our authority under CAA section 301(a) and the relevant portion of section 181(b)(2) consistent with the *South Coast* decision. The only anti-backsliding requirements related to attainment planning for the one-hour ozone standard are contained in EPA's regulation 40 CFR 51.905(a), which does not include any obligations for subsequent planning rounds under section 179(d). Section 179(d) prescribes consequences that were not retained for purposes of anti-backsliding after revocation of the one-hour ozone standard.

Earthjustice Comment #2: Earthjustice states its belief that the consequences of a failure to attain are plainly enumerated in the Act—a new plan meeting the requirements of section 110 and 172 [see section 179(d)], contingency measures approved under section 172(c)(9) and section 185 fees.

EPA Response to Earthjustice Comment #2: As stated on page 56700 of our September 14, 2011 proposed rule, we agree that a final determination that a Severe or Extreme area failed to attain by its one-hour ozone NAAQS attainment date triggers a State's obligation to implement one-hour contingency measures for failure to attain under section 172(c)(9) and fee programs under sections 182(d)(3), 182(f), and 185. Because the South Coast, San Joaquin Valley, and Southeast Desert areas are classified as Extreme (or Severe in the case of the Southeast Desert) for the one-hour ozone standard, today's final determinations of failure to attain by the applicable attainment date trigger the obligation to implement such one-hour contingency measures and fee programs.

We do not agree, however, that these determinations re-activate a requirement to prepare and submit an additional round of one-hour attainment planning pursuant to CAA section 179(d). Section 179(d) was not retained as an anti-backsliding requirement, and as explained in Response to Comment #1, above, EPA is not applying section 179 in order to make the determinations of failure to attain for the three subject California areas under section 179(c). For these and other reasons set forth elsewhere in this notice, the additional plan requirements under section 179(d) are not triggered.

Earthjustice Comment #3: Earthjustice cites the decision by the Court of Appeals for the DC Circuit in the *South Coast Air Quality Mgmt. Dist.* v. *EPA* case (472 F.3d 882, 903–904 (DC Cir. 2007) in asserting that EPA unsuccessfully attempted to delete certain statutory requirements (*i.e.,* new plan under section 179(d), contingency measures under section 172(c), and section 185 fees) in the Agency's 2004 Phase 1 Rule.

EPA Response to Earthjustice Comment #3: We agree that the *South Coast* case, cited above, vacated the provisions of EPA's Phase 1 Rule that excluded section 172(c)(9) contingency measures and section 185 fees from the list of applicable requirements for purposes of anti-backsliding after revocation of the one-hour ozone standard. We disagree, however, that the *South Coast* decision preserves EPA's obligations under CAA section 179(c) or the related State obligations under CAA section 179(d) after revocation of the one-hour ozone standard. EPA's authority to revoke the one-hour ozone standard was specifically challenged in the *South Coast* case but upheld by the DC Circuit. See *South Coast,* 472 F.3d 882, at 899 (''Therefore, EPA retains the authority to revoke the one-hour standard so long as adequate anti-backsliding provisions are introduced.'') As we have noted, the claim that all the specific requirements of sections 179(c) and (d) and 181(b)(2) should be retained and imposed as anti-backsliding measures was not raised in the *South Coast* case and cannot be resurrected at this time. Because the one-hour ozone standard has been revoked, it is no longer a ''standard'' for the purposes of CAA section 179(c) and thus the statutory requirements of section 179(d) also no longer apply. While EPA is obliged to make those determinations necessary to effectuate the contingency measure and fee anti-backsliding requirements, there is nothing that requires EPA to make those determinations under section 179 or 181, or that dictates the imposition of the consequences formerly imposed by those sections before revocation, *i.e.,* reclassification, second-round attainment planning. These were not retained as anti-backsliding requirements and 40 CFR 51.905(e)(2) made that explicit, was never challenged, and was not vacated by the *South Coast* decision. Commenters are conflating EPA's obligation to determine whether an area attained by its one-hour ozone attainment date with the terms of section 179, which exceed the limits of, and are not necessary for purposes of anti-backsliding requirements.

Earthjustice Comment #4: Earthjustice observes that EPA promulgated, as part of the Agency's Phase 1 Rule, a provision that states in essence that, after revocation, EPA is no longer obliged to determine pursuant to section 179(c) or section 181(b)(2) whether an area attained the one-hour ozone standard by that area's attainment date for the one-hour ozone standard, but asserts that EPA has never interpreted the statute or EPA's regulations as allowing EPA to avoid making the required determinations under sections 179(c) or 181(b)(2) when needed to fulfill the obligations of the CAA. In support of this contention, Earthjustice points to the text found in EPA's one-hour ozone attainment determinations for Washoe County [as citing both 179(c) and 181(b)(2)], Philadelphia and District of Columbia [as citing section 181(b)(2)], Southern New Jersey [as citing section 181(b)(2)] and Milwaukee [as citing section 181(b)(2)].

EPA Response to Earthjustice Comment #4: First, the only example that Earthjustice claims as evidence that EPA has conceded that it remains obligated after revocation of the one-hour ozone standard to make attainment determinations for the one-hour ozone standard under section 179(c), is an attainment determination that was made *before* the one-hour ozone standard was revoked. EPA's one-hour ozone attainment determination for Washoe County, Nevada was published on May 3, 2005 (70 FR 22803), the one-hour ozone standard was revoked on June 15, 2005. Therefore, EPA's determination for Washoe County proves nothing about EPA's obligation to make attainment determinations under section 179(c) of the Act after revocation. To the contrary, 40 CFR 51.905(e)(2) clearly provides: ''Upon revocation of the 1-hour NAAQS for an area, EPA is no longer obligated (A) To determine pursuant to section 181(b)(2)

or section 179(c) of the CAA whether an area attained * * *.''

Second, although after revocation, on a number of occasions, EPA has cited section 181(b)(2)—but never section 179—when determining that areas attained the one-hour ozone standard by the applicable deadline, all of these rulemakings were determinations of attainment rather than determinations of failure to attain. Because the areas met their attainment deadlines, EPA was not determining or imposing the consequences of failure to attain. Moreover, when EPA invoked section 181(b)(2) in determining that areas had attained the one-hour ozone deadline, EPA made clear in those actions that the only portion of section 181(b)(2) applicable for purposes of the one-hour ozone anti-backsliding requirements was the obligation to make the determination itself, since the portions of the section prescribing the consequence of reclassification had not been retained. 40 CFR 51.905(e).

For example, in one of the determinations of attainment, EPA noted that:

> ''EPA remains obligated under section 181(b)(2) to determine whether an area attained the one-hour ozone NAAQS by its attainment date. However, after the revocation of the one-hour ozone NAAQS, EPA is no longer obligated to reclassify an area to a higher classification for the one-hour NAAQS based upon a determination that the area failed to attain the one-hour NAAQS by the area's attainment date for the one-hour NAAQS. (40 CFR 51.905(e)(2)(i)(B).) Thus even if we make a finding that an area has failed to attain the one-hour ozone NAAQS by its attainment date, the area would not be reclassified to a higher classification.'' 73 FR 42727, at 42728 (July 23, 2008).

As EPA has noted, after revocation, the only possible anti-backsliding requirements triggered by a failure to attain the one-hour ozone attainment deadline are the requirements of sections 172(c)(9) (*i.e.,* contingency measures) and 185 (*i.e.,* fees). Thus, even if EPA were to invoke section 181(b)(2) as the statutory basis under which EPA is obligated to make determinations of attainment or failure to attain the one-hour ozone standard in the South Coast, San Joaquin Valley, and Southeast Desert, no requirement for new plans would be triggered for these areas. None of EPA's post-revocation determinations regarding one-hour attainment deadlines cite section 179(c). All of the post-revocation rulemakings determining attainment by the attainment deadline that cite section 181(b)(2) do so only with respect to the obligation to make the requisite air quality determination for the sole purpose of the applicable one-hour anti-backsliding requirements linked to such determinations, *i.e.,* contingency measures and section 185 fees. An additional round of one-hour attainment planning is not one of these ''applicable requirements.'' See 40 CFR 51.900(f) and 51.905(a)(1). One could also conclude that the requirement and corresponding obligation to adopt and implement a new one-hour attainment plan for failure to attain the one-hour ozone standard by the applicable attainment date, in contrast to the obligation to adopt and implement contingency measures and fees, could not be an ''applicable requirement'' for anti-backsliding purposes for the purposes of 40 CFR 51.900(f) and 51.905(a)(1) in the South Coast, San Joaquin Valley and Southeast Desert because the only applicable attainment dates that could trigger new planning requirements for these areas were well after June 15, 2004, the date of designation for the eight-hour ozone standard and the date that determines which ''applicable requirements'' apply to any given eight-hour ozone nonattainment area. As such, new planning requirements triggered by a failure to attain by the applicable attainment date could not have been a requirement on that date, and thus could not be an ''applicable requirement'' for the purposes of anti-backsliding.

Earthjustice Comment #5: Earthjustice contends that, between the plain language of the CAA and EPA's consistent interpretation of these provisions, there is no question that section 179(c) or section 181(b)(2) is the appropriate authority for making the determinations that the South Coast, San Joaquin Valley, and Southeast Desert one-hour ozone nonattainment areas have failed to attain the applicable attainment dates but notes that EPA cites neither one, but instead cites section 301(a) as providing the authority for EPA's determination. Earthjustice faults the September 14, 2011 proposed rule for failing to explain how or why section 301(a) provides the appropriate authority for the action, what regulations are being ''prescribed'' under section 301(a), and why such regulations are ''necessary'' given the statutory and regulatory commands.

EPA Response to Earthjustice Comment #5: Section 301(a)(1) of the CAA, in relevant part, provides that: ''The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.'' Today's final rule is a regulation that included EPA review and evaluation of air quality information in relation to a standard and that followed the procedural requirements of the Administrative Procedure Act, including publication of a proposed rule and the consideration of public comments.

EPA's invocation of section 301(a) is appropriate because the *South Coast* Court required EPA to determine the procedures necessary to enforce the contingency measures and section 185 fees requirements, but did not specify those procedures. In the words of the *South Coast* court: ''While EPA maintains that it would be impractical to enforce [section 185 fees] because EPA will no longer make findings of attainment * * *, section 172(e) does not condition its strict distaste for backsliding on EPA's determinations of expediency; EPA must determine its procedures after it has identified what findings must be made under the Act.'' *South Coast,* 472 F.3d 882, at 903. The court's decision in *South Coast* did not compel EPA to make determinations for the one-hour ozone standard under any specific provision of the statute, much less CAA sections 179(c) or 181(b)(2). Nor did the Court's decision vacate 40 CFR 51.905(e)(2), which relieves EPA of the obligation to make determinations under sections 181(b) and section 179. The *South Coast* decision simply required EPA to identify the procedures to make the findings related to anti-backsliding measures.

In response, EPA has identified a determination of attainment or failure to attain the one-hour ozone standard by the applicable attainment date, made through notice and comment rulemaking, as the necessary and appropriate procedure to be followed to effectuate the specific one-hour ozone anti-backsliding measures of sections 172(c)(9) and 185. EPA believes that section 301(a) therefore provides appropriate authority for EPA to promulgate the necessary procedures to fulfill the objective of ensuring implementation of anti-backsliding measures and be consistent with 40 CFR 51.905(e)(2). EPA also believes that it would not bring about any different result were EPA instead to invoke that portion of section 181(b)(2) that addresses such attainment determinations. To this extent, EPA agrees with the suggestion of the commenter that it may also rely on authority of section 181(b)(2) as a basis for continuing to make determinations for the limited purpose of effectuating one-hour ozone contingency measures and section 185 fees. After revocation, the other portions of section 181(b)(2) regarding consequences of these determinations, including

reclassifications, are no longer applicable under 40 CFR 51.905(e)(2). Conversely, there is no need or justification for reliance on section 179(c), which has played no role with respect to the one-hour standard since revocation of the standard. For the purpose of ensuring the contingency measure and fee anti-backsliding measures, it is not necessary for EPA to trigger the obsolete planning requirements of section 179(d) with which section 179(c) was linked, nor is EPA obligated to do so. In these circumstances, section 179 should not be used to revive an additional one-hour planning obligation that has not been preserved as an anti-backsliding requirement.

We recognize that, subsequent to revocation of the one-hour ozone standard, we have cited section 181(b)(2) as preserving an obligation to make determinations of attainment for the one-hour ozone standard by the applicable attainment date. As we have observed, however, we have been careful in every instance to sever the attainment determination itself from other portions of that section—notably, the obligation to reclassify areas that fail to attain the one-hour ozone standard by the applicable attainment date. EPA believes it is consistent with the statute, the *South Coast* decision and EPA's Phase 1 Rule to proceed either under section 301(a) or section 181(b)(2)'s provision for making a determination, for the limited purpose of ensuring implementation of anti-backsliding measures. In acting under either provision, EPA is enforcing those specific requirements that are applicable for anti-backsliding. In no way do EPA's determinations act to revive the additional one-hour requirements that have not been retained for anti-backsliding—one-hour planning requirements under section 179(d) and reclassification.

Earthjustice Comment #6: Earthjustice questions whether the action to determine that the three subject California nonattainment areas failed to attain the one-hour ozone standard by the applicable attainment dates is an authority that has been delegated to the Regional Administrator from the EPA Administrator.

EPA Response to Earthjustice Comment #6: Section 301(a)(1) of the CAA, in relevant part, provides that: ''The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this chapter, except the making of regulations subject to section 7607(d) of this title, as he may deem necessary or expedient.'' This rulemaking is not one of the regulations subject to section 7607(d) (*i.e.,* section 307(d)).

Under the authority of CAA section 301(a)(1), the Administrator has delegated numerous authorities under the Clean Air Act. As noted above, EPA believes that it may also rely on authority of section 181(b)(2) as a basis for continuing to make determinations for the limited purpose of effectuating one-hour ozone contingency measures and section 185 fees, and with respect to section 181(b)(2), Delegation 7–110 in the Delegations Manual provides authority for Regional Administrators to make these determinations. Delegation 7–110 in relevant part delegates authority to regional administrators: ''[t]o determine, based on the number of exceedances, whether an area attained its ozone standard by the date required (181(b)(2)).'' Therefore, the EPA Region IX Regional Administrator is duly authorized to take the final action that he does today through this document.

In addition, under Delegation 7–10 (in Chapter 7 of EPA's Delegations Manual), the EPA Administrator has delegated authority to propose or take final action on any SIP under section 110 of the CAA to the Regional Administrators. Among the references cited in Delegation 7–10 are section 110 and section 301(a) of the CAA. EPA's final determinations of failure to attain the one-hour ozone standard by the applicable attainment dates for South Coast, San Joaquin Valley, and Southeast Desert are not SIP actions themselves but are made herein under CAA section 301(a) for the express purpose of ensuring implementation of one-hour ozone SIP requirements, namely, contingency measures and section 185 fees, that applied to these areas as Severe or Extreme areas for the revoked one-hour ozone standard at the time of designation of these areas for the eight-hour ozone standard. For these reasons, EPA's final determinations made herein by the EPA Region IX Regional Administrator are covered by both Delegation 7–110 and 7–10.

Earthjustice Comment #7: Earthjustice contends that EPA's invocation of section 301(a) is not adequate to prescribe new regulatory requirements revising the well-established ''obligations'' to make findings under sections 179(c) and 181(b)(2) to implement the requirements of the CAA. Earthjustice argues that EPA is attempting to change its interpretation of its statutory requirements, and asks EPA to explain its reasoning for this alleged change so as to allow commenters to meaningfully comment on the Agency's rationale. Earthjustice further states that such a change in the ozone implementation rules must be made through national rulemaking signed by the Administrator.

EPA Response to Earthjustice Comment #7: EPA disagrees with Earthjustice's characterization of EPA's actions here as somehow prescribing new regulatory requirements. Rather, it is Earthjustice that is seeking to use EPA's determinations here to impose additional plan requirements that have not been retained for one-hour anti-backsliding. EPA here is simply making the same air quality determinations and applying the same notice and comment rulemaking process that it used prior to revocation. The only difference is that, after revocation of the one-hour standard, the purpose and consequences of these determinations are no longer ''reclassification'' (section 181(b)(2)) or requiring additional rounds of SIP revisions (section 179(d)). The purpose is to ensure implementation of those one-hour ozone requirements that EPA and the *South Coast* Court have taken pains to identify with specificity. EPA is thus acting consistently with the 2004 Phase 1 Rule and with the directives of the Court in the *South Coast* case. Simply because EPA acknowledges it now has an obligation to make these determinations for purposes of legitimate anti-backsliding requirements does not mean that these determinations call down all the consequences that had been excluded from those identified by EPA and the Court. See 40 CFR 51.905(e)(2). Earthjustice, not EPA, is attempting to change the established rules of anti-backsliding by reviving moribund portions of sections 179 under the guise of enforcing EPA's obligation to make attainment determinations for quite different purposes. It is Earthjustice that seeks improperly to add to the list of anti-backsliding requirements by representing new requirements as merely a procedural mechanism to enforce those that have been legitimately recognized.

We strongly disagree with the commenter's claim that we are changing our interpretation of the Agency's statutory obligations with respect to the one-hour ozone standard. As explained above, since revocation of the one-hour ozone standard, we have never cited section 179(c) as preserving an obligation on our part to determine whether an area attained the one-hour ozone standard by the applicable attainment date. We certainly have never stated or implied, after revocation of the one-hour standard that a determination of failure to attain by the one-hour attainment deadline would

call for additional section 179(d) planning requirements. As pointed out above, since revocation we have cited section 181(b)(2) only in the context of making determinations of attainment that do not result in any attendant requirements relating to additional planning or reclassifications, but rather only to implement two specific anti-backsliding measures.

Lastly, contrary to Earthjustice's contention, we believe that, the specific language in 40 CFR 51.905(e)(2) eliminating any compulsion for EPA to make determinations under section 179(c) for the one-hour ozone standard and the availability of other more appropriate procedures to enforce anti-backsliding requirements, refute any argument for reliance on that section. The only reason to involve section 179(c) would be the illegitimate one of seeking, long after anti-backsliding requirements have been debated and established, to add section 179(d) plans to the list. It is disingenuous to argue the necessity of invoking the authority of section 179(c) to enforce the only anti-backsliding requirements in play, which clearly do not include additional one-hour attainment demonstration plans under section 179(d). The *South Coast* decision did not vacate 40 CFR 51.905(e)(2). It established only that, notwithstanding that provision, EPA must continue to make determinations of attainment for purposes other than those addressed by that regulation. EPA today is complying with the directive of the Court, and making through notice and comment rulemaking the requisite determinations to implement the specific anti-backsliding measures of contingency measures and section 185 fees.

Earthjustice Comment #8: By relying on CAA section 301(a), Earthjustice is concerned that EPA is attempting to invent new procedures for determining attainment in order to avoid the obligation under section 179(d) to prepare a new one-hour ozone plan. Waiving the planning obligations would, in Earthjustice's view, violate the statute.

EPA Response to Earthjustice Comment #8: EPA is not waiving any planning requirements under section 179(d), because they are not applicable as one-hour anti-backsliding requirements. In accordance with 40 CFR 51.905(e)(2), we are no longer obligated to make attainment determinations under section 179(c) and there is nothing in the *South Coast* case or in EPA's past statements to the contrary. In any event, there is no provision for retaining further planning under section 179(d) with respect to the revoked one-hour ozone standard. See also EPA Responses to Earthjustice Comments elsewhere in this final rule.

Earthjustice Comment #9: Earthjustice contends that spikes in one-hour ozone concentrations over 0.12 ppm are harmful to public health and that EPA's decision to adopt an eight-hour ozone standard was not based on any determination that these shorter-term exposures were no longer of concern. Earthjustice cites EPA's 1997 final rule establishing the eight-hour ozone standard as describing new evidence that EPA had found of an array of adverse health effects associated with short-term exposures (*i.e.,* 1 to 3 hours) above the standard level of 0.12 ppm.

EPA Response to Earthjustice Comment #9: At root, Earthjustice objects to EPA's decision in 1997 to replace the one-hour ozone standard with the eight-hour ozone standard rather than retaining both standards. 62 FR 38856 (July 18, 1997). This issue was raised many years ago in the comments on EPA's proposal (61 FR 65716, December 13, 1996) to revise the ozone standard. A number of commenters on EPA's 1996 proposal urged EPA to maintain standards based on both one-hour and eight-hour averaging times to provide protection from one- and eight-hour exposures of concern. 62 FR 38856, at 38863 (column 1). These commenters generally argued that an 8-hour standard alone could still allow for unhealthful high one-hour exposures. While EPA acknowledged the possibility that an eight-hour ozone standard alone could allow for high one-hour exposures of concern, at and above 0.12 ppm, EPA concluded for the reasons set forth in the 1997 final rule that replacing the one-hour ozone standard with an eight-hour ozone standard, considering the level and form adopted, was appropriate to provide adequate and more uniform protection of public health from both short-term (1–3 hours) and prolonged (6 to 8 hours) exposure to ozone in the ambient air. 62 FR 38856, at 38863 (column 2). The decision to retain only the new eight-hour ozone standard included the result that, apart from the specific requirements of 40 CFR 51.905(a) regarding one-hour ozone plans, an attainment demonstration for the eight-hour standard would provide requisite protection against violations of both the one- and the eight-hour standards. EPA's decision to replace the one-hour ozone standard with an eight-hour ozone standard has long been settled, and EPA does not intend, and is not required to re-open that issue in the context of today's determinations.

Earthjustice Comment #10: Citing CAA section 181(a) and the *South Coast* case, Earthjustice believes that Congress clearly intended the most polluted ozone areas to address the harms caused by these peak concentrations within 20 years of the 1990 CAA Amendments, and contends that it would not make sense to decide that attainment of the one-hour standard was no longer needed when the one-hour ozone problem is just as serious as Congress believed it to be.

EPA Response to Earthjustice Comment #10: This comment essentially restates the objection to EPA's decision in 1997 to replace the one-hour ozone standard with an eight-hour ozone standard and EPA's decision in 2004 to revoke the one-hour ozone standard for all areas of the country by a fixed date, rather than by the date when areas were found to have attained the one-hour ozone standard. In response to the proposed rule that culminated in our 2004 Phase 1 Rule, we received and considered comments that EPA should retain the one-hour ozone standard because it is necessary to protect public health. Comments submitted in that rulemaking included the same assertion that the one-hour ozone standard may be more protective of public health than the eight-hour ozone standard in several areas such as the South Coast and Houston, and the same assertion that revocation would be contrary to the CAA and Congressional intent. In our 2004 Phase 1 Rule, we responded to these comments, pointing out that the question whether the one-hour ozone standard is necessary to protect public health is a standard-setting issue that was resolved in EPA's 1997 final rule promulgating the eight-hour ozone standard to replace the one-hour ozone standard. See 69 FR 23951, at 23970 (column 1) (April 30, 2004).

Earthjustice's comment here regarding Congressional intent is the same argument that was made in the *South Coast* case challenging EPA's authority to revoke the one-hour standard. There, the environmental petitioners contended that the one-hour ozone standard cannot be withdrawn because Congress ''codified'' the one-hour ozone standard in subpart 2, but the court recognized that, by establishing the periodic NAAQS review process in section 109(d)(1) of the CAA, Congress clearly contemplated the possibility that scientific advances would require amendment of the national ambient air quality standard, and upheld EPA's authority to revoke the one-hour ozone standard so long as adequate anti-backsliding provisions were applied. *South Coast,* 472 F.3d 882, at 899.

In our 2004 Phase 1 Rule, in response to comments on the scope of its anti-backsliding requirements, EPA specifically addressed planning requirements under the one-hour ozone standard: ''Where they are not required by anti-backsliding provisions, EPA does not believe that the additional burden States would undertake in planning to achieve both the 1-hour and the 8-hour NAAQS is necessary to protect public health.'' 69 FR 23951, at 23971 (April 30, 2004). The *South Coast* case also disposed of the specific challenges raised as to the adequacy of the anti-backsliding provisions in EPA's implementation rule, and established specifically which measures were required to be retained. As EPA has explained elsewhere in responses to comments, those provisions do not include additional attainment plans under section 179. The provisions of 40 CFR 51.905(e)(2) relating to section 179(c) were not challenged or vacated by the *South Coast* court. Contrary to commenter's contention, today's determinations fully discharge EPA's responsibility to address the only one-hour ozone anti-backsliding measures (contingency measures and section 185 fees) activated by determinations of failure to meet one-hour attainment deadlines. EPA has struck the balance between preserving old one-hour ozone requirements and allowing current planning and control requirements for the newer standards to function on their behalf. It is long past the time to challenge this balance and dispute the revocation of the one-hour ozone standard and the established set of one-hour anti-backsliding requirements, which do not include additional rounds of one-hour ozone planning. We also note that California has submitted attainment demonstration plans for all three subject California nonattainment areas for the 1997 eight-hour ozone standard; such plans also serve to promote attainment of the revoked one-hour standard.

Earthjustice's comment seeks to remind EPA that the DC Circuit stated: ''The Act placed states onto a one-way street whose only outlet is attainment.'' *South Coast* at 472 F.3d 882, at 900. In making today's determinations to ensure implementation of one-hour ozone contingency measures and section 185 fees, which the DC Circuit has resolved are those required by anti-backsliding upon failure to attain the revoked standard, EPA is heeding the DC Circuit's admonition in *South Coast* and fulfilling the requirements of the Act.

Earthjustice Comment #11: Earthjustice contends that EPA cannot reasonably conclude that the South Coast, San Joaquin Valley and Southeast Desert areas, now that they have failed to attain and their attainment plans appear inadequate, can be relieved of this obligation to demonstrate attainment. In support of this contention, Earthjustice cites two Ninth Circuit decisions, *Association of Irritated Residents* v. *EPA,* 632 F.3d 584, at 594 (9th Cir. 2011) (herein referred to as the *AIR* case), and *Hall* v. *EPA,* 273 F.3d 1146, at 1159 (9th Cir. 2001) (herein referred to as the *Hall* case).

EPA Response to Earthjustice Comment #11: As explained elsewhere in these responses, EPA evaluates the adequacy of a plan containing a demonstration of attainment, and whether it meets all applicable requirements, when EPA acts to approve or disapprove the plan and not after the applicable attainment date. In the case of the three subject California nonattainment areas, EPA approved the one-hour ozone plans prior to the applicable attainment dates and thus, the determinations that the areas did not actually attain the one-hour ozone standard by the applicable attainment dates was not an issue under consideration at that time and does not undermine the validity of EPA's prior approvals of the plans at the time they were taken.

The anti-backsliding requirements for one-hour ozone attainment demonstrations are set forth in 40 CFR 51.900(f)(13) and 51.905(a)(1)(i). For the purposes of anti-backsliding, an eight-hour ozone nonattainment area is obligated to have a fully-approved attainment demonstration plan for the one-hour ozone standard based on the area's ozone classification that the area had at the time of designation for the eight-hour ozone standard. Thus, the State of California is obligated to have a fully-approved ''Extreme'' area attainment demonstration plan for the South Coast and the San Joaquin Valley and a fully-approved ''Severe-17'' area attainment demonstration plan for the Southeast Desert. EPA approved the relevant South Coast plan in April 2000 (65 FR 18903, April 10, 2000), the relevant San Joaquin Valley plan in March 2010 (75 FR 10420, March 8, 2010),[11] and the relevant Southeast Desert plan in January 1997 (62 FR 1150, January 8, 1997).

EPA did disapprove a revision to the attainment demonstration plan for the South Coast in March 2009 (74 FR 10176, March 10, 2009) because the measures upon which the revised attainment demonstration relied had been withdrawn, but such disapproval does not necessarily undermine EPA's prior approval of the attainment demonstration plan for the South Coast. This will depend on the final decision in the *AIR* case, once all appeals have been resolved. It is possible that EPA will need to consider requiring California to prepare and submit a new one-hour ozone attainment demonstration plan for the South Coast, but if EPA were to do so, the Agency would be acting pursuant to a decision that the State had not complied with the anti-backsliding requirement for a one-hour ozone attainment demonstration under 40 CFR 51.905(a)(1) for the South Coast, and not because the area had failed to attain the one-hour ozone standard by the applicable attainment date.

Earthjustice cites the *AIR* case and *Hall* in support of its contention that it is unreasonable for EPA to conclude that, in light of the failure of the three subject California nonattainment areas to attain the one-hour ozone standard by the applicable attainment dates, the areas can be relieved of the obligation to demonstrate attainment of the one-hour ozone standard. This argument erroneously assumes that there is an additional obligation to submit a revised one-hour attainment plan even after valid approval of the State's plan as required under 40 CFR 51.905(a). These two cases stand for the principle that, under section 110(l) of the CAA, when EPA reviews a SIP revision, EPA must evaluate the existing SIP and make a determination as to whether the existing SIP, as modified by the SIP revision at hand, would provide for attainment of the national ambient air quality standards. In *AIR,* the specific SIP revision at issue was a revised attainment demonstration plan for the one-hour ozone standard for the South Coast. In *Hall,* the specific SIP revision at issue was a set of revised new source review rules for Clark County, Nevada.

Section 110(l) of the CAA applies to SIP revisions, and, unlike the case in *AIR,* EPA is not acting today on any SIP revision and thus section 110 and both the *Hall* and *AIR* cases are not relevant to this action. After revocation of the one-hour standard, a State's obligation with respect to attainment demonstration plans for the one-hour ozone standard is defined in 40 CFR 51.905(a)(1)(i). As stated above, because California has submitted and EPA has approved the one-hour ozone plans for San Joaquin Valley and the Southeast Desert, the State has addressed its one-hour ozone attainment plan obligations

[11] EPA's approval of the San Joaquin Valley ''Extreme'' area one-hour ozone plan is the subject of ongoing litigation in the Ninth Circuit Court of Appeals. *Sierra Club* v. *EPA* (Nos. 10–71457, 10–71458).

for these areas. For the South Coast, as explained above, whether the State has satisfied this obligation may depend on the final resolution and mandate by the Court in the *AIR* case, but does not depend on today's determination. For all three subject areas, today's determinations serve to ensure the implementation of one-hour ozone contingency measures and section 185 fees, which, unlike further one-hour attainment planning, are the measures required by the Court-approved anti-backsliding provisions.

Earthjustice Comment #12: Earthjustice demands that, in the final rule, EPA clearly communicate that, for the South Coast, San Joaquin Valley and Southeast Desert areas, new one-hour ozone plans complying with the requirements of section 179(d) must be submitted to EPA within one year of the date EPA publishes the final determinations.

EPA Response to Earthjustice Comment #12: For the reasons set forth elsewhere in EPA's response to comments, we disagree that the determinations that we make in this document trigger a requirement under CAA section 179(d) on the State of California to prepare and submit SIP revisions including new demonstrations of attainment for the one-hour ozone standard for the three subject California nonattainment areas. A new section 179(d) ozone plan, triggered by section 179(c) is not an applicable anti-backsliding requirement.

With respect to anti-backsliding requirements, the *South Coast* Court vacated the Phase 1 Rule only with respect to the measures addressed. Here, the only pertinent anti-backsliding measures triggered by a determination of failure to meet the one-hour deadline are one-hour contingency measures for failure to attain and section 185 fees. In the *South Coast* decision reviewing EPA's implementation rule, neither 51.905(e)'s provisions regarding sections 179 and 181, nor the exclusion of section 179(d) from one-hour anti-backsliding requirements was challenged by the parties or addressed by the Court. Challenges regarding anti-backsliding specifically addressed sections 172(c)(9) and 185 and two other anti-backsliding provisions not relevant here (NSR and conformity). To effectuate section 172(c)(9) and section 185 anti-backsliding provisions, EPA is determining that these three areas failed to attain by their one-hour attainment dates. But EPA has explained at length why these determinations do not reinstate the additional planning requirements of section 179(d) that were not retained as anti-backsliding measures.

Earthjustice Comment #13: Earthjustice contends that the South Coast, San Joaquin Valley, and Southeast Desert continue to exceed the 0.12 ppm one-hour ozone standard on a regular basis, that these spikes have consequences. Earthjustice asserts that, after more than 20 years, the residents of these areas have not been afforded the protections needed and required by the Clean Air Act to meet even this standard.

EPA Response to Earthjustice Comment #13: EPA recognizes that exceedances of the one-hour ozone standard in the three subject California nonattainment areas have occurred, and is making final determinations that the three areas have failed to attain the one-hour ozone standard by their applicable attainment dates. However, EPA also recognizes that significant progress has been made in lowering peak hourly concentrations, frequency of exceedances, and the geographic extent of exceedances in these areas. Since passage of the CAA Amendments of 1990, one-hour ozone concentrations in these areas have decreased, despite significant increases in population and vehicle miles traveled. For example, CARB data indicates that the number of days on which concentrations exceeded the one-hour ozone standard have dropped from 131 in 1990 to only 9 in 2010 in the South Coast, from 45 in 1990 to only 7 in 2010 in San Joaquin Valley, and from 76 in 1990 to only 3 in the Mojave Desert portion of the Southeast Desert. Moreover, a comparison of CARB's one-hour ozone data from the three-year period prior to revocation (2002–2004) with corresponding data from the three-year period following revocation (2006–2008) shows a decrease in the annual number of days on which the one-hour standard was exceeded from 46 to 27 in the South Coast, from 26 to 13 in San Joaquin Valley, and from 11 to 4 in the Mojave Desert portion of the Southeast Desert. While we acknowledge that even this significant progress has not yet resulted in attainment, it does not bear the hallmark of backsliding.

We disagree that the residents of these areas are not afforded the protections needed and required by the Clean Air Act. Through today's determinations, all applicable anti-backsliding requirements for the revoked one-hour ozone standard must be implemented. One-hour anti-backsliding measures, moreover, do not operate in a vacuum. State planning efforts for attainment of the current, more protective eight-hour ozone standard, and adoption and implementation of control measures actively continue.[12] These provide an ongoing regimen for reducing ozone concentrations in terms of both the one- and the eight-hour ozone standards. Thus, EPA believes that the residents of these areas are being afforded the protections that are required in accordance with EPA regulations and the CAA.

III. Final Action

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements, see *South Coast,* 47 F.3d 882, at 903. Thus, pursuant to EPA's obligation and authority under section 301(a) and the relevant portion of section 181(b)(2) to ensure implementation of one-hour ozone anti-backsliding requirements, and for the reasons given above and in our September 14, 2011 proposed rule, EPA is taking final action to determine that the South Coast, the San Joaquin Valley, and the Southeast Desert failed to attain the one-hour ozone standard by the applicable attainment dates. For South Coast and San Joaquin Valley, quality-assured and certified data collected during 2008–2010 show that these two ''Extreme'' one-hour ozone nonattainment areas failed to attain the standard by November 15, 2010. For Southeast Desert, a ''Severe-17'' one-hour ozone nonattainment area, quality-assured and certified data for 2005–2007 show that the area failed to attain the standard by November 15, 2007.

These determinations bear on the areas' obligations with respect to the one-hour ozone standard anti-backsliding requirements whose implementation is triggered by a failure to attain by the applicable attainment date: section 172(c)(9) contingency measures for failure to attain and sections 182(d)(3) and 185 major stationary source fee programs.

IV. Statutory and Executive Order Reviews

These actions make determinations that certain areas did not attain the applicable standard based on air quality, and do not impose any requirements beyond those required by statute and regulation. For that reason, these actions:

- Are not a ''significant regulatory action'' subject to review by the Office of Management and Budget under

[12] On December 15, 2011, EPA took final actions to approve SIP revisions for the South Coast and San Joaquin Valley as meeting, among other requirements, the requirement to demonstrate attainment of the 1997 eight-hour ozone standard.

Executive Order 12866 (58 FR 51735, October 4, 1993);

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

• Are 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.*);

• Do 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);

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

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

• Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

• Do not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 16, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.282 is amended by adding paragraph (d) to read as follows:

§ 52.282 Control strategy and regulations: Ozone.

* * * * *

(d) *Determinations that Certain Areas Did Not Attain the 1-Hour Ozone NAAQS.* EPA has determined that the Los Angeles-South Coast Air Basin Area and the San Joaquin Valley Area extreme 1-hour ozone nonattainment areas did not attain the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2010 and that the Southeast Desert Modified Air Quality Maintenance Area severe-17 1-hour ozone nonattainment area did not attain the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2007. These determinations bear on the areas' obligations with respect to the one-hour ozone standard anti-backsliding requirements whose implementation is triggered by a determination of failure to attain by the applicable attainment date: section 172(c)(9) contingency measures for failure to attain and sections 182(d)(3) and 185 major stationary source fee programs.

[FR Doc. 2011–33475 Filed 12–29–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0865; FRL–9330–2]

Tepraloxydim; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tepraloxydim in or on the imported commodities ''Pea and bean, dried shelled, except soybean, subgroup 6C'' and ''Sunflower subgroup 20B''. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also removes established tolerances for residues of tepraloxydim on ''Lentil, seed'' and ''Pea, dry, seed,'' as residues on these commodities will be covered by the new tolerance on the pea and bean subgroup (6C).

DATES: This regulation is effective December 30, 2011. Objections and requests for hearings must be received on or before February 28, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0865. 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.,* Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; email address: *stanton.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the harmonized test guidelines referenced in this document electronically, please go *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0865 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 28, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0865, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 15, 2010 (75 FR 78240) (FRL–8853–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E7788) by BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.573 be amended by establishing tolerances for residues of the herbicide tepraloxydim, 2-[1-[[[(2E)-3-chloro-2-propen-1-yl]oxy]imino]propyl]-3-hydroxy-5-(tetrahydro-2H-pyran-4-yl)-2-cyclohexen-1-one and its metabolites convertible to GP (3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid) and OH–GP (3-hydroxy-3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid), calculated as tepraloxydim, in or on Pea and bean, dried shelled, except soybean, subgroup 6C and Sunflower subgroup 20B at 0.10 parts per million (ppm) and 0.25 ppm, respectively. That notice referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has reduced the proposed tolerance for Sunflower subgroup 20B from 0.25 ppm to 0.20 ppm. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for tepraloxydim including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with tepraloxydim follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Tepraloxydim has low acute toxicity via the oral, dermal, and inhalation routes of exposure. It produces minimal

eye irritation, is a slight dermal irritant, and is not a dermal sensitizer.

In subchronic and chronic toxicity studies, the main target organs for tepraloxydim toxicity were the liver, the spleen/hematopoietic system and reproductive system. Liver findings were reported in all subchronic and chronic toxicity/carcinogenicity feeding studies and included increased incidences of hepatocellular foci, abnormal liver function parameters, increased relative liver weight, hepatocyte hypertrophy, and increased hepatocellular neoplasms in the mouse and rat carcinogenicity studies. Tepraloxydim also affected the hematopoietic system. In dogs, hemolytic anemia was demonstrated by depressed hematocrit, hemoglobin, and red blood cells (RBCs). These changes were accompanied by compensatory responses, including splenic hematopoiesis, femoral and sternal bone marrow hyperplasia, increased erythroid precursors and hemosiderin-laden macrophages, and splenic hemosiderosis. The reproductive system was affected by tepraloxydim at relatively high doses (in excess of LOAELs (lowest observed adverse effect levels) established in repeat-dose mouse, rat and dog studies). Reproductive effects included morphological microscopic changes indicative of reduced secretory activity in the seminal vesicles and preputial glands in male mice; increased uterine sclerosis, decreased corpora lutea, and decreased follicles in female mice; increased incidences of focal calcification of the testes in the high dose group in the rat carcinogenicity feeding study; and effects on male sex organs at high doses in dogs.

In the rat developmental toxicity study, fetal effects (reduced fetal body weights, delayed ossification and the occurrence of hydroureter) were seen at a dose threefold lower than the dose resulting in maternal toxicity (reduced body weight and body weight gain). Additional developmental anomalies or malformations (dilatation of both heart ventricles and filiform tails that were observed externally and corresponded to absent caudal and sacral vertebrae) were observed at the maternal LOAEL in the study. The results indicate potential increased quantitative and qualitative susceptibility of fetuses to tepraloxydim exposure. In contrast, no developmental effects were seen in the rabbit developmental toxicity study up to the highest tested dose, the LOAEL for maternal toxicity (reduced body weight and food consumption). In the multi-generation rat reproduction study, there were no effects on any of the measured reproductive parameters up to and including the highest tested dose and no evidence of quantitative or qualitative susceptibility of the offspring.

In both the acute and subchronic rat neurotoxicity studies, there were mild changes in motor activity and grip strength indices. On day 0 of the acute oral neurotoxicity study in rats, motor activity was decreased in all treated female groups, while forelimb grip strength was slightly increased in all treated females. In the rat subchronic neurotoxicity study, motor activity was increased in the high dose females at day 50 and in both sexes on day 85 at the highest dose tested. None of the studies, including both neurotoxicity studies, reported treatment-related effects on brain weight or gross/microscopic lesions in the tissues of the nervous system.

In cancer studies conducted in rats and mice, there was weak and/or conflicting evidence of carcinogenicity. In rats, there was some evidence of carcinogenicity in the females based on an increased incidence of liver tumors at the high dose only in the carcinogenicity phase of the study, but this finding was not supported by the results of the chronic phase in the same strain and sex of rats. In mice, liver tumors were seen in females at an excessively toxic dose. EPA's concern for carcinogenicity is low, and the Agency has determined that the chronic population-adjusted dose (cPAD) of 0.05 milligrams/kilogram/day (mg/kg/day) will adequately account for all chronic effects, including carcinogenicity, likely to result from exposure to tepraloxydim. This determination is based on the following considerations:

- The liver tumors in female rats were seen only at the high dose (*i.e.,* lack of dose response);
- The incidences of these tumors were within the ranges for the historical controls;
- The rat liver tumors observed in one study were not seen in a parallel study conducted at the same dose and duration (*i.e.,* tumorogenic potential not replicated);
- In mice, liver tumors were seen only at excessive doses (*i.e.,* greater than the Limit Dose of 1,000 mg/kg/day) which may have resulted in indirect effects that may not occur at lower doses;
- The liver tumors did not result in reduced latency in either species;
- There is no concern for mutagenicity/genotoxicity; and
- The NOAEL (no observed adverse effect level) of 5 mg/kg/day used for deriving the chronic reference dose (cRfD) is approximately 55-fold lower than the lowest dose (272 mg/kg/day) that induced liver tumors in rats.

Specific information on the studies received and the nature of the adverse effects caused by tepraloxydim as well as the NOAEL and the lowest-observed-adverse-effect-level LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in the document *''Amended: Tepraloxydim: Human Health Risk Assessment for New Tolerances on Imported Dry Bean and Dry Pea Subgroup 6C and Sunflower Subgroup 20B''* at page 31 in docket ID number EPA–HQ–OPP–2010–0865.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological point of departure (POD) is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a PAD or a RfD—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for tepraloxydim used for human risk assessment is shown in the following Table .

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TEPRALOXYDIM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk asssessment	Study and toxicological effects
Acute dietary (General population including infants and children).	LOAEL = 500 (mg/kg/day) UF_A = 10× UF_H = 10× FQPA SF retained as UF_L = 10×.	Acute RfD = 0.5 mg/kg/day aPAD = 0.5 mg/kg/day	Acute neurotoxicity screening battery LOAEL = 500 mg/kg/day based on decreased motor activity in females. (The NOAEL is not identified.)
Acute dietary (Females 13–49 years of age).	NOAEL = 40 mg/kg/day UF_A = 10× UF_H = 10× FQPA SF = 1×	Chronic RfD = 0.4 mg/kg/day. cPAD = 0.4 mg/kg/day	Rat developmental toxicity LOAEL = 120 mg/kg/day based on findings of reduced ossification indicative of delayed maturation, and the occurrence of hydroureter.
Chronic dietary (All populations).	NOAEL = 5 mg/kg/day UF_A = 10× UF_H = 10× FQPA SF = 1×	Chronic RfD = 0.05 mg/kg/day. cPAD = 0.05 mg/kg/day	Rat carcinogenicity study LOAEL = 30 mg/kg/day based on male liver microscopic lesions (eosinophilic foci).
Cancer (Oral, dermal, inhalation)	Weak and/or conflicting evidence of carcinogenicity in the rat and mouse; the chronic population-adjusted dose of 0.05 mg/kg/day will adequately account for all chronic effects, including carcinogenicity.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tepraloxydim, EPA considered exposure under the petitioned-for tolerances as well as all existing tepraloxydim tolerances in 40 CFR 180.573. EPA assessed dietary exposures from tepraloxydim in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for tepraloxydim. As shown in the Table above, EPA identified different points of departure for assessing acute dietary exposure for the general population (including infants and children) and women of childbearing age (13 to 49).

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that residues are present in all commodities at the tolerance level and that 100% of commodities are treated with tepraloxydim.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed that residues are present in all commodities at the tolerance level and that 100% of commodities are treated with tepraloxydim.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that tepraloxydim does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for tepraloxydim in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of tepraloxydim. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of tepraloxydim for acute exposures are estimated to be 1.4 parts per billion (ppb) for surface water and 0.002 ppb for ground water. EDWCs for chronic exposures for non-cancer assessments are estimated to be 0.7 ppb for surface water and 0.002 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 1.4 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 0.7 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Tepraloxydim is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found tepraloxydim to share a common mechanism of toxicity with any other substances, and tepraloxydim does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that tepraloxydim does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10×) margin of

safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10×, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* As discussed in Unit III.A, there was evidence of increased qualitative and quantitative susceptibility of fetuses in the rat developmental toxicity study. There was no evidence of increased susceptibility seen in the rabbit developmental toxicity study or multi-generation rat reproduction study. The degree of concern is low for the increased susceptibility seen in the developmental study in rats (prenatal exposure), since a clear NOAEL/LOAEL was established for developmental toxicity and the endpoints of concern are used to assess exposure for the most sensitive population of concern (*i.e.,* Females 13to 49). There is no residual uncertainty for prenatal and/or postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1× for all exposure scenarios, except acute dietary exposure of the general population.

A 10× FQPA Safety Factor in the form of a UF_L is retained for assessing acute dietary risk for the general population, including infants and children, to account for the uncertainty resulting from using a LOAEL, rather than a NOAEL, as the POD (*i.e.,* a NOAEL was not identified in the critical study). The critical effect (decreased motor activity in females) observed at the LOAEL of 500 mg/kg/day in the acute neurotoxicity study was neither severe nor irreversible; and the dose-responsive decrease in motor activity was observed in females on Day 0 in the absence of any other treatment-related clinical signs (including functional observation battery) or neurohistopathological effects. The dose-response relationship of tepraloxydim indicates that an uncertainty factor of 10× is sufficiently protective against the critical effect and any other adverse effects at the aRfD.

The decision to reduce the FQPA SF to 1× for all other exposure scenarios is based on the following findings:

i. The toxicity database is complete except for immunotoxicity testing (OPPTS Guideline 870.7800). Recent changes to 40 CFR part 158 make this testing required for pesticide registration. In the absence of specific immunotoxicity studies, EPA has evaluated the available tepraloxydim toxicity database to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. No evidence of immunotoxicity was found. Treatment-related effects seen in the spleen (splenic hematopoiesis) and bone marrow (hyperplasia) are compensatory responses to tepraloxydim-induced hemolytic anemia.

Considering the lack of evidence of immunotoxicity in the database for tepraloxydim, EPA does not believe that conducting an immunotoxicity study will result in a NOAEL less than that (5 mg/kg/day) used to derive the current cRfD. Consequently, the EPA believes the existing data are sufficient for endpoint selection for exposure/risk assessment purposes and for evaluation of the requirements under the FQPA, and an additional database uncertainty factor is unnecessary.

ii. In both the acute and subchronic rat neurotoxicity studies, there were mild changes in motor activity and grip strength indices. However, EPA has concluded that there is no need for a developmental neurotoxicity (DNT) study or additional UFs to account for neurotoxicity, based on the following considerations:

- Neurotoxic effects were seen at high doses of 500 mg/kg (¼ of the limit dose), 1,000 mg/kg, and 2,000 mg/kg following bolus (gavage) dosing in the acute neurotoxicity study and at 428 mg/kg/day in males and 513 mg/kg/day in females following dietary administration in the subchronic neurotoxicity study.
- In the two-generation reproduction study, no clinical signs indicative of neurotoxicity were seen in the parental animals or offspring; nor was there evidence for increased susceptibility of offspring.
- Because a DNT study would necessarily be conducted at high doses in order to elicit neurotoxicity, it would not yield a POD lower than those currently used for acute (40 mg/kg [aPAD = 0.40 mg/kg] and 500 mg/kg [cPAD = 0.5 mg/kg]) and chronic (5 mg/kg/day) risk assessments.

iii. Although there was evidence of increased qualitative and quantitative susceptibility of fetuses in the rat developmental toxicity study, the concern for the increased susceptibility is low, and EPA did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of tepraloxydim.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% crop treated (CT) and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to tepraloxydim in drinking water. These assessments will not underestimate the exposure and risks posed by tepraloxydim.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to tepraloxydim will occupy 2.2% of the aPAD for children, 1 to 2 years old, the population group receiving the greatest exposure. The acute dietary exposure from food and water to tepraloxydim will occupy 1.0% or less of the aPAD for all other population subgroups, including females 13 to 49 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to tepraloxydim from food and water will utilize 9.6% of the cPAD for children, 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for tepraloxydim.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term adverse effect was identified; however, tepraloxydim is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately

protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for tepraloxydim.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, tepraloxydim is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for tepraloxydim.

5. *Aggregate cancer risk for U.S. population.* Based on the results of two adequate rodent carcinogenicity studies and the explanation given in Unit III.A, tepraloxydim is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to tepraloxydim residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/mass spectrometry (GC/MS) BASF Analytical Method D9701/1) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for tepraloxydim.

C. Revisions to Petitioned-For Tolerances

EPA has reduced the proposed tolerance for Sunflower subgroup 20B from 0.25 ppm to 0.20 ppm to harmonize with the established MRL in Canada. Since the highest average field trial residue and maximum field trial residue for sunflower seed were 0.14 ppm and 0.18 ppm, respectively, EPA has determined that the Canadian level is adequate to cover expected residues on commodities in subgroup 20B.

EPA is also revising the introductory text of § 180.573(a)(1), (a)(2) and (c), which contain the tolerance expression for the existing and new tolerances, to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be determined. Tolerances for plant commodities are currently expressed in terms of the combined residues tepraloxydim, 2-[1-[[[(2E)-3-chloro-2-propen-1-yl]oxy]imino]propyl]-3-hydroxy-5-(tetrahydro-2H-pyran-4-yl)-2-cyclohexen-1-one, and its metabolites convertible to GP (3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid) and OH–GP (3-hydroxy-3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid), calculated as tepraloxydim. Livestock tolerances are currently expressed in terms of the combined residues of tepraloxydim and its metabolites convertible to GP, OH–GP, and GL (3-(2-oyotetrahydropyran-4-yl)-1,5-dioic acid), calculated as tepraloxydim. The tolerance expression for plants is being revised to make clear that the tolerances cover residues of tepraloxydim, including its metabolites and degradates, but that compliance with the tolerances is to be determined by measuring only the combined residues of tepraloxydim and its metabolites convertible to GP and OH–GP, calculated as tepraloxydim. Similarly, the tolerance expression for livestock commodities is being revised to clarify that the tolerances cover residues of tepraloxydim, including its metabolites and degradates, but that compliance with the tolerance levels will be determined by measuring only the combined residues of tepraloxydim and its metabolites convertible to GP, OH–GP, and GL, calculated as tepraloxydim. EPA has determined that it is reasonable to make these changes final without prior proposal and opportunity for comment, because public comment is not necessary, in that the changes have no substantive effect on the tolerances, but rather are merely intended to clarify the existing tolerance expressions.

Finally, EPA is removing established tolerances for residues of tepraloxydim on ''Lentil, seed'' and ''Pea, dry, seed'' because residues on these commodities are covered by the new tolerances for residues of tepraloxydim on the pea and bean subgroup 6C.

V. Conclusion

Therefore, the established tolerances for residues of tepraloxydim on ''Lentil, seed'' and ''Pea, dry, seed'' are removed, and new tolerances are established for residues of tepraloxydim, including its metabolites and degradates, in or on ''Pea and bean, dried shelled, except soybean, subgroup 6C'' and ''Sunflower subgroup 20B'' as set forth in the regulatory text.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition

under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.573 as follows:

■ a. Revise the introductory text in paragraphs (a)(1), (a)(2), and (c);

■ b. Remove the commodities ''Lentil, seed'' and ''Pea, dry, seed'' from the table in paragraph (a)(1);

■ c. Add alphabetically the commodities ''Pea and bean, dried shelled, except soybean, subgroup 6C'' and ''Sunflower subgroup 20B'' and add footnote 1 to the table in paragraph (a)(1).

The revised and added text read as follows:

§ 180.573 Tepraloxydim; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of tepraloxydim, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the combined residues of tepraloxydim, (2-[1-[[[(2*E*)-3-chloro-2-propen-1-yl]oxy]imino]propyl]-3-hydroxy-5-(tetrahydro-2*H*-pyran-4-yl)-2-cyclohexen-1-one) and its metabolites convertible to GP (3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid) and OH–GP (3-hydroxy-3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid), calculated as tepraloxydim, in or on the commodities.

Commodity	Parts per million
* * *	*
Pea and bean, dried shelled, except soybean, subgroup 6C [1]	0.10
* * *	*
Sunflower subgroup 20B [1]	0.20
* * *	*

[1] There are no U.S. registrations for commodities in this subgroup.

(2) Tolerances are established for residues of tepraloxydim, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the combined residues of tepraloxydim (2-[1-[[[(2*E*)-3-chloro-2-propen-1-yl]oxy]imino]propyl]-3-hydroxy-5-(tetrahydro-2*H*-pyran-4-yl)-2-cyclohexen-1-one) and its metabolites convertible to GP (3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid), OH–GP (3-hydroxy-3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid), and GL (3-(2-oxotetrahydropyran-4-yl)-1,5-dioic acid), calculated as tepraloxydim, in or on the commodities.

* * * * *

(c) *Tolerances with regional registrations.* A tolerance with regional registration, as defined in § 180.1(l), is established for residues of tepraloxydim, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the combined residues of tepraloxydim (2-[1-[[[(2*E*)-3-chloro-2-propen-1-yl]oxy]imino]propyl]-3-hydroxy-5-(tetrahydro-2*H*-pyran-4-yl)-2-cyclohexen-1-one) and its metabolites convertible to GP (3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid) and OH–GP (3-hydroxy-3-(tetrahydropyran-4-yl)pentane-1,5-dioic acid), calculated as tepraloxydim, in or on the commodities.

* * * * *

[FR Doc. 2011–33477 Filed 12–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0283; FRL–9330–1]

Cyhalofop-butyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends tolerances for residues of cyhalofop-butyl in or on rice, grain and rice, wild, grain. Dow AgroSciences, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 30, 2011. Objections and requests for hearings must be received on or before February 28, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0283. 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.,* Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Kathryn V. Montague, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 305–1243; email address: *montague.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0283 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 28, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0283, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 20, 2011 (76 FR 22067) (FRL–8869–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7836) by Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that 40 CFR 180.576 be amended by reestablishing and making permanent tolerances for residues of the herbicide, cyhalofop-butyl, R-(+)-n-butyl-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionate, plus cyhalofop acid, R-(+)-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionic acid) and the di-acid metabolite, (2R)-4-[4-(1-carboxyethoxy)phenoxy]-3-fluorobenzoic acid, in or on rice, grain and rice, wild, grain at 0.35 parts per million (ppm), respectively. That notice referenced a summary of the petition prepared by Dow AgroSciences, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing. These amended tolerances are required due to recent side-by-side field trial data submitted to support a new formulation of cyhalofop-butyl, which resulted in higher than anticipated residues associated with the currently registered formulation with this active ingredient. Based upon review of the data supporting the petition, EPA has increased the proposed tolerances from 0.35 ppm to 0.40 ppm and has revised the tolerance expression. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will

result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cyhalofop-butyl including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with cyhalofop-butyl follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Cyhalofop-butyl has low or minimal acute toxicity via the oral, dermal and inhalation routes of exposure. It is minimally irritating to the eye, nonirritating to the skin and is not a dermal sensitizer.

Kidney effects were observed after subchronic and chronic dosing of the rat and mouse as well as in the rabbit developmental and rat reproduction studies. In the 90-day rat study, lipofuscin pigment deposition in proximal tubule kidney cells was noted in both sexes in addition to hepatocyte eosinophilic granules (males only); and in the 90-day mouse study (females only), there was an increase in absolute and relative kidney weights as well as swelling of the proximal tubule cells. In the rabbit developmental study, 1/18 dams in the mid-dose group and 9/18 dams in the high-dose group died or were sacrificed in extremis after exhibiting hematuria (gross pathological examinations revealed cloudy or dark colored kidneys). Slight kidney tubular cell swelling was observed only in adult males in the rat reproductive toxicity study. In the 18-month mouse carcinogenicity study, kidney findings included tubular dilatation, chronic glomurulonephritis and hyaline casts in females (not males). In both sexes in the chronic/carcinogenicity rat study increased deposition of kidney changes (early and increased deposition of the pigments lipofuscin and hemosiderin in the renal proximal tubular cells) was observed. In addition, in females only, renal mineralization was observed.

Non-kidney effects observed following subchronic or chronic exposure to cyhalofop-butyl included hyperplasia of the stomach mucosal epithelium (male mice only) in the 18-month mouse carcinogenicity study and brown and/or atrophied thymuses and decreased thymus weight in the 90-day dog study. The thymus effects, which could be an indication of potential immunotoxicity, were not observed in the 1-year dog study or in other species (rats, mice or rabbits) and were not seen in any tested species following chronic exposure to cyhalofop-butyl.

There was no evidence of developmental, reproductive or endocrine toxicity in the toxicology studies for cyhalofop-butyl. In the rat developmental toxicity study, there were no maternal or fetal effects observed up to the limit dose. In the rabbit developmental toxicity study, no fetal effects were observed up to the limit dose; whereas kidney effects (deaths related to hematuria and the occurrence of cloudy or dark colored kidneys on gross pathological examination) were seen in maternal animals. Slight kidney tubular cell swelling was observed in adult males in the rat reproductive toxicity study with no evidence of treatment-related effects observed in females or offspring. There were no systemic or neurotoxic effects noted at the limit dose in the gavage acute neurotoxicity study or in the 90-day feeding neurotoxicity study.

In a previous 2002 risk assessment for cyhalofop-butyl, it was not possible to assess the carcinogenic potential of cyhalofop-butyl due to insufficient dosing in the rat and mouse carcinogenicity studies. In the absence of acceptable data, EPA assumed that cyhalofop-butyl had the same carcinogenic potential as the structural analog, diclofop-methyl, and conducted an exposure assessment to evaluate cancer risk using quantitative linear low-dose extrapolation and the Q1* for diclofop-methyl of 2.3×10^{-1} (mg/kg/day)$^{-1}$. Subsequently, two specific mechanistic studies (Peroxisome Proliferator Receptor-Alpha Reporter Assays) in the mouse were submitted to EPA. Review of the mechanistic data indicated that cyhalofop-butyl is not a liver toxicant/carcinogen for humans, since the rodent liver mode of action is not likely to occur in humans; and that the doses in the original long-term studies were approaching a maximum tolerated dose. In addition, there were no positive effects in the battery of mutagenic studies. Based on these findings, EPA has classified cyhalofop-butyl as ''Not Likely to be Carcinogenic to Humans.''

Specific information on the studies received and the nature of the adverse effects caused by cyhalofop-butyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Cyhalofop-butyl. Human Health Risk Assessment for Proposed Amended Tolerances on Rice and Wild Rice,'' p. 8 in docket ID number EPA–HQ–OPP–2011–0283 and are also discussed in the final rule published in the **Federal Register** of April 8, 2009 (74 FR 15876) (FRL–8406–8).

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for cyhalofop-butyl used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CYHALOFOP-BUTYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute Dietary (All Populations).	No appropriate endpoint attributable to a single dose was available in the current database. Therefore, an acute RfD was not established for the general U.S. population or any population subgroup.		
Chronic dietary (All populations).	NOAEL= 1.0 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.010 mg/kg/day. cPAD = 0.010 mg/kg/day	Carcinogenicity study in mice. LOAEL = 10.06/10.28 mg/kg/day, M/F, based on kidney effects in females including tubular dilatation, chronic glomerulonephritis, and hyaline casts.
Cancer (Oral, dermal, inhalation).	Classified as ''not likely to be carcinogenic to humans'' in accordance with the EPA Final Guidelines for Carcinogen Risk Assessment (March 29, 2005).		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to cyhalofop-butyl, EPA considered exposure under the petitioned-for tolerances as well as all existing cyhalofop-butyl tolerances in 40 CFR 180.576. EPA assessed dietary exposures from cyhalofop-butyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for cyhalofop-butyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that all rice and wild rice commodities would be treated with cyhalofop-butyl and contain tolerance-level residues.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that cyhalofop-butyl does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for cyhalofop-butyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of cyhalofop-butyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Tier 1 Rice Model and Screening Concentration in Ground Water (SCI–GROW) model, the estimated drinking water concentrations (EDWCs) of cyhalofop-butyl for chronic exposures for non-cancer assessments (the only dietary exposure scenario for which a toxicological endpoint of concern was identified) are estimated to be 21 parts per billion (ppb) for surface water and 0.152 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 21 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Cyhalofop-butyl is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found cyhalofop-butyl to share a common mechanism of toxicity with any other substances, and cyhalofop-butyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cyhalofop-butyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology data base for cyhalofop-butyl includes rat and rabbit developmental toxicity studies and a 2-generation reproduction toxicity study in rats. There were no treatment-related effects observed in fetuses or offspring in any of these studies.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for cyhalofop-butyl is complete except for immunotoxicity data. EPA has evaluated the available cyhalofop-butyl toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. Brown and/or atrophied thymuses and decreased thymus weight were observed in the 90-day dog study. However, these effects, which could be an indication of potential immunotoxicity, were not observed in the 1-year dog study or in other species (rats, mice or rabbits) and were not seen in any tested species following chronic exposure to cyhalofop-butyl. Based on these considerations, EPA has concluded that the doses and endpoints selected for risk assessment (along with traditional uncertainty factors) are protective of potential immunotoxicity and an additional uncertainty factor is not needed. The required immunotoxicity study has been received by EPA and is currently being reviewed. A screening-level review of this study indicates that there are no immunotoxic effects associated with cyhalofop-butyl.

ii. There is no indication that cyhalofop-butyl is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that cyhalofop-butyl results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 percent crop treated and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyhalofop-butyl in drinking water. Residential exposure of infants and children is not expected. These assessments will not underestimate the exposure and risks posed by cyhalofop-butyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, cyhalofop-butyl is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyhalofop-butyl from food and water will utilize 18% of the cPAD for All Infants (< 1 year old), the population group receiving the greatest exposure. There are no residential uses for cyhalofop-butyl.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyhalofop-butyl is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to cyhalofop-butyl through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyhalofop-butyl is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to cyhalofop-butyl through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Based on the evidence summarized in Unit III.A., cyhalofop-butyl is classified as ''not likely to be carcinogenic to humans'' and is, therefore, not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyhalofop-butyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Gas Chromatography/Mass Spectrometry (GC/MS) Method GRM 99.06) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for cyhalofop-butyl.

C. Revisions to Petitioned-For Tolerances

EPA has revised the proposed tolerances levels. The petitioner requested tolerances of 0.35 ppm based on the use of the North American Free Trade Agreement (NAFTA) tolerance calculation procedures. Based on the submitted rice data using the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures that were implemented in April 2011, EPA calculated that the rice, grain and wild rice, grain tolerances should be 0.40 ppm.

Also, EPA is revising the tolerance expression in order to make clear that the tolerances cover residues of the herbicide cyhalofop-butyl, including its metabolites and degradates. Compliance with the tolerance levels is to be determined by measuring cyhalofop butyl, cyhalofop acid, and the di-acid metabolite.

V. Conclusion

Therefore, tolerances are established for residues of cyhalofop-butyl, including its metabolites and degradates, as set forth in the regulatory text.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 19, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.576 is amended by revising paragraph (a) to read as follows:

§ 180.576 Cyhalofop-butyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of cyhalofop-butyl, including its metabolites and degradates, in or on the commodities listed in the table below. Compliance with the tolerance levels specified below is to be determined by measuring cyhalofop butyl [R-(+)-n-butyl-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionate], cyhalofop acid [R-(+)-2-(4(4-cyano-2-fluorophenoxy)-phenoxy)propionic acid], and the di-acid metabolite [(2R)-4-(4-(1-carboxyethoxy)phenoxy)-3-fluorobenzoic acid].

Commodity	Parts per million
Rice, grain	0.40
Wild rice, grain	0.40

* * * * *

[FR Doc. 2011–33480 Filed 12–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0959; FRL–9328–6]

Difenoconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of difenoconazole in or on oat and rye commodities, and wheat, hay. Syngenta Crop Protection, Incorporated requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 30, 2011. Objections and requests for hearings must be received on or before February 28, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0959. 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.,* Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tony Kish, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9443; email address: *kish.tony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0959 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 28, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0959, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerances

In the **Federal Register** of Wednesday, July 20, 2011 (76 FR 43231) (FRL–8880–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7785) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.475 be amended by establishing tolerances for residues of the fungicide, difenoconazole, [1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole], in or on oats, forage at 0.1ppm; oats, hay at 0.1 ppm; oats, straw at 0.1 ppm; oats, grain at 0.1 ppm; rye, forage at 0.1 ppm; rye, straw at 0.1 ppm; rye, grain at 0.1 ppm; and wheat, hay at 0.1 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.*

One comment on the notice of filing was received from an anonymous submitter. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting this petition, EPA has revised the proposed tolerance levels for oat, grain; oat, forage; oat, hay; oat, straw; rye, grain; rye, forage; rye, straw; and wheat, hay. In addition, EPA modified commodity definitions submitted by the registrant, Syngenta Crop Protection, Inc. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C)(ii)(I) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *''.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for difenoconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with difenoconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Difenoconazole possesses low acute toxicity by the oral, dermal and inhalation routes of exposure. It is not an eye or skin irritant and is not a sensitizer. Subchronic and chronic studies with difenoconazole in mice and rats showed decreased body weights, decreased body weight gains and effects on the liver. In an acute neurotoxicity study in rats, reduced fore-limb grip strength was observed on day 1 in males and clinical signs of neurotoxicity were observed in females at the limit dose of 2000 milligrams/kilograms (mg/kg). In a subchronic neurotoxicity study in rats, decreased hind limb strength was observed in males only at the mid- and high-doses. However, the effects observed in acute and subchronic neurotoxicity studies are transient, and the dose-response is well characterized with identified no-observed-adverse-effects-levels (NOAELs). No systemic toxicity was observed at the limit dose in the most recently submitted 28-day rat dermal toxicity study.

There is no concern for increased qualitative an/or quantitative susceptibility after exposure to difenoconazole in developmental toxicity studies in rats and rabbits, and a reproduction study in rats as fetal/offspring effects occurred in the presence of maternal toxicity. There are no indications in the available studies that organs associated with immune function, such as the thymus and spleen, are affected by difenoconazole.

In accordance with the Agency's current policy, difenoconazole is classified as ''Suggestive Evidence of Carcingenic Potential'' and EPA is using the Margin of Exposure (MOE) approach to assess cancer risk. Difenoconazole is not mutagenic, and no evidence of carcinogenicity was seen in rats. Evidence for carcinogenicity was seen in mice (liver tumors), but statistically significant carcinomas tumors were only induced at excessively-high doses. Adenomas (benign tumors) and liver necrosis only were seen at 300 parts per million (ppm) (46 and 58 mg/kg/day in males and females, respectively). Based on excessive toxicity observed the two highest doses in the study, the presence of only benign tumors and necrosis at the mid-dose, the absence of tumors at the study's lower doses, and the absence of genotoxic effects, EPA has concluded that the chronic point of departure (POD) from the chronic mouse study will be protective of any cancer effects. The POD from this study is the NOAEL of 30 ppm (4.7 and 5.6 mg/kg/day in males and females, respectively) which was chosen based upon only those biological endpoints which were relevant to tumor development (*i.e.,* hepatocellular hypertrophy, liver necrosis, fatty changes in the liver and bile stasis).

Specific information on the studies received and the nature of the adverse effects caused by difenoconazole as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document entitled, ''Difenoconazole Human Health Risk Assessment for Amended Section 3 Registration to Add Seed Treatment Use on Oats and Rye and Establish a Tolerance in/on Wheat Hay,'' dated October 27, 2011 at page number 25 in docket ID number EPA–HQ–OPP–2010–0959–0007.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for difenoconazole used for human risk assessment is discussed in Unit III. B. of the final rule published in the **Federal Register** of June 15, 2011 (76 FR 34877) (FRL–8876–4).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to difenoconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing difenoconazole tolerances in 40 CFR 180.475. EPA assessed dietary exposures from difenoconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for difenoconazole. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance-level residues, 100 percent crop treated (PCT), and the available empirical or DEEM™ (ver. 7.81) default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues for some commodities, average field trial residues for the majority of commodities, the available empirical or DEEM™ (ver. 7.81) default processing factors, and 100 PCT.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to difenoconazole. A separate quantitative cancer exposure assessment is unnecessary since the NOAEL (4.7 and 5.6 mg/kg/day in males and females, respectively) to assess cancer risk is higher than the NOAEL (0.96 and 1.27 mg/kg/day in males and females, respectively) to assess chronic risks and exposure for the purpose of assessing cancer risk would be no higher than chronic exposure. Therefore, the chronic dietary risk estimate will be protective of potential cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use PCT information in the dietary assessment for difenoconazole. EPA used anticipated residues in the form of average field trial residues for the majority of commodities.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating

that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for difenoconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of difenoconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) for the registered and proposed new uses and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of difenoconazole for acute exposures are estimated to be 15.8 parts per billion (ppb) for surface water and 0.0128 ppb for ground water.

For chronic exposures for non-cancer assessments are estimated to be 10.4 ppb for surface water and 0.0128 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, the water concentration value of 15.8 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 10.4 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Difenoconazole is currently registered for the following uses that could result in residential exposures: Ornamentals. EPA assessed residential exposure using the following assumptions: Adults may be exposed to difenoconazole from its currently registered use on ornamentals. Residential pesticide handlers may be exposed to short-term duration (1–30 days) only. The dermal and inhalation (short-term) residential exposure was assessed for ''homeowners'' mixer/loader/applicator wearing short pants and short-sleeved shirts as well as shoes plus socks using garden hose-end sprayer, ''pump-up'' compressed air sprayer, and backpack sprayer.

Residential post-application exposure may occur from use of difenoconozole on golf course turf. Short-term dermal exposure was assessed for post-application exposure to golf course turf. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Difenoconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web sites at: *http://www.epa.gov/pesticides/cumulative* and *http://www.epa.gov/fedrgstr/EPA_PEST/2002/January/Day_16/.*

Difenoconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including difenoconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10× FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov,* Docket Identification (ID) Number EPA–HQ–OPP–2005–0497 and the most recent update that assessed additional new commodities for triazoles may be found in docket ID number EPA–HQ–OPP–2010–0959 in the document titled ''Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address Tolerance Petitions for Metconazole'', dated April 27, 2011. The requested amended uses of difenoconazole did not result in an increase in dietary exposure estimates for free triazole or conjugated triazoles. Therefore, the last dietary exposure analyses cited above addresses potential exposures resulting from commodities discussed in this action.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10×) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10×, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* EPA determined that the available data

indicated no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to difenoconazole. In the prenatal developmental toxicity studies in rats and rabbits and the 2-generation reproduction study in rats, toxicity to the fetuses/offspring, when observed, occurred at equivalent or higher doses than in the maternal/parental animals. In the prenatal developmental toxicity study in rats, maternal toxicity was manifested as decreased body weight gain and food consumption at the LOAEL of 85 mg/kg/day; the NOAEL was 16 mg/kg/day. The developmental toxicity was manifested as alterations in fetal ossifications at 171 mg/kg/day; the developmental NOAEL was 85 mg/kg/day. In a developmental toxicity study in rabbits, maternal and developmental toxicity were seen at the same dose level (75 mg/kg/day). Maternal toxicity in rabbits was manifested as decreased body weight gain and decreased food consumption, while developmental toxicity was manifested as decreased fetal weight. In a 2-generation reproduction study in rats, there were decreases in maternal body weight gain and decreases in body weights of F1 males at the LOAEL of 12.5 mg/kg/day; the parental systemic and off spring toxicity NOAEL was 1.25 mg/kg/day.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1×. That decision is based on the following findings:

i. The toxicity database is complete except for an immunotoxicity study which is now required as a part of new data requirements in the 40 CFR part 158 for conventional pesticide registration. However, the toxicology database for difenoconazole does not show any evidence of treatment-related effects on the immune system. The overall weight of evidence suggests that this chemical does not directly target the immune system. Accordingly, the Agency does not believe that conducting a functional immunotoxicity study will result in a lower point of departure POD than that currently in use for overall risk assessment, and therefore, a database uncertainty factor is not needed to account for lack of this study.

ii. The acute and subchronic neurotoxicity studies in rats are available. These data show that difenoconazole exhibits some evidence of neurotoxicity, but the effects are transient or occur at the limit dose. EPA concluded that difenoconazole is not a neurotoxic compound. Based on the toxicity profile, and lack of neurotoxicity, a developmental neurotoxicity study in rats is not required.

iii. There is no evidence that difenoconazole results in increased susceptibility of rats or rabbit fetuses to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity data.

iv. There are no residual uncertainties identified in the exposure databases. A conservative dietary food exposure assessment was conducted. Acute dietary food exposure assessments were performed based on tolerance-level residues, 100 PCT, and the available empirical or DEEM (ver. 7.81) default processing factors.

Chronic dietary exposure assessments were based on tolerance-level residues for some commodities, average field trial residues for the majority of commodities, the available empirical or DEEM (ver. 7.81) default processing factors, and 100 PCT. These are conservative approaches and are unlikely to understate the residues in food commodities.

EPA also made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to difenoconazole in drinking water. Post-application residential exposure of children is not expected. These assessments will not underestimate the exposure and risks posed by difenoconazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to difenoconazole will occupy 19% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to difenoconazole from food and water will utilize 46% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of difenoconazole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Difenoconazole is currently registered for uses on ornamentals that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to difenoconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 260 or greater. Because EPA's level of concern for difenoconazole is a MOE of 100 or below, these MOEs resulting from short-termed exposure to difenoconazole are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, difenoconazole is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for difenoconazole.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., the chronic dietary risk assessment is protective of any potential cancer effects.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to difenoconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement method, gas chromatography with nitrogen/phosphorus detection (GC/NPD) method AG–575B, is available for the determination of residues of difenoconazole *per se* in/on plant commodities. An adequate enforcement method, liquid chromatography coupled with tandem mass spectrometry (LC/MS/MS) method REM 147.07b, is available for the determination of residues of difenoconazole and CGA–205375 in livestock commodities.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex maximum residue limits (MRLs) for residues of difenoconazole have been established. However, since no Codex MRLs have been established for residues of difenoconazole in/on oat commodities, rye commodities, and wheat hay, harmonization with Codex is not an issue. Canadian MRLs for residues of difenoconazole have been established at 0.01 ppm for oat grain and 0.01 ppm for rye grain and U.S. tolerances for oat grain and rye grain are harmonization with these established Canadian MRLs. Mexican MRLs for residues of difenoconazole have been established; however, no Mexican MRLs have been established for any of the cereal grain commodities.

C. Response to Comments

One comment was received from a private citizen who opposed authorization by EPA to allow pesticide use on oats and other petitioned-for uses that would result in any pesticide residue on food. The Agency has received this same comment on numerous previous occasions and rejects it for the reasons previously stated in the **Federal Register** at 70 FR 1349, January 7, 2005.

D. Revisions to Petitioned-For Tolerances

EPA determined that the proposed tolerance for oat, grain at 0.1 ppm should be established at 0.01 ppm. This decision was based on the translation and re-evaluation of available barley grain data. No detectable residues of difenoconazole are expected in/on oat grain from the maximum seed treatment use under consideration. Therefore, the tolerance should be established at the limit of quantitation (LOQ) of the current enforcement method, 0.01 ppm in/on oat grain. EPA increased the proposed tolerance in/on oat, forage from 0.1 ppm to 0.15 ppm based on the translation and re-evaluation of available wheat forage data; using the Organization for Economic Cooperation and Development (OECD) MRL calculator, a tolerance of 0.15 ppm is appropriate. For both oat, hay and oat, straw EPA decreased the proposed tolerances of 0.1 ppm to 0.05 ppm based on the translation and re-evaluation of available wheat hay and wheat straw data; residues of difenoconazole are not expected to exceed the LOQ of the current enforcement method, 0.05 ppm in/on oat straw or hay.

EPA determined that the proposed tolerance for rye, grain at 0.1 ppm should be established at 0.01 ppm. This decision was based on the translation and re-evaluation of available wheat grain data. No detectable residues of difenoconazole are expected in/on rye grain; therefore, the tolerance should be established at the LOQ of the current enforcement method, 0.01 ppm in/on rye grain. Also, the EPA recommended tolerance for rye, grain at 0.01 ppm replaces the existing difenoconazole import only tolerance for rye, grain 0.1 ppm. EPA increased the proposed tolerance for rye, forage from 0.1 ppm to 0.15 ppm based on the translation and re-evaluation of available wheat forage data; using the OECD MRL calculator, a tolerance of 0.15 ppm is appropriate. For rye, straw, EPA decreased the proposed tolerance of 0.1 ppm to 0.05 ppm based on the translation and re-evaluation of available wheat straw data; residues of difenoconazole are not expected to exceed the LOQ of the current enforcement method, 0.05 ppm in/on rye straw.

For wheat, hay, EPA decreased the proposed tolerance of 0.1 ppm to 0.05 ppm based on the re-evaluation of available wheat hay data; residues of difenoconazole are not expected to exceed the LOQ of the current enforcement method, 0.05 ppm in/on wheat hay.

V. Conclusion

Therefore, tolerances are established for residues of difenoconazole, including its metabolites and degradates, in or on the commodities listed in the table at the end of this document. Compliance with the tolerance levels specified in the table below is to be determined by measuring only difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H–1,2,4-triazole, in or on oat, forage at 0.15 ppm; oat, grain at 0.01 ppm; oat, hay at 0.05 ppm; oat, straw at 0.05 ppm; rye, forage at 0.15 ppm; rye, grain at 0.01 ppm; rye, straw at 0.05 ppm; and wheat, hay at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.475 the table to paragraph (a) is amended by alphabetically adding oat, forage; oat, grain; oat, hay; oat, straw; rye, forage; rye, straw; and wheat, hay and by revising the entry for rye, grain to read as follows:

§ 180.475 Difenoconazole; tolerance for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Oat, forage	0.15
Oat, grain	0.01
Oat, hay	0.05
Oat, straw	0.05
* * * * *	
Rye, forage	0.15
Rye, grain	0.01
Rye, straw	0.05
* * * * *	
Wheat, hay	0.05

* * * * *

[FR Doc. 2011–33482 Filed 12–29–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, 175, and 176

[Docket No. PHMSA–2009–0126 (HM–215K)]

RIN 2137–AE76

Hazardous Materials: Harmonization With the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This document responds to administrative appeals, provides clarifications, and corrects typographical and other minor errors adopted in an international harmonization final rule published January 19, 2011 (HM–215K; 76 FR 3308). The final rule amended the Hazardous Materials Regulations (HMR) by revising, removing or adding proper shipping names, the hazard class of a material, packing group assignments, special provisions, packaging authorizations, packaging sections, air transport quantity limitations, and vessel stowage requirements. The amendments were necessary to align the HMR with recent revisions to international standards for the transport of hazardous materials by all modes.

DATES: *Effective Date:* January 1, 2012.

Voluntary compliance date: PHMSA is authorizing voluntary compliance beginning December 30, 2011.

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to *http://www.regulations.gov* at any time and insert ''PHMSA–2009–0126'' in the ''Keyword'' box, and then click ''Search.'' You may also view the docket online by visiting the Docket Management Facility in Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t. Monday through Friday, except Federal holidays.

Anyone is able to search the electronic form for 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 the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Michael Stevens, telephone (202) 366–8553, or Shane Kelley, telephone (202) 366–0656, Standards and Rulemaking Division, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Administrative Appeals Filed in Response to the HM–215K Final Rule

A. Use of the Square-on-Point With Identification Number Limited Quantity Marking
B. Fuel Cell Cartridges
1. Fuel Cell Cartridges Transported as ORM–D by Aircraft
2. Fuel Cell Systems and Cartridges Aboard Passenger-Carrying Aircraft
C. General Requirements for Transportation by Aircraft
D. Self-Reactive Material as a Limited Quantity
III. Clarification of the HM–215K Final Rule
A. Use of the Limited Quantity ''Y'' Marking
B. General Requirements for Transportation by Aircraft
C. Packaging Requirements for Metal Hydride Storage Systems
IV. Section-by-Section Review of Changes
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A. Statutory/Legal Authority for the Rulemaking
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D. Executive Order 13175
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K. International Trade Analysis

I. Background

On January 19, 2011, PHMSA published a final rule under Docket PHMSA–2009–0126 (HM–215K; 76 FR 3308) that revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to align with various international standards. The final rule adopted amendments to the HMR regarding hazard communication, hazard classification including packing group assignment, packaging authorization, air transport quantity limitations, and various other international harmonization-related topics. The amendments were necessary to align the HMR with the latest revisions to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), the International Maritime Organization's Dangerous Goods Code (IMDG Code), Transport Canada's Transportation of Dangerous Goods Regulations (TDG Regulations), and the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations (UN Model Regulations) to facilitate to the seamless transportation of hazardous materials internationally, to, through and from the United States.

In this document, PHMSA responds to administrative appeals, provides clarifications, and corrects typographical and other minor errors adopted in the January 19, 2011 final rule.

II. Administrative Appeals Filed in Response to the HM–215K Final Rule

In response to the January 19, 2011 final rule, administrative appeals were submitted by the following companies and organizations:

American Coatings Association (ACA)
Association of Hazmat Shippers, Inc. (AHS)
Dangerous Goods Advisory Council, Inc. (DGAC)
Fuel Cell and Hydrogen Energy Association (FCHEA)
Healthcare Distribution Management Association (HDMA)
International Air Transport Association (IATA)
Patton Boggs, LLP., on behalf of Lilliputian Systems, Inc. (LSI)
PPG Industries (PPG)
Sporting Arms & Ammunition Manufacturer's Institute (SAAMI)

The administrative appeals addressed in this document are discussed in detail below. Because some of the issues raised by appellants require notice and public comment under the Administrative Procedure Act (APA; 5 U.S.C. 553), they are being proposed in a separate notice of proposed rulemaking (NPRM) under this docket number (PHMSA–2009–0126; RIN 2137–AE83). For example, FCHEA and LSI requested that PHMSA revise § 175.10 to align with the ICAO Technical Instructions and allow spare fuel cell cartridges containing Division 2.1 flammable gas to be carried in checked baggage. We are also aware of recent actions taken by the International Civil Aviation Organization's Dangerous Goods Panel regarding certain lithium ion battery-powered mobility aids (*e.g.,* wheelchairs, travel scooters) offered by passengers for air transport. Such actions could affect the outcome of the administrative appeal submitted by IATA in response to the January 19, 2011 final rule and, therefore, those actions will also be addressed in the separate NPRM.

We can, however, in some instances adopt a provision submitted in an administrative appeal that was inadvertently omitted in the final rule if it is clearly within the scope of changes proposed in the notice, does not require substantive changes from the international standard on which it is based, and imposes minimal or no cost impacts on persons subject to the requirement. Otherwise, in order to provide opportunity for notice and comment, the change must first be proposed in an NPRM.

A. Use of the Square-on-Point With Identification Number Limited Quantity Marking

Currently, under § 172.315 of the HMR and except for transportation by aircraft, a packaging containing a limited quantity material is not required to be marked with the proper shipping name when marked with a square-on-point containing the UN identification (ID) number of the limited quantity material. In the January 19, 2011 final rule, we provided a one-year transition period to authorize continued use of this marking before the revisions to the limited quantity markings become effective. ACA, DGAC, and PPG all state the one-year transition period does not allow sufficient time to deplete stock(s) of packagings pre-printed with the square-on-point mark containing the ID number and requested an extension of three- to five-years. Appellants request that PHMSA provide a transition period similar to the transition period provided for the phase-out of the ORM–D marking, depending on the mode of transportation. Appellants also requested that any transition periods be included in §§ 171.14 (transitional provisions) and 172.300 (marking applicability).

PHMSA Response

We agree. Shippers should be provided the same transition period that authorizes the continued use of the square-on-point mark containing the UN ID number provided for ORM–D markings. In this document, we are granting the appeals submitted by ACA, DGAC, and PPG and revising § 172.315 by extending the transition period, until December 31, 2013 for other than air transportation. For domestic air transportation, we are authorizing use of the square-on-point mark containing the ID number to continue until December 31, 2012 as adopted in the January 19, 2011 final rule. However, we are not revising §§ 171.14 and 172.300 to include the transition periods because we believe it is overly duplicative.

B. Fuel Cell Cartridges Aboard Passenger-Carrying Aircraft

In this document, we respond to two administrative appeals related to the transportation of fuel cell cartridges. The administrative appeals are discussed as follows:

1. Fuel Cell Cartridges Transported as ORM–D by Air

In the January 19, 2011 final rule, we revised the limited quantity

requirements for fuel cell cartridges to allow transportation as ''Consumer commodity, ORM–D,'' except when transported by aircraft.

FCHEA states not allowing the transportation by aircraft of fuel cell cartridges as ORM–D–AIR is inconsistent with the ICAO Technical Instructions and the UN Model Regulations and claims that the difference is ''impractical'' from an international trade and enforcement standpoint. They note there are no safety consequences when comparing the air transportation of fuel cell cartridges shipped as limited quantity material and those shipped as ORM–D–AIR. They also note that fuel cell cartridges are sturdy articles that meet a range of tests and requirements to ensure they do not pose unreasonable risks in transportation. FCHEA requests PHMSA to allow fuel cell cartridges to be transported as ORM–D–AIR by aircraft so that fuel cell technologies are not placed at a disadvantage compared to other technologies authorized to be transported by aircraft.

PHMSA response.

We deny FCHEA's administrative appeal that would authorize fuel cell cartridges to be offered and transported as ''Consumer commodity, ORM–D–AIR,'' by aircraft. When packages of articles or substances are renamed ''Consumer commodity'' and are reclassed as ''ORM–D–AIR,'' the identity and risk posed by the substance or article is no longer communicated. This is one of the primary reasons the ORM–D–AIR hazard class is being phased-out by the end of 2012. We believe the authorization to offer fuel cell cartridges as limited quantities by passenger-carrying and cargo-only aircraft satisfies the need for the expedient transportation of such articles, while communicating their risk, and imposing minimal regulatory burden.

2. Fuel Cell Systems and Cartridges Aboard Passenger-Carrying Aircraft

FCHEA's administrative appeal indicated that in addition to the differences in fuel cell cartridge chemistries authorized in checked baggage, there are a number of inconsistencies and editorial issues when comparing § 175.10 and the ICAO Technical Instructions regarding fuel cell systems and cartridges used to power portable electronic devices authorized to be carried aboard passenger-carrying aircraft. They note that over the last several years, revisions to the ICAO Technical Instructions have made the regulatory language clearer. FCHEA requests that PHMSA make similar revisions to avoid any potential confusion between requirements under the HMR and the ICAO Technical Instructions.

PHMSA response.

We agree. Thus, we are granting FCHEA's administrative appeal to editorially revise § 175.10(a)(19) to be consistent with language in 8; 1.1.2 (t) of the ICAO Technical Instructions. This clarification does not, however, revise current HMR provisions regarding such articles and is entirely editorial in nature.

C. General Requirements for Transportation by Aircraft

As adopted in the January 19, 2011 final rule, the general air packaging requirements for combination packagings prohibit Class 1 (explosive) and Class 7 (radioactive) material to be offered for transportation as limited quantity material by aircraft. *See* 76 FR 3369. In their administrative appeal, DGAC and SAAMI state this is inconsistent with other provisions in the HMR that allow the transportation of these materials by aircraft, specifically, §§ 173.421 through 173.425 for limited quantity radioactive material, instruments, and articles and § 173.63(b) for certain Division 1.4S explosive articles. DGAC and SAAMI request that PHMSA revise the list of prohibited hazardous material and articles and Table 3 in § 173.27(f) to clarify that Class 1 (explosive) material conforming to § 173.63(b) and Class 7 (radioactive) material conforming to §§ 173.421 through 173.425, as applicable, are authorized for transportation by aircraft. Additionally, DGAC requests UN3334 (''Aviation regulated liquid, n.o.s.'') and UN3335 (''Aviation regulated solid, n.o.s.'') be added to the list of Class 9 (miscellaneous hazard) material as the substances are currently authorized as limited quantity material under the § 173.155 exceptions for Class 9 material and for consistency with the ICAO Technical Instructions.

PHMSA response.

We agree. DGAC and SAAMI are correct, and we are therefore granting their administrative appeals by revising § 173.27(f) to reflect current regulations that authorize the shipment of these substances and articles by aircraft. We want to point out that although certain Class 1 and Class 7 materials are indicated as eligible for air transport in § 173.27(f), such indication is provided for informational purposes to aid readers in indentifying the appropriate packaging and other regulatory provisions for such materials. For example, packages of such materials are not marked with the limited quantity ''Y'' mark prescribed in § 172.315 but rather as prescribed in §§ 173.63 and 173.421 through 173.425, as appropriate.

D. Self-Reactive Material as a Limited Quantity

In the UN Model Regulations, certain Division 4.1 self-reactive materials are authorized limited quantity exceptions. Currently, the HMR do not authorize such exceptions. AHS appealed to PHMSA to include a limited quantity exception for the material ''Self-reactive solid, Type F, UN3230.'' AHS notes that they filed a petition for rulemaking in 2009 (P–1542), to which PHMSA replied by stating that the petition merited rulemaking action and that it would be addressed in the January 19, 2011 final rule.

PHMSA response.

We recognize the merits of AHS's appeal and petition for rulemaking, but are denying AHS's administrative appeal because it is beyond the scope of this rulemaking. To accommodate the federally mandated requirement for notice and comment during a significant rulemaking action, the petition must be presented under a notice of proposed rulemaking to allow for comment by all interested parties. We regret the unintentional omission of a proposal in the NPRM for a limited quantity exception for ''Self-reactive solid, Type F, UN3230'' and for adoption under the January 19, 2011 final rule. We fully intend to include a proposal for this material as a broader effort to revise the packaging requirements for all eligible self-reactive materials in a near-term rulemaking action.

III. Clarification of the HM–215K Final Rule

A. Use of the Limited Quantity ''Y'' Marking

In the January 19, 2011 final rule, we adopted new limited quantity markings consistent with the ICAO Technical Instructions, IMDG Code, and the UN Model Regulations to include a limited quantity ''Y'' marking for display on packagings prepared for air transportation. In their administrative appeals, ACA and DGAC ask for a clearer indication of when this new marking may be used in modes of transportation by other than aircraft. They note PHMSA's consideration in the January 19 final rule of a comment stating that the limited quantity ''Y'' marking should be authorized for use in all modes of transportation if displayed on a packaging that meets all conditions and requirements for air transportation. *See 76 FR 3313.* Additionally, on the

basis of their opposition to adoption of the air transport requirements for limited quantities consistent with the ICAO Technical Instructions, DGAC recommends that:

> The ''Y'' package mark [proposed] in § 172.315 not be required * * * [and] recommend that [PHMSA] allow permissive use of the ''Y'' mark for all modes of transport when the package meets the relevant requirements of the ICAO TI.

We agreed with the DGAC recommendation that a ''Y'' marked package in full conformance with the air transport provisions prescribed for a limited quantity package should be authorized in all modes of transportation and also stated we would revise § 171.22 accordingly. Although we indicated our intent to revise § 171.22, which prescribes the authorization and conditions for use of international standards, we inadvertently failed to amend the corresponding regulatory text of the section. In its administrative appeal, ACA also requests that PHMSA amend this section to indicate the limited quantity ''Y'' marking is authorized for use in all modes of transportation. Further, DGAC suggests that we revise § 172.315 to include language authorizing the use of this marking by modes other than air.

PHMSA response.

We agree. Our indication in the final rule to revise § 171.22 was in error as that section prescribes the authorization to use the various international standards. Regardless, we clearly indicated in the preamble of the final rule that the display of a ''Y'' marking on limited quantity package that is not intended for transportation by aircraft is authorized. Thus, because a limited quantity package prepared for air transportation by default is authorized by all modes of transportation, the administrative appeals requesting that PHMSA align with the international standards are hereby granted. See the Section-by-Section review of changes for a full discussion of the § 172.315 revisions and requirements.

B. General Requirements for Transportation by Aircraft

In the January 19, 2011 final rule, we revised the § 173.27 general requirements for transportation of packagings by aircraft. Specifically, we revised paragraph (f) by including a new Table 3 that prescribes the requirements for authorized limited quantity material intended for air transportation consistent with the 2011–2012 ICAO Technical Instructions, where appropriate.

AHS notes that PHMSA included ''Consumer commodity, ID8000'' as authorized Class 9 material but failed to revise paragraph (f)(2)(i)(G) for Class 9 material not authorized as limited quantity material by aircraft. As indicated by AHS, ''Consumer commodity, ID8000'' may be shipped as limited quantity material by aircraft, thus ''ID8000'' should be added to the list of materials excepted from the Class 9 prohibition in paragraph (f)(2)(i)(G).

PHMSA response.

We agree. In this final rule, we are revising § 173.27(f)(2)(i)(G) to include ''ID8000'' as a material excepted from the Class 9 prohibition. In addition, for clarification, we are revising Table 3 to indicate that the note associated with Class 9 liquid material applies to both liquid and solid material.

C. Packaging Provisions for Metal Hydride Storage Systems

In the January 19, 2011 final rule, we added a new section, § 173.311, for packaging requirements for ''Metal hydride storage systems, UN3468'' used for the transport of hydrogen. Prior to the January 19, 2011 final rule, the HMR did not prescribe methods for the construction, qualification, marking, and requalification of these systems although we issued a number of special permits and competent authority approvals (CAA) to allow the manufacture and use of similar systems for the transport of hydrogen.

In a January 24, 2011 request for clarification, Ovonic Hydrogen Systems, LLC (OHS) expresses concern that the new § 173.311 requires transportable metal hydride storage systems to meet ISO Standard 16111:2008 (ISO 16111) which does not recognize the storage canisters manufactured by OHS under its currently-held CAA. Specifically, OHS manufactures storage canisters based on refillable aluminum cylinders designed, constructed, and tested to DOT 3AL specifications. Instead, ISO 16111 requires the use of aluminum cylinders constructed and tested to ISO 7866 specifications. Testing and marking requirements under ISO 7866 differ from testing and marking requirements for DOT 3AL specifications and OHS states its storage canisters are non-compliant as a result.

PHMSA response.

We disagree with OHS's assertion. The adoption of packaging requirements for metal hydride storage systems in § 173.311 does not invalidate any active special permits or CAAs authorizing the transportation of hydrogen in ''metal hydride storage canisters.'' When a special permit or CAA expires and is not renewed, systems must conform with the § 173.311 requirements for metal hydride storage systems to include the requirements of ISO 16111. Special permits issued by the Associate Administrator authorize the transportation of hazardous material and packaging within the United States only. International regulatory agencies may not recognize a special permit granted by PHMSA. However, metal hydride storage canisters designed, constructed, and otherwise conforming to requirements authorized under a CAA issued by PHMSA should be honored by other competent authorities worldwide as a valid alternative to ISO 16111.

IV. Section-by-Section Review of Changes

Part 172

Section 172.101

This section provides a hazardous materials table that identifies listed materials as hazardous material for purposes of transportation.

For the table entry ''Calcium hypochlorite, hydrated or Calcium hypochlorite, hydrated mixtures, with not less than 5.5 percent but not more than 16 percent water, UN2880,'' the PG III information was inadvertently removed. Under a final rule published December 29, 2006 (HM–215I, 71 FR 78596), we revised the PG II information to remove Special provision 166. However, the instruction to revise this entry did not include the PG III information and, therefore, it was inadvertently removed from the 49 CFR. In this document, we are revising the entry to add the PG III information to the entry to reflect the correct descriptions for this entry. This correction reads as a ''remove/add.''

For the table entry ''Tellurium compound, n.o.s., UN3284,'' effective October 1, 2010, we inadvertently added the term ''solid'' to the proper shipping name to read ''Tellurium compound, solid, n.o.s.'' in the January 19, 2011 final rule. In this document, we are revising the proper shipping name to remove the term ''solid.'' This correction reads as a ''remove/add.''

Section 172.315

This section prescribes the requirements for marking packages containing limited quantity material. Based on administrative appeals submitted in response to the January 19, 2011 final rule (HM–215K; 76 FR 3308), and numerous requests for clarification of the limited quantity marking requirements, we are revising § 172.315 to authorize continued use of the limited quantity marking (*i.e.,* square-

on-point and Identification Number) prescribed in § 172.315, in effect on October 1, 2010, for the same duration offered for continued use of the ORM–D–AIR and ORM–D markings, December 31, 2012 and December 31, 2013, respectively. For transportation by aircraft, the hazard class label (when applicable) and proper shipping name marking are still required. Additionally, we are revising § 172.315 to allow marking of a limited quantity package not intended for transportation by air with the limited quantity ''Y'' marking if the packaging is prepared in accordance with § 173.27(f) indicating it is suitable for transportation as a limited quantity package by aircraft. A ''Y'' marked package transported by a mode other than air indicates the package would be suitable for air transport if marked, labeled and accompanied by a shipping paper and is otherwise packaged in accordance with 3; 4 of the ICAO Technical Instructions as limited by subpart C of Part 171 and Part 175 of the HMR or § 173.27(f) and Part 175 of the HMR.

In the January 19 final rule, we erroneously adopted limited quantity marking requirements applicable to cargo transport units (CTU) containing packages of hazardous materials in only limited quantities. We erred by stating the marking must be applied to only one side and one end of the CTU when we should have required the marking on all four exterior sides of the CTU consistent with 3.4.5.5 of the IMDG Code. In this document, we are correcting that error in § 172.315. Finally, we are reorganizing the format of the language used in this section solely for editorial clarification.

Section 173.27

This section prescribes general requirements for the transportation of hazardous material by aircraft. Based on appeals and requests for clarification, in this document we are revising § 173.27(f). Specifically, we are revising paragraph (f)(2) and Table 3 in paragraph (f) by adding materials currently authorized elsewhere in the HMR and to provide additional clarification regarding those hazardous materials and articles eligible for transport by aircraft under the conditions prescribed in this paragraph. The authorized hazardous materials and articles added and referenced are as follows: (1) Class 1 (explosive) articles in accordance with § 173.63(b); (2) Class 7 (radioactive) material in accordance with applicable §§ 173.421 through 173.425; and (3) ''Aviation regulated liquid, n.o.s., UN3334,'' ''Aviation regulated solid, n.o.s., UN3335,'' and ''Consumer commodity, ID8000.'' As stated earlier in this preamble, although certain Class 1 and Class 7 materials are indicated as eligible for air transport in § 173.27(f), because they do not meet guiding principles established for limited quantities such indication is provided for informational purposes to aid readers in identifying the appropriate packaging and other provisions for such materials. For example, packages of Class 7 are not marked with the limited quantity ''Y'' mark prescribed in § 172.315 but rather as prescribed in 173.421 through 173.425, as appropriate.

Section 173.124

Section 173.124 defines a Class 4 material. For consistency with a revision adopted in the UN Model Regulations, PHMSA amended the definition of ''self-heating'' in § 173.124(b)(2) of the HMR in the January 19 final rule. In this document, PHMSA is correcting the typographical error in the heading of the definition.

Section 173.151

Section 173.151 prescribes exceptions for a Class 4 material. Paragraph (d) prescribes exceptions for Division 4.3 solid material of Packing Groups II and III. The HMR do not authorize limited quantity packages of such substances to be reclassified as ORM–D or to be renamed ''Consumer commodity.'' In the January 19, 2011 final rule, PHMSA inadvertently revised the third sentence of paragraph (d) to extend the additional exceptions for limited quantities and ORM in § 173.156 to Division 4.3 substances, when no such authorization prior to this rulemaking existed nor was it considered in this rulemaking due to the obvious risk to transportation safety. Therefore, in this final rule, PHMSA is removing the reference to § 173.156 in the third sentence of § 173.151(d).

Section 173.156

Section 173.156 provides additional exceptions for limited quantity and ORM packages. In the January 19, 2011 final rule, PHMSA unintentionally amended paragraph (b)(1) by requiring the marking of such packages in accordance with subpart D of part 172. In this final rule, PHMSA is amending § 173.156(b)(1) by removing the requirement to mark such packages. Because paragraph (b)(2) authorizes the common carriage of such packages, the marking requirements that existed prior to the January 19, 2011 final rule will remain as adopted.

Section 173.306

Section 173.306 prescribes requirements for limited quantity of compressed gases. In this document, we are revising certain paragraphs for clarification of requirements adopted in the final rule and to correct minor grammatical errors.

Section 173.311

This section specifies packaging instructions for hydrogen in metal hydride storage systems. The January 19, 2011 final rule incorrectly refers to ISO standards in § 178.71(f) that apply to the design and construction of UN refillable welded cylinders rather than § 178.71(m) for the design and construction of UN metal hydride storage systems. In this final rule, we are revising the section to correctly refer to § 178.71(m).

Part 175

Section 175.10

Section 175.10 prescribes the conditions under which a passenger, crew member, or an operator may carry hazardous materials aboard a passenger-carrying aircraft. In response to FCHEA's administrative appeal, in this final rule we are editorially revising the language in § 175.10(a)(19) for the carriage of fuel cell systems and fuel cell cartridges for consistency with the ICAO Technical Instructions. These revisions do not amend the fuel cell cartridge chemistries authorized in checked baggage as adopted in the January 19 final rule.

Section 175.75

Section 175.75 prescribes quantity limitations and cargo location requirements for hazardous materials transported by aircraft. In this document, we are revising for clarification the definition of ''Inaccessible'' in paragraph (d)(2) to mean any package that is loaded where a crew member or other authorized person cannot access, handle and, when size and weight permit, separate such packages from other cargo during flight, including a freight container in an accessible cargo compartment when packages are loaded in an inaccessible manner. This definition is consistent with the defined term ''Accessible'' and is revised for clarification only. Additionally, PHMSA is revising the heading in the third column of the paragraph (f) Quantity and Loading Table for clarity by adding the words ''per cargo compartment.'' Since issuing the January 19 final rule, we have fielded numerous inquiries regarding whether the limitation was now ''per

aircraft'' as opposed to ''per compartment.'' Additionally, we are correcting the error in Note a. of the table as published in the January 19 final rule. Notwithstanding the correction made to Note a. of the § 175.75(f) table, we want to emphasize the revisions made in this document to § 175.75 are for editorial clarification only.

Part 176

Section 176.905

This section specifies requirements for vessel transport of motor vehicles and equipment. In this final rule, we are revising paragraph (j) to refer to the correct section paragraph regarding items of equipment containing hazardous materials, specifically, § 173.220(f), that are integral components of a motor vehicle, engine or mechanical equipment.

V. Summary of Changes Regarding Limited Quantity Material and ORM–D

In an effort to clarify the amendments to the HMR associated with the transition from the domestic ORM–D system for transportation of limited quantity material to the international system, we offer the following:

Applicability of the ORM–D System

—Until December 31, 2013, shippers may continue to rename a limited quantity hazardous material as a ''Consumer commodity, ORM–D'' (*see* § 171.8), as authorized in the appropriate packaging exception for the material. Beginning January 1, 2014, limited quantity hazardous material will no longer be authorized the ''Consumer commodity'' proper shipping name except those eligible and prepared for shipment by aircraft in accordance with § 173.167 and using the newly adopted identification number ''ID8000.'' Such packages are eligible for transportation by all modes but must be marked with the limited quantity ''Y'' mark prescribed in § 172.315(b) indicating the package is suitable for air transportation.

—Until December 31, 2013, shippers may continue to reclass limited quantity hazardous material as ''Other Regulated Material'' otherwise known as ORM–D. Limited quantity material reclassed as ORM–D and transported by modes other than air may continue to be prepared and packaged in accordance with the appropriate packaging exceptions for the hazardous material (*e.g.,* § 173.150 for a Class 3 flammable liquid substance), and be transported in a package displaying the ORM–D marking. Until December 31, 2012, shippers may continue to ship ORM–D–AIR by aircraft. Until such time, ORM–D offered for shipment by aircraft may continue to be prepared and packaged in accordance with the requirements of § 173.27 in effect October 1, 2010, and transported in packages displaying the ORM–D–AIR marking.

—Until December 31, 2013, shippers may continue to display the limited quantity marking (*i.e.,* the square-on-point and identification number) on a package containing limited quantity material in accordance with § 172.315 in effect October 1, 2010.

Use of the New Limited Quantity Markings

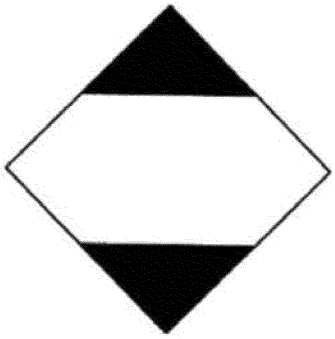
—Beginning January 1, 2014, for modes of transportation other than air, shippers of limited quantity material must display the limited quantity marking adopted in § 172.315 under the January 19, 2011 final rule (*i.e.,* the square-on-point with top and bottom portion black and the center white). See illustration below.

—Beginning January 1, 2013, for transportation by air, shippers of limited quantity material must display the limited quantity ''Y'' marking adopted in § 172.315 under the January 19, 2011 final rule. See illustration below.

Clarification of Limited Quantity Marking Requirements

—A limited quantity package should not display both an ORM–D or ORM–D–AIR marking and one of the new limited quantity markings, as this may only serve to frustrate a shipment while in transportation. Such dual markings are only authorized during the transition period. Once the transition period expires (December 31, 2012 or December 31, 2013), the ORM–D or ORM–D–AIR marking must be covered, obliterated, or otherwise obstructed from view.

Limited quantity marking for packages not prepared for air transport.



Limited quantity marking for packages prepared for air transport.

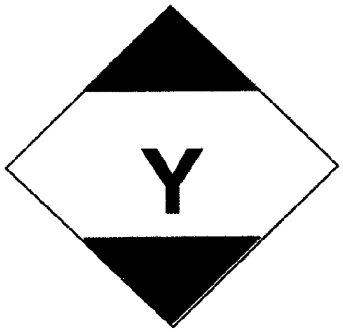


TABLE OF POTENTIAL LIMITED QUANTITY PACKAGING SCENARIOS

Packaging scenario	Authorized? If authorized, when?	Mandatory? If mandatory, when?	Label(s) required?	Shipping papers required?	PSN and ID number marking required?	Notes
ORM–D Packaging						
Packaging marked ORM–D transported by modes other than air.	Yes, until December 31, 2013.	No	No	No. Unless a hazardous waste, hazardous substance or marine pollutant.	No	A shipper may voluntarily mark instead with the new limited quantity markings illustrated above. See also "Limited Quantity Packaging" below.
Packaging marked ORM–D transported by air.	No.					
Packaging marked ORM–D–AIR transported by modes other than air.	Yes, until, December 31, 2012.	No	No	No. Unless a hazardous waste, hazardous substance or marine pollutant.	No	A shipper may voluntarily mark instead with the new limited quantity markings illustrated above. See Limited Quantity Packaging below. A shipper marking a package with ORM–D–Air must ensure the packaging meets the requirements of § 173.27 effective October 1, 2010 even if the package is not transported by air.
Packaging marked ORM–D–AIR transported by air.	Yes, until, December 31, 2012.	No	No	Yes	Yes.	
Packaging marked ORM–D/ORM–D–AIR also marked with one of the new limited quantity markings.	For ORM–D: Yes For ORM–D–AIR: No.					The limited quantity "Y" mark indicates the package conforms to § 173.27(f) effective January 1, 2012. Although it may not be specifically prohibited, we recommend that packages not display both types of surface limited quantity markings to avoid confusion and frustration of shipment during the course of transportation.

TABLE OF POTENTIAL LIMITED QUANTITY PACKAGING SCENARIOS—Continued

Packaging scenario	Authorized? If authorized, when?	Mandatory? If mandatory, when?	Label(s) required?	Shipping papers required?	PSN and ID number marking required?	Notes
Limited Quantity Packaging						
Packaging marked with a square-on-point containing the ID # transported by modes other than air.	Yes, until, December 31, 2013.	No	No	No	See note	Proper shipping name not required to be marked when packaging is marked with a square-on-point containing the UN ID #.
Packaging marked with a square-on-point containing the UN ID # transported by air.	Yes, until, December 31, 2012.	No	Yes	Yes	Yes	Proper shipping name is required to be marked when packaging is marked with a square-on-point containing the UN ID #.
Packaging marked with a surface LQ marking transported by modes other than air.	Yes	Yes, beginning January 1, 2014.	No	No. Unless a hazardous waste, hazardous substance or marine pollutant.	No. Unless a hazardous waste or hazardous substance.	Voluntary compliance authorized as of January 1, 2011. Identification number not required.
Packaging marked with a standard LQ marking transported by air.	No.					
Packaging marked with an LQ "Y" marking transported by modes other than air.	Yes	No	No	No. Unless a hazardous waste, hazardous substance or marine pollutant.	No. Unless a hazardous waste or a hazardous substance.	A shipper marking a package with an LQ "Y" marking must ensure the packaging meets the requirements of § 173.27(f) effective January 1, 2011 even if the package is not transported by air. Identification number not required.
Packaging marked with an LQ "Y" marking transported by air.	Yes	Yes, beginning January 1, 2013.	Yes	Yes	Yes	Voluntary compliance authorized as of January 1, 2011.
Packaging marked with a square-on-point containing the UN ID # and also marked with one of the new limited quantity markings or any combination.	No.					

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule responds to administrative appeals submitted in response to final rule HM–215K (January 19, 2011; 76 FR 3308), provides editorial clarification and corrects minor errors associated with the final rule.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure

that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is a non-significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Additionally, E.O. 13563 supplements and reaffirms E.O. 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the January 19, 2011 final rule. The Regulatory Evaluation is available for review in the public docket for this rulemaking.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''), and the President's memorandum on ''Preemption'' published in the **Federal Register** on May 22, 2009 (74 FR 24693). This final rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements for certain subjects. The subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses all the covered subject items above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to incorporate revisions to the HMR based on administrative appeals submitted in response to the January 19, 2011 final rule, effective January 1, 2011. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is March 29, 2012.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The response to appeals and revisions contained in this final rule will have little or no negative effect on the regulated industry. Based on the assessment in the Regulatory Evaluation to the January 19, 2011 final rule, I hereby certify that, while this rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Flexibility analysis is available for review in the docket.

F. Paperwork Reduction Act

This final rule imposes no new information collection requirements.

G. Regulatory Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. In the January 19, 2011 final rule, we developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude that there are no significant environmental impacts associated with this final rule. Consistency in the regulations for the transportation of hazardous materials aids in shippers' understanding of what is required and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. For interested parties, an environmental assessment was included with the January 19, 2011 final rule available in the public docket. Additionally, we conclude that there are no significant environmental impacts associated with the amendments adopted in this document regarding the administrative appeals submitted in response to the January 19 final rule.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments

received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.dot.gov/privacy.html.*

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not exclude imports that meet this objective. Accordingly, this rulemaking is consistent with PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

■ 2. In § 172.101, The Hazardous Materials Table is amended by removing those entries under [REMOVE] and adding entries under [ADD] to read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations (see §§ 173.27 and 175.75) Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE].												
	*		*		*	*	*		*	*			
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 16 percent water.*	5.1	UN2880	II	5.1	165, IB8, IP2, IP4, IP13, W9.	152	212	240	5 kg	25 kg	D	4, 25, 48, 52, 56, 58, 69, 142.
	*		*	*		*	*	*		*			
G	Tellurium compound, solid, n.o.s.	6.1	UN3284	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B	
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	
	*		*	*		*	*	*		*			
	[ADD]												
	*		*	*		*	*	*		*			
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 16 percent water.*	5.1	UN2880	II	5.1	165, IB8, IP2, IP4, IP13, W9.	152	212	240	5 kg	25 kg	D	4, 25, 48, 52, 56, 58, 69, 142.
				III	5.1	165, 171, IB8, IP4, IP13, W9.	152	213	240	25 kg	100 kg	D	4, 25, 48, 52, 56, 58, 69, 142.
	*		*	*		*	*	*		*			
G	Tellurium compound, n.o.s.	6.1	UN3284	I	6.1	IB7, IP1, T6, TP33.	None	211	242	5 kg	50 kg	B	
				II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	
				III	6.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	
	*		*	*		*	*	*		*			

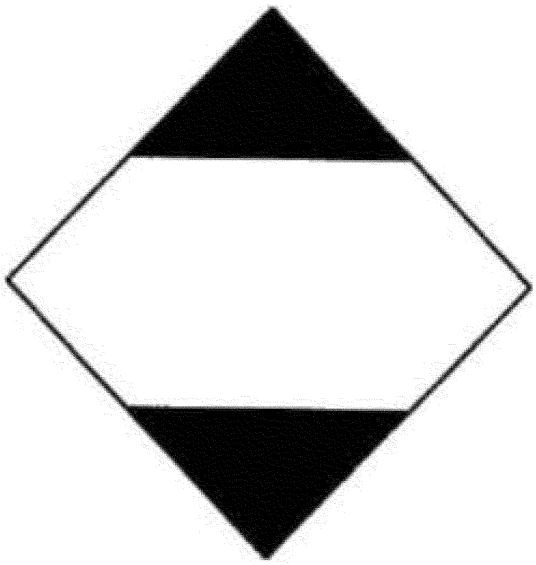
* * * * *

■ 3. Section 172.315 is revised to read as follows:

§ 172.315 Limited quantities.

(a) *Modes other than air transport.* Except for an article or substance of Class 7 prepared in accordance with subpart I of part 173, a package prepared in accordance with applicable limited quantity requirements in part 173 of this subchapter and offered for transportation by a mode other than air must display the limited quantity marking shown in paragraph (a)(1) of this section. A package displaying this mark is not subject to the marking requirements of § 172.301 of this subpart unless the limited quantity package also contains a hazardous substance or a hazardous waste. Required markings need not be duplicated if already marked as prescribed elsewhere in this subpart. As an alternative, a packaging may display the limited quantity ''Y'' mark shown in paragraph (b) of this section if the package conforms to authorized substance and article provisions and the inner and outer package quantity limits in § 173.27(f) of this subchapter.

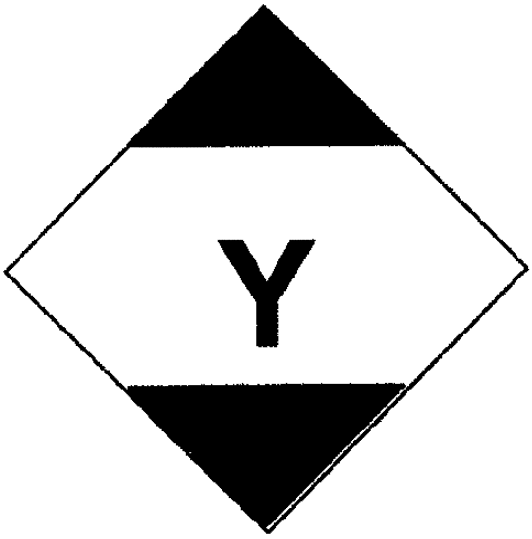
(1) *Marking description.* The top and bottom portions of the square-on-point and the border forming the square-on-point must be black and the center white or of a suitable contrasting background as follows:



(2) The square-on-point must be durable, legible and of a size relative to the packaging, readily visible, and must be applied on at least one side or one end of the outer packaging. The width of the border forming the square-on-point must be at least 2 mm and the minimum dimension of each side must be 100 mm unless the packaging size requires a reduced size marking that must be no less than 50 mm on each side. When intended for transportation by vessel, a cargo transport unit (see § 176.2 of this subchapter) containing packages of hazardous materials in only limited quantities must be marked once on each side and once on each end of the exterior of the unit with an identical mark which must have minimum dimensions of 250 mm on each side.

(b) *Air transport.* Except for an article or substance of Class 7 prepared in accordance with subpart I of part 173, a package prepared in accordance with air-specific limited quantity requirements prescribed in § 173.27 of this subchapter and intended for transportation by air must display the limited quantity mark prescribed in paragraph (b)(1) of this section in addition to other markings required by this subpart (*e.g.,* ''RQ'', proper shipping name, identification number, as appropriate). Required markings need not be duplicated if already marked as prescribed elsewhere in this subpart.

(1) *Marking Description.* The top and bottom portions of the square-on-point and the border forming the square-on-point must be black and the center white or of a suitable contrasting background and the symbol ''Y'' must be black and located in the center of the square-on-point and be clearly visible as follows:



(2) The square-on-point must be durable, legible and of a size relative to the package as to be readily visible. The square-on-point must be applied on at least one side or one end of the outer packaging. The width of the border forming the square-on-point must be at least 2 mm and the minimum dimension of each side must be 100 mm unless the package size requires a reduced size marking that must be no less than 50 mm on each side.

(c) Limited quantity markings prescribed in paragraphs (a) and (b) of this section may use the packaging itself as the contrasting background for the center portion of the marking if the color sufficiently contrasts so that the black border, top and bottom portions of the square-on-point, and the ''Y'' symbol, if applicable, are clearly recognizable.

(d) *Transitional exceptions*—(1) *Square-on-point with Identification Number.* Except for transportation by aircraft and until December 31, 2013, a package containing a limited quantity may continue to be marked in accordance with the requirements of this section in effect on October 1, 2010 (*i.e.,* square-on-point with Identification Number) as an alternative to the marking required by paragraph (a) of this section. For transportation by aircraft and until December 31, 2012, a package containing a limited quantity may continue to be marked in accordance with the requirements of this section in effect on October 1, 2010 (*i.e.,* square-on-point with Identification Number) as an alternative to the marking required by paragraph (b) of this section.

(2) *ORM–D marked packaging.* Except for transportation by aircraft and until December 31, 2013, a packaging marked in accordance with § 172.316 of this subpart is not required to be marked with the limited quantity marking required by paragraph (a) of this section. For transportation by aircraft and until December 31, 2012, a packaging marked in accordance with § 172.316 may not be marked with the limited quantity ''Y'' marking required by paragraph (b) of this section unless it also conforms to § 173.27(f).

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 4. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 5. In § 173.27, paragraph (f)(2)(i) is revised and, in paragraph (f)(3), table 3 is revised to read as follows:

§ 173.27 General requirements for transportation by aircraft.

* * * * *

(f) * * *

(2) *Limited quantities.* (i) Unless otherwise specified in this part, or in subpart C of part 171 of this subchapter, when a limited quantity of hazardous material packaged in a combination packaging is intended for transportation aboard an aircraft, the inner and outer packagings must conform to the quantity limitations set forth in Table 3 of this paragraph. Substances and articles must be authorized for transportation aboard a passenger-carrying aircraft (see Column (9A) of the § 172.101 Hazardous Materials Table of this subchapter). As such, not all unauthorized substances or articles may be indicated in this section. Unless otherwise excepted, packages must be marked and labeled in accordance with this section and any additional requirements in subparts D and E, respectively, of part 172 of this subchapter. Materials or articles *not* authorized as limited quantity by aircraft are:

(A) Those in Packing Group I;

(B) Class 1 (explosive) material (see § 173.63(b) of this part for exceptions provided to certain articles of Division 1.4S) and Class 7 (radioactive) material (see §§ 173.421 through 173.425 of this part, as applicable, for exceptions provided to certain substances, instruments or articles of Class 7);

(C) Divisions 2.1 (flammable gas) (*except* Aerosols (UN1950) and Receptacles, small (UN2037) without subsidiary risk) and Division 2.3 (toxic gas);

(D) Divisions 4.1 (self-reactive), 4.2 (spontaneously combustible) (primary or subsidiary risk), and 4.3 (dangerous when wet) (liquids);

(E) Division 5.2 (organic peroxide) (*except* when contained in a Chemical or First aid kit (UN3316) or Polyester resin kit (UN3269) (Types D, E and F non-temperature controlled only));

(F) Class 8 (corrosive) materials UN2794, UN2795, UN2803, UN2809, 3028; and

(G) All Class 9 (miscellaneous) materials *except for* UN1941, UN1990, UN2071, UN3077, UN3082, UN3316, UN3334, UN3335, and ID8000.

* * * * *

(3) * * *

TABLE 3—MAXIMUM NET QUANTITY OF EACH INNER AND OUTER PACKAGING FOR MATERIALS AUTHORIZED FOR TRANSPORTATION AS LIMITED QUANTITY BY AIRCRAFT

Hazard class or division	Maximum authorized net quantity *of each inner packaging*		Maximum authorized net quantity *of each outer package*	Notes
	Glass, earthenware or fiber inner packagings	Metal or plastic inner packagings		
Class 1	Forbidden (See note)			See § 173.63(b) of this part for exceptions provided to certain articles of Division 1.4S.
Class 2			30 kg Gross	*Authorized materials:* Aerosols (UN1950) in Divisions 2.1 and 2.2, and Receptacles, small (UN2037) in Divisions 2.1 and 2.2 without subsidiary risk and Fuel cells cartridges (UN3478, UN3479), see § 173.230 of this part.
Class 3	PG I: Forbidden.			
	PG II: 0.5L	PG II: 0.5L	PG II: 1L*	* Maximum net quantity per outer package with corrosive subsidiary risk (e.g., UN2924, UN3286) is 0.5L. For Class 3 base materials as part of a Polyester resin kit (UN3269), see § 173.165 of this part for additional requirements, as applicable. Inner packaging limit for UN3269 base material is 1.0 L. For Fuel cell cartridges *containing flammable liquids* (UN3473), see § 173.230 of this part.
	PG III: 2.5L* * Corrosive subsidiary risk (e.g., UN2924) or toxic (e.g., UN1992) is 1L.	PG III: 5.0L* * Corrosive subsidiary risk (e.g., UN2924) or toxic (e.g., UN1992) is 1L.	PG III: 10L*	* Maximum net quantity per outer package with corrosive subsidiary risk (e.g., UN2924) is 1L and toxic subsidiary risk (e.g., UN1992) is 2L. For Class 3 base materials as part of a Polyester resin kit (UN3269), see § 173.165 of this part for additional requirements, as applicable. Inner packaging limit for UN3269 base material is 1.0 L.
Division 4.1 (does not include self-reactive material).	PG I: Forbidden.			
	PG II: 0.5 kg	PG II: 0.5 kg	PG II: 5 kg*	* Maximum net quantity per outer package with toxic subsidiary risk (e.g., UN3179) is 1 kg.
	PG III: 1 kg	PG III: 1 kg	PG III: 10 kg*	* Maximum net quantity per outer package with corrosive subsidiary risk (e.g., UN3180) is 5 kg.
Division 4.2 (Primary or subsidiary).	Forbidden *		25 kg (net mass) *	* Until December 31, 2012, Charcoal (NA1361), PG III, may be transported as a limited quantity and may be renamed Consumer commodity and reclassed ORM-D-AIR, if eligible.
Division 4.3 (solid material only).	PG I solids and all liquids regardless of Packing Group: Forbidden.			
	PG II: 0.5 kg	PG II: 0.5 kg	PG II: 5 kg*	* Maximum net quantity per outer package with toxic subsidiary risk (e.g., UN3134) is 1 kg. For fuel cell cartridges *containing water reactive substances* (UN3476), see § 173.230 of this part.
	PG III: 1 kg	PG III: 1 kg	PG III: 10 kg*	* Maximum net quantity per outer package with corrosive or flammable subsidiary risk (e.g., UN3131 or UN3132, respectively) is 5 kg.
Division 5.1 (Liquid or solid material).	PG I: Forbidden.			
Division 5.1 (liquid material).	PG II: 0.1L	PG II: 0.1L	PG II: 0.5L.	
	PG III: 0.5L	PG III: 0.5L	PG III: 1.0L.	
Division 5.1 (solid material).	PG II: 0.5 kg	PG II: 0.5 kg	PG II: 2.5 kg*	* Maximum net quantity per outer package with toxic subsidiary risk (e.g., UN3087) is 1 kg.
	PG III: 1.0 kg	PG III: 1.0 kg	PG III: 10 kg*	* Maximum net quantity per outer package with corrosive subsidiary risk (e.g., UN3085) is 1 kg.

TABLE 3—MAXIMUM NET QUANTITY OF EACH INNER AND OUTER PACKAGING FOR MATERIALS AUTHORIZED FOR TRANSPORTATION AS LIMITED QUANTITY BY AIRCRAFT—Continued

Hazard class or division	Maximum authorized net quantity *of each inner packaging*		Maximum authorized net quantity *of each outer package*	Notes
	Glass, earthenware or fiber inner packagings	Metal or plastic inner packagings		
Division 5.2 (liquid material).	30 mL	30 mL	1 kg	*Authorized materials:* Types D, E and F are authorized only as part of a Chemical or First aid kit (UN3316) packaged in accordance with § 173.161 of this part or a Polyester resin kit (UN3269) packaged in accordance with § 173.165 of this part. See §§ 173.161 and 173.165, as applicable, for additional requirements.
Division 5.2 (solid material).	100g	100g	1 kg	Solid activators of Types D, E and F are limited to 100 g per inner packaging for UN3316 and UN3269. See §§ 173.161 and 173.165, as applicable, for additional requirements.
Division 6.1	PG I (Inhalation or otherwise): Forbidden.			
Division 6.1 (liquid material).	PG II: 0.1L	PG II: 0.1L	PG II: 1.0L*	* Maximum net quantity per outer package with corrosive subsidiary risk (e.g., UN3289) is 0.5L.
	PG III: 0.5L	PG III: 0.5L	PG III: 2.0L.	
Division 6.1 (solid material).	PG II: 0.5 kg	PG II: 0.5 kg	PG II: 1.0 kg.	
	PG III: 1.0 kg	PG III: 1.0 kg	PG III: 10 kg.	
Class 7	Forbidden (See note)			See §§ 173.421 through 173.425 of this part, as applicable, for exceptions provided to certain substances, instruments or articles of Class 7.
Class 8	PG I: Forbidden.			
Class 8 (liquid material).	PG II: 0.1L	PG II: 0.1L	PG II: 0.5L	For "Fuel cell cartridges *containing corrosive substances"* (UN3477), see § 173.230 of this part.
	PG III: 0.5L	PG III: 0.5L	PG III: 1.0L.	
Class 8 (solid material).	PG II: 0.5 kg	PG II: 0.5 kg	PG II: 5.0 kg*	* Maximum net quantity per outer package for UN2430 is 1.0 kg. UN2794, UN2795, UN2803, UN2809, UN3028 are not authorized as limited quantity.
	PG III: 1.0 kg	PG III: 1.0 kg	PG III: 5.0 kg.	
Class 9 (liquid material).	30 mL (UN3316); 5.0L (UN1941, UN1990, UN3082).	30 mL (UN3316); 5.0L (UN1941, UN1990, UN3082).	1 kg (UN3316); 30 kg gross (all other authorized Class 9 material).	*Authorized materials:* UN1941, UN1990, UN2071, UN3077, UN3082, UN3334, and UN3335. Additionally, Consumer commodity (ID8000) in accordance with § 173.167 of this part and Chemical kit or First aid kit (UN3316) in accordance with § 173.161 of this part are authorized.
Class 9 (solid material).	100 g (UN3316); 5.0 kg (UN2071, UN3077).	100 g (UN3316); 5.0 kg (UN2071, UN3077).	1 kg (UN3316); 30 kg gross (all other authorized Class 9 material).	

* * * * *

■ 6. In § 173.124, the paragraph (b)(2) heading is revised to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

* * * * *

(b) * * *

(2) *Self-heating material.* * * *

* * * * *

■ 7. In § 173.151, in paragraph (d), the third sentence is revised to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(d) * * * A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel. * * *

* * * * *

■ 8. In § 173.156, paragraph (b)(1) introductory text is revised to read as follows:

§ 173.156 Exceptions for limited quantity and ORM.

* * * * *

(b) * * *

(1) Strong outer packagings as specified in this part, marking requirements specified in subpart D of part 172 of this subchapter, and the 30 kg (66 pounds) gross weight limitation are not required for packages of limited quantity materials or, until December

31, 2013, materials classed as ORM–D when—

* * * * *

■ 9. In § 173.306:

■ a. In paragraph (a) introductory text, the second sentence is revised.

■ b. In paragraph (a)(1), the second sentence is revised.

■ c. In paragraph (a)(3) introductory text, the second sentence is revised.

■ d. In paragraph (a)(5) introductory text, the second sentence is revised.

■ e. In paragraph (b) introductory text, the third sentence is revised.

■ f. In paragraph (b) introductory text, the fifth sentence is revised.

■ g. Paragraph (h)(2)(i) is revised.

The revisions read as follows:

§ 173.306 Limited quantities of compressed gases.

(a) * * * For transportation by aircraft, the package must conform to the applicable requirements of § 173.27 of this subchapter and only packages of hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. * * *

(1) * * * Additional exceptions for certain compressed gases in limited quantities and the ORM–D hazard class are provided in paragraph (i) of this section.

* * * * *

(3) * * * Additional exceptions for certain compressed gases in limited quantities and the ORM–D hazard class are provided in paragraph (i) of this section.

* * * * *

(5) * * * Additional exceptions for certain compressed gases in limited quantities and the ORM–D hazard class are provided in paragraph (i) of this section.

* * * * *

(b) * * * For transportation by aircraft, the package must conform to the applicable requirements of § 173.27 of this subchapter and only packages of hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. * * * Additional exceptions for certain compressed gases in limited quantities and the ORM–D hazard class are provided in paragraph (i) of this section.

* * * * *

(h) * * *

(2) *Exceptions.* (i) For other than transportation by aircraft, exceptions for certain compressed gases in limited quantities and the ORM–D hazard class are provided in paragraph (i) of this section.

* * * * *

■ 10. In § 173.311, the second sentence is revised to read as follows:

§ 173.311 Metal hydride storage systems.

* * * Metal hydride storage systems must be designed, constructed, initially inspected and tested in accordance with ISO 16111 (IBR, see § 171.7 of this subchapter) as authorized under § 178.71(m) of this subchapter. * * *

PART 175—CARRIAGE BY AIRCRAFT

■ 11. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.45 and 1.53.

■ 12. In § 175.10, paragraph (a)(19) is revised to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(19) Fuel cells used to power portable electronic devices (*e.g.,* cameras, cellular phones, laptop computers and camcorders) and spare fuel cell cartridges when transported personal use under the following conditions:

(i) Fuel cells and fuel cell cartridges may contain only Division 2.1 liquefied flammable gas, or hydrogen in a metal hydride, Class 3 flammable liquid (including methanol), Division 4.3 water-reactive material, or Class 8 corrosive material;

(ii) The quantity of fuel in any fuel cell or fuel cell cartridge may not exceed:

(A) 200 mL (6.76 ounces) for liquids;

(B) 120 mL (4 fluid ounces) for liquefied gases in non-metallic fuel cell cartridges, or 200 mL (6.76 ounces) for liquefied gases in metal fuel cell cartridges;

(C) 200 g (7 ounces) for solids; or

(D) For hydrogen in metal hydride, the fuel cell cartridges must have a water capacity of 120 mL (4 fluid ounces) or less;

(iii) No more than two spare fuel cell cartridges may be carried by a passenger or crew member as follows:

(A) Fuel cell cartridges containing Class 3 flammable liquid (including methanol) and Class 8 corrosive material in carry-on or checked baggage; and

(B) Division 2.1 liquefied flammable gas or hydrogen in a metal hydride and Division 4.3 water-reactive material in carry-on baggage only;

(iv) Fuel cells containing fuel are permitted in carry-on baggage only;

(v) Fuel cell cartridges containing hydrogen in a metal hydride must meet the requirements in § 173.230(d) of this subchapter;

(vi) Refueling of a fuel cell aboard an aircraft is not permitted except that the installation of a spare cartridge is allowed;

(vii) Each fuel cell and fuel cell cartridge must conform to IEC/PAS 62282–6–1 (IBR; see § 171.7 of this subchapter) and must be marked with a manufacturer's certification that it conforms to the specification. In addition, each fuel cell cartridge must be marked with the maximum quantity and type of fuel in the cartridge;

(viii) Interaction between fuel cells and integrated batteries in a device must conform to IEC/PAS 62282–6–1 (IBR, see § 171.7 of this subchapter). Fuel cells whose sole function is to charge a battery in the device are not permitted; and

(ix) Fuel cells must be of a type that will not charge batteries when the consumer electronic device is not in use and must be durably marked by the manufacturer with the wording: ''APPROVED FOR CARRIAGE IN AIRCRAFT CABIN ONLY'' to indicate that the fuel cell meets this requirement.

* * * * *

■ 13. Section 175.75 is revised to read as follows:

§ 175.75 Quantity limitations and cargo location.

(a) No person may carry on an aircraft a hazardous material except as permitted by this subchapter.

(b) Except as otherwise provided in this subchapter, no person may carry a hazardous material in the cabin of a passenger-carrying aircraft or on the flight deck of any aircraft, and the hazardous material must be located in a place that is inaccessible to persons other than crew members. Hazardous materials may be carried in a main deck cargo compartment of a passenger aircraft provided that the compartment is inaccessible to passengers and that it meets all certification requirements for a Class B aircraft cargo compartment in 14 CFR 25.857(b) or for a Class C aircraft cargo compartment in 14 CFR 25.857(c). A package bearing a ''KEEP AWAY FROM HEAT'' handling marking must be protected from direct sunshine and stored in a cool and ventilated place, away from sources of heat.

(c) For each package containing a hazardous material acceptable for carriage aboard passenger-carrying aircraft, no more than 25 kg (55 pounds) net weight of hazardous material may be loaded in an inaccessible manner. In addition to the 25 kg limitation, an additional 75 kg (165 pounds) net weight of Division 2.2 (non-flammable compressed gas) may be loaded in an inaccessible manner. The requirements of this paragraph do not apply to Class 9, ORM–D–AIR and Limited or Excepted Quantity material.

(d) For the purposes of this section—

(1) *Accessible* means, on passenger-carrying or cargo-only aircraft that each package is loaded where a crew member or other authorized person can access, handle, and, when size and weight permit, separate such packages from other cargo during flight, including a freight container in an accessible cargo compartment when packages are loaded in an accessible manner. Additionally, a package is considered accessible when transported on a cargo-only aircraft if it is:

(i) In a cargo compartment certified by FAA as a Class C aircraft cargo compartment as defined in 14 CFR 25.857(c); or

(ii) In an FAA-certified freight container that has an approved fire or smoke detection system and fire suppression system equivalent to that required by the certification requirements for a Class C aircraft cargo compartment.

(2) *Inaccessible* means all other configurations to include packages loaded where a crew member or other authorized person cannot access, handle, and, when size and weight permit, separate such packages from other cargo during flight, including a freight container in an accessible cargo compartment when packages are loaded in an inaccessible manner.

(e) For transport aboard cargo-only aircraft, the requirements of paragraphs (c) and (d) of this section do not apply to the following hazardous materials:

(1) Class 3, PG III (unless the substance is also labeled CORROSIVE), Class 6 (unless the substance is also labeled FLAMMABLE LIQUID (PG II and III only)), Division 6.2, Class 7 (unless the hazardous material meets the definition of another hazard class), Class 9, and those marked as ORM–D–AIR, Limited Quantity or Excepted Quantity material.

(2) Packages of hazardous materials transported aboard a cargo aircraft, when other means of transportation are impracticable or not available, in accordance with procedures approved in writing by the FAA Regional or Field Security Office in the region where the operator is located.

(3) Packages of hazardous materials carried on small, single pilot, cargo aircraft if:

(i) No person is carried on the aircraft other than the pilot, an FAA inspector, the shipper or consignee of the material, a representative of the shipper or consignee so designated in writing, or a person necessary for handling the material;

(ii) The pilot is provided with written instructions on the characteristics and proper handling of the materials; and

(iii) Whenever a change of pilots occurs while the material is on board, the new pilot is briefed under a hand-to-hand signature service provided by the operator of the aircraft.

(f) At a minimum, quantity limits and loading instructions in the following quantity and loading table must be followed to maintain acceptable quantity and loading between packages containing hazardous materials. The quantity and loading table is as follows:

QUANTITY AND LOADING TABLE

Applicability	Forbidden	Quantity Limitation: 25 kg net weight of hazardous material plus 75 kg net weight of Division 2.2 (non-flammable compressed gas) per cargo compartment	No limit
Passenger-carrying aircraft	Cargo Aircraft Only labeled packages	Inaccessible	Accessible.
Cargo-only aircraft— Packages authorized aboard a passenger-carrying aircraft.	Not applicable	Inaccessible (Note 1)	Accessible (Note 2).
Cargo-only aircraft— Packages not authorized aboard a passenger-carrying aircraft and displaying a Cargo Aircraft Only label.	Inaccessible (Note 1)	Not applicable	Accessible (Note 2).

Note 1: The following materials are not subject to this loading restriction—
a. Class 3, PG III (unless the substance is also labeled CORROSIVE).
b. Class 6 (unless the substance is also labeled FLAMMABLE LIQUID (PG II and III only)).
c. Class 7 (unless the hazardous material meets the definition of another hazard class).
d. Class 9, ORM–D–AIR and Limited Quantity or Excepted Quantity material.
Note 2: Aboard cargo-only aircraft, packages required to be loaded in a position that is considered to be accessible include those loaded in a Class C cargo compartment.

PART 176—CARRIAGE BY VESSEL

■ 14. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 15. In § 176.905, paragraph (j) is revised to read as follows:

§ 176.905 Stowage of motor vehicles or mechanical equipment.

* * * * *

(j) Except as provided in § 173.220(f) of this subchapter, the provisions of this subchapter do not apply to items of equipment such as fire extinguishers, compressed gas accumulators, airbag inflators and the like which are installed in the vehicle or mechanical equipment if they are necessary for the operation of the vehicle or equipment, or for the safety of its operator or passengers.

Issued in Washington, DC, on December 20, 2011, under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2011–33358 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

Drivers of CMVs: Restricting the Use of Cellular Phones

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; correction.

SUMMARY: FMCSA is correcting a Final Rule that appeared in the **Federal Register** on December 2, 2011 (76 FR 75470), which restricted the use of

hand-held mobile telephones by drivers of commercial motor vehicles. That rule was jointly issued by FMCSA and Pipeline and Hazardous Materials Safety Administration (PHMSA), but this correction only affects an FMCSA regulation.

DATES: Effective January 3, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Routhier, Transportation Specialist, Federal Motor Carrier Safety Administration, Vehicle and Roadside Operation Division, at (202) 366–4325 or *FMCSA_MCPSV@dot.gov.*

SUPPLEMENTARY INFORMATION: For FMCSA and PHMSA's Final Rule published on December 2, 2011 (76 FR 75470), the following correction is made:

§ 390.3 [Corrected]

■ On page 75487, in § 390.3, paragraph (f)(1), correct ''(g)(2)'' to ''(f)(2)''.

Issued on: December 21, 2011.

Larry Minor,

Associate Administrator for Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2011–33198 Filed 12–29–11; 8:45 a.m.]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 111207732–1745–01]

RIN 0648–BB73

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions for Bigeye Tuna and Yellowfin Tuna in Purse Seine Fisheries for 2012

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

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule extends the dates of applicability of existing regulations applicable to U.S. purse seine vessels operating in the western and central Pacific Ocean (WCPO) through December 31, 2012. NMFS issues this rule under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement a decision of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The WCPFC decision, made December 20, 2011, extends the effectiveness of the WCPFC's ''Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean'' (CMM 2008–01), originally scheduled to expire on December 31, 2011. CMM 2008–01 is the basis for the existing regulations whose dates of applicability are being extended by this interim rule. Under this rulemaking, these regulations now apply through December 31, 2012, and include limits on fishing effort, restrictions on the use of fish aggregating devices (FADs), closed areas, catch retention requirements, and requirements to carry observers. This action is necessary for the United States to satisfy its international obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: Effective on December 30, 2011, comments must be submitted in writing by February 28, 2012.

ADDRESSES: Comments on this interim rule, identified by NOAA–NMFS–2011–0296, and the regulatory impact review (RIR) prepared for this interim rule may be sent to either of the following addresses:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking portal, at *http://www.regulations.gov*; or
- *Mail:* Mail written comments to Michael D. Tosatto, Regional Administrator,

NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of the two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and generally will be posted on *http://www.regulations.gov* without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may 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 relevant 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.

Copies of the RIR prepared for this interim rule are available from *http://www.regulations.gov* or may be obtained from Michael D. Tosatto, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, (808) 944–2219.

SUPPLEMENTARY INFORMATION:

Electronic Access

This interim rule is also accessible at *http://www.gpoaccess.gov/fr.*

Background on the Convention and the WCPFC

The Convention Area comprises the majority of the western and central Pacific Ocean (WCPO). A map showing the boundaries of the Convention Area can be found on the WCPFC Web site at: *http://www.wcpfc.int/doc/convention-area-map.* The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The Secretary of Commerce has delegated the authority to promulgate regulations to NMFS.

Existing Regulations To Implement WCPFC Decision for Bigeye Tuna and Yellowfin Tuna in Purse Seine Fisheries

At its Fifth Regular Session, in December 2008, the WCPFC adopted CMM 2008–01. The CMM, available with other decisions of the WCPFC at *http://www.wcpfc.int/decisions.htm,* places certain obligations on the WCPFC Members, Participating Territories, and Cooperating Non-members (collectively, CCMs). The CMM was based in part on the findings by the WCPFC that the stock of bigeye tuna (*Thunnus obesus*) in the WCPO was experiencing a fishing

mortality rate greater than the rate associated with maximum sustainable yield and that the stock of yellowfin tuna (*Thunnus albacares*) in the WCPO was experiencing a fishing mortality rate close to the rate associated with maximum sustainable yield. The Convention calls for the WCPFC to adopt measures designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors. Accordingly, the objectives of CMM 2008–01 include achieving, over the 2009–2011 period, a reduction in fishing mortality on bigeye tuna in the WCPO of at least 30 percent and no increase in fishing mortality on yellowfin tuna in the WCPO, relative to a specified historical baseline.

In 2009, NMFS issued regulations to implement the applicable provisions of CMM 2008–01, with one rule devoted to the purse seine-related provisions of the CMM (final rule published August 4, 2009; 74 FR 38544) and another rule devoted to the longline-related provisions (final rule published December 7, 2009; 74 FR 63999). The regulations for purse seine fishing are codified at 50 CFR 300.223(a)–(e) (paragraph (f), which addresses sea turtle take mitigation, is unaffected by this rulemaking and remains effective) and the regulations for longline fishing are codified at 50 CFR 300.224. In accordance with the effective dates of CMM 2008–01, these regulations apply through December 31, 2011.

The existing regulations for purse seine fishing include: (1) Specific limits on the number of fishing days that may be spent by the U.S. purse seine fleet on the high seas and in areas under U.S. jurisdiction (including the U.S. exclusive economic zone, or EEZ) within the Convention Area for each of: The one-year periods 2009, 2010, and 2011 (3,882 fishing days each); the two-year periods 2009–2010 and 2010–2011 (6,470 fishing days each); and the three-year period 2009–2011 (7,764 fishing days); (2) specific periods in each of the years 2009 (August–September), 2010 (July–September) and 2011 (July–September) during which U.S. fishing vessels are prohibited from setting purse seines around or within one nautical mile of fish aggregating devices (FADs), deploying FADs, or servicing FADs or their associated electronic equipment in the Convention Area; (3) two specific areas of high seas within the Convention Area in which U.S. purse seine vessels are prohibited from fishing, effective from January 1, 2010, through December 31, 2011; (4) a prohibition, which went into effect June 14, 2010, and continues through December 31, 2011, on U.S. purse seine fishing vessels from discarding at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna (*Katsuwonus pelamis*), with certain exceptions; and (5) a requirement, effective August 1 through September 30, 2009, and from January 1, 2010, through December 31, 2011, that U.S. purse seine vessels carry a WCPFC observer on all trips in the Convention Area in the area between 20° N. latitude and 20° S. latitude, with certain exceptions.

WCPFC Decision To Extend Conservation and Management Measure for Bigeye Tuna and Yellowfin Tuna

The WCPFC was scheduled to hold its regular annual session in December 2011, and intended to discuss at that time CMM 2008–01, including whether to adopt the same or changed measures for 2012 and beyond. However, that session was postponed unexpectedly due to a fire at a major power plant and resulting power failures in Palau, where the meeting was scheduled to be held. The annual session is now tentatively scheduled to take place in March 2012. Because of the postponement of its regular annual session and the expiration of CMM 2008–01 at the end of 2011, the WCPFC made an intersessional decision on December 20, 2011, to extend the effectiveness of CMM 2008–01 until the WCPFC is able to hold its regular annual session. The decision specifies that those provisions of the CMM that are tied to specific years will continue to operate as they did in 2011 (*e.g.,* the dates of the FAD prohibition period for 2012 are the same as for 2011).

The Action

This interim rule implements, for purse seine fisheries, the decision of the WCPFC to extend the effectiveness of CMM 2008–01 past December 31, 2011. Specifically, it extends the applicable dates of the five elements of the existing implementing regulations for purse seine fishing, at 50 CFR 300.223(a)–(e), through December 31, 2012.

NMFS would implement the longline-related provisions of the WCPFC's recent decision to extend CMM 2008–01 in a separate rulemaking in early 2012. Implementation of the longline-related provisions of the extended CMM 2008–01 would need to take into account Section 113 of the recently enacted Consolidated and Further Continuing Appropriations Act, 2012 (Act), which could affect the way NMFS assigns catches in U.S. longline fisheries with respect to the catch limits. All other existing regulations for longline fishing remain in place and NMFS remains able to account for all catches.

This interim rule amends the existing regulations for purse seine fishing such that they apply in 2012 as follows:

(1) Fishing Effort Limits

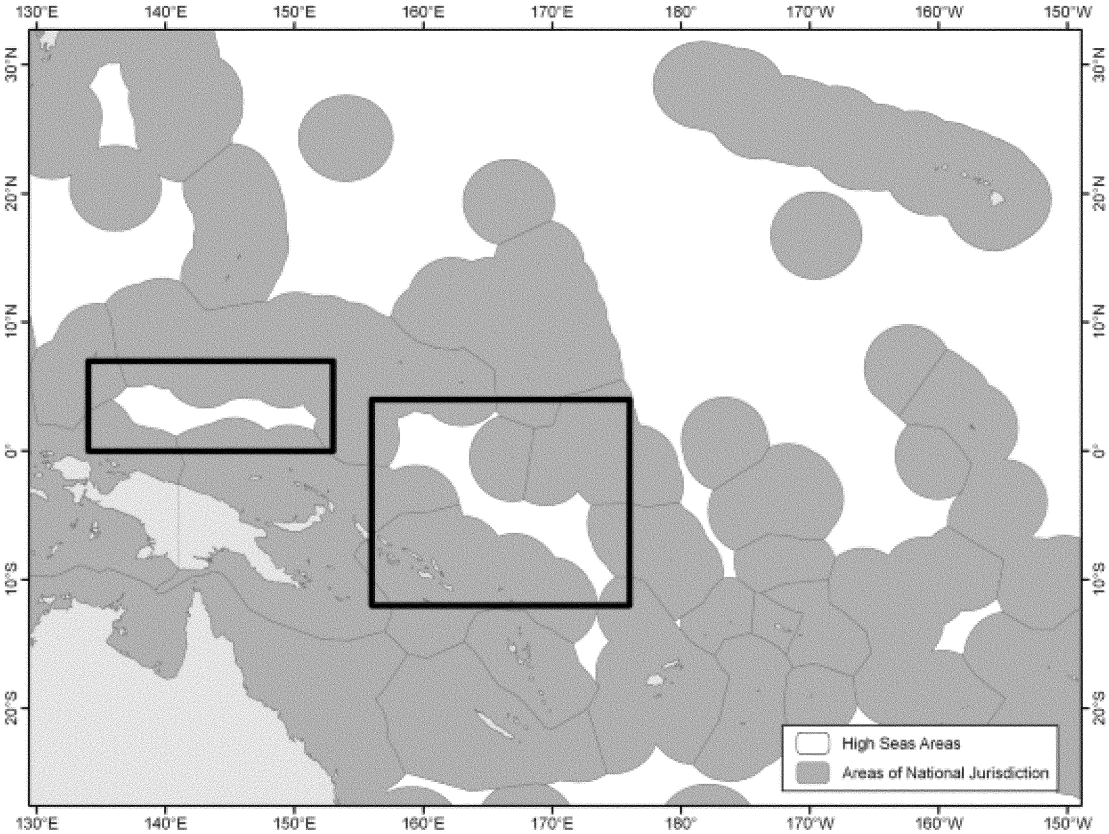
Limits are established on the number of fishing days that may be spent by the U.S. purse seine fleet on the high seas and in areas under U.S. jurisdiction within the Convention Area for each of: 2012 (3,882 fishing days); the two-year period 2011–2012 (6,470 fishing days); and the three-year period 2010–2012 (7,764 fishing days). If one of the limits is reached and the fishery is closed with notice from NMFS, it will be prohibited to use a U.S. purse seine vessel to fish in the Convention Area on the high seas or in areas under U.S. jurisdiction until the end of the applicable period.

(2) FAD Prohibition Period

From July 1 through September 30, 2012, owners, operators, and crew of U.S. fishing vessels will be prohibited from setting a purse seine around a FAD or within one nautical mile of a FAD or deploying or servicing a FAD or its associated electronic equipment in the Convention Area. It will also be prohibited during this period to set a purse seine in a manner intended to capture fish that have aggregated in association with a FAD, such as by setting the purse seine in an area from which a FAD has been moved or removed within the previous eight hours or setting the purse seine in an area into which fish were drawn by a vessel from the vicinity of a FAD.

(3) High Seas Area Closures

Two specific areas of high seas within the Convention Area are closed to purse seine fishing through December 31, 2012. The two areas are depicted on the map in Figure 1. Figure 1. High seas closed areas. Areas of high seas are indicated in white; areas of claimed national jurisdiction, including territorial seas, archipelagic waters, and exclusive economic zones, are indicated in dark shading. Areas closed to purse seine fishing through December 31, 2012, are all high seas areas (in white) within the two rectangles bounded by the bold black lines. The coordinates of the two rectangles are set forth in the regulation. This map displays indicative maritime boundaries only.



(4) Catch Retention

It is prohibited to discard any bigeye tuna, yellowfin tuna, or skipjack tuna from a U.S. purse seine vessel at sea within the Convention Area through December 31, 2012. Exceptions are provided for fish that are unfit for human consumption for reasons other than their size, for the last set of the trip if there is insufficient well space to accommodate the entire catch, and for cases of serious malfunction of equipment that necessitate that fish be discarded.

(5) Observer Coverage

U.S. purse seine vessels must, through December 31, 2012, carry observers deployed as part of the WCPFC Regional Observer Programme (WCPFC ROP) or deployed by NMFS on all trips in the Convention Area. These observer requirements do not apply to fishing trips for which: the portion of the fishing trip within the Convention Area takes place entirely within areas under U.S. jurisdiction or entirely within areas under the jurisdiction of any other single nation; no fishing takes place in the Convention Area in the area between 20° N. latitude and 20° S. latitude; or NMFS has determined that an observer is not available.

These regulations are being issued without prior notice or public comment because of the unexpected postponement of this year's regular annual session of the WCPFC and its consequent intersessional decision to extend the effectiveness of CMM 2008–01. That decision, made December 20, 2011, allowed NMFS extremely limited time for implementation. In order to satisfy the international obligations of the United States as a Contracting Party to the Convention, NMFS must implement three of the five elements—the high seas closed areas, the catch retention requirements, and the observer coverage requirements—by January 1, 2012, or as soon as possible thereafter. NMFS believes it appropriate to include the remaining two elements, extension of the fishing effort limits and the FAD prohibition period, in this interim rule because these elements are directly related to the other three elements, and because their inclusion will provide the public with notice of how these two elements will apply in 2012. However, NMFS notes that any closure resulting from reaching one of the limits on fishing effort will go into effect only if and when one of the limits is reached in 2012, and that the FAD-related restrictions will be in effect from July 1, 2012, through September 30, 2012. NMFS will consider public comments on this interim rule and issue a final rule, as appropriate.

The WCPFC may make a binding decision at its anticipated annual session in early 2012 that would alter the extended provisions of CMM 2008–01 as they apply in 2012. NMFS would undertake another rulemaking, as appropriate, to implement that decision.

Classification

The NMFS Assistant Administrator has determined that this interim rule is consistent with the WCPFC Implementation Act and other applicable laws.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and prior opportunity for public comment on this action. This rule will continue regulations implemented under the authority of CMM 2008–01 and the WCPFC Implementation Act beyond the current expiration of December 31, 2011. Affected entities have been subject to these measures since 2009. The conditions prompting the regulations established in 2009 remain largely unchanged. However, the WCPFC did not decide to extend CMM 2008–01 until December 20, 2011. The decision was prompted by the unexpected postponement of the WCPFC annual session scheduled for December 2011. Thus, NMFS had

limited notice of the need to implement the WCPFC decision to extend CMM 2008–01. In order to satisfy its international obligations under the Convention and ensure there is no gap, or as brief a gap as possible, in the application of important conservation measures for bigeye tuna and yellowfin tuna, NMFS must implement the provisions of the WCPFC's decision to extend the provisions of CMM 2008–01 applicable to purse seine fisheries by January 1, 2012, or as soon as possible thereafter. NMFS would not be able to do so if it provided opportunity for prior notice and prior public comment. Therefore, prior notice and prior opportunity for public comment on this action would be impracticable and contrary to the public interest.

There is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. As described above, NMFS had limited notice of the need to implement the WCPFC intersessional decision to extend CMM 2008–01. These measures are intended to reduce fishing pressure on bigeye tuna and yellowfin tuna in the WCPO in order to maintain or restore stocks at levels capable of producing maximum sustainable yield on a continuing basis. The conditions prompting the existing regulations remain largely unchanged, and failure to immediately extend those regulations consistent with the WCPFC intersessional decision while the WCPFC develops more lasting international conservation measures could result in excessive fishing pressure on these stocks, in violation of international and domestic obligations. Therefore, NMFS must implement the provisions of the WCPFC's decision to extend the provisions of CMM 2008–01 applicable to purse seine fisheries by January 1, 2012, or as soon as possible thereafter. NMFS would not be able to do so if it provided a 30-day delay in effective date. Therefore, compliance with the 30-day delay requirement would be impracticable and contrary to the public interest.

Coastal Zone Management Act (CZMA)

NMFS has determined that this rule will be implemented in a manner consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal zone management programs of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the State of Hawaii. This determination has been submitted for review by the responsible territorial and state agencies under section 307 of the CZMA.

Executive Order 12866

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

National Environmental Policy Act

This interim rule is an extension or a change in the period of effectiveness of a regulation that has been subject to prior analyses supporting a finding of no significant impact determination. As such, NMFS has determined that this action is categorically excluded from the need to prepare an Environmental Assessment or an Environmental Impact Statement, pursuant to NOAA Administrative Order 216–6, Section 6.03d.4(a).

Regulatory Flexibility Act

This interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: December 27, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.223, paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and introductory text to paragraphs (b), (c)(1), (d)(3), and (e)(2) are revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) * * *

(1) * * *

(i) For each of the years 2009, 2010, 2011, and 2012 there is a limit of 3,882 fishing days.

(ii) For each of the two-year periods 2009–2010, 2010–2011, and 2011–2012, there is a limit of 6,470 fishing days.

(iii) For each of the three-year periods 2009–2011 and 2010–2012, there is a limit of 7,764 fishing days.

* * * * *

(b) *Use of fish aggregating devices.* From August 1 through September 30, 2009, and from July 1 through September 30 in each of 2010, 2011, and 2012, owners, operators, and crew of fishing vessels of the United States shall not do any of the following in the Convention Area:

* * * * *

(c) *Closed areas.* (1) Effective January 1, 2010, through December 31, 2012, a fishing vessel of the United States may not be used to fish with purse seine gear on the high seas within either Area A or Area B, the respective boundaries of which are the four lines connecting, in the most direct fashion, the coordinates specified as follows:

* * * * *

(d) * * *

(3) Effective from the date announced pursuant to paragraph (d)(1) of this section through December 31, 2012, a fishing vessel of the United States equipped with purse seine gear may not discard at sea within the Convention Area any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*), except in the following circumstances and with the following conditions:

* * * * *

(e) * * *

(2) Effective January 1, 2010, through December 31, 2012, a fishing vessel of the United States may not be used to fish with purse seine gear in the Convention Area without a WCPFC observer on board. This requirement does not apply to fishing trips that meet any of the following conditions:

* * * * *

[FR Doc. 2011–33593 Filed 12–29–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110831547–1736–02]

RIN 0648–BB26

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Ecosystem-Based Amendment 2 for the South Atlantic Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the Comprehensive Ecosystem-Based Amendment 2 (CE–BA 2) to implement the following South Atlantic fishery management plan (FMP) amendments: Amendment 1 to the FMP for Pelagic *Sargassum* Habitat of the South Atlantic Region (*Sargassum* FMP); Amendment 7 to the FMP for Coral, Coral reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP); and Amendment 25 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council); as well as Amendment 21 to the FMP for Coastal Migratory Pelagic (CMP) Resources (CMP FMP) as prepared and submitted by the South Atlantic and Gulf of Mexico Fishery Management Councils. This rule modifies the fishery management unit (FMU) for octocorals in the South Atlantic exclusive economic zone (EEZ), establishes an annual catch limit (ACL) for octocorals, modifies management in special management zones (SMZs) off South Carolina, and modifies sea turtle and smalltooth sawfish release gear specifications in the South Atlantic region. CE–BA 2 also designates new Essential Fish Habitat (EFH) for *Sargassum,* and EFH-Habitat Areas of Particular Concern (EFH–HAPCs) for the Snapper-Grouper, Coral FMPs. This rule specifies ACLs for species not undergoing overfishing (octocorals), implements management measures to ensure overfishing does not occur for these species but optimum yield may be achieved, and conserves and protects habitat in the South Atlantic region.

DATES: This rule is effective January 30, 2012.

ADDRESSES: Electronic copies of the amendment, which includes an environmental impact statement, a regulatory impact review, and the initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SACoralandCoralReefs.htm.*

FOR FURTHER INFORMATION CONTACT: Karla Gore, Southeast Regional Office, NMFS, telephone: (727) 824–5305, email: *Karla.Gore@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fisheries for CMP species; coral, coral reefs, and live/hard bottom habitats; pelagic *Sargassum;* and snapper-grouper off the southern Atlantic states are managed under their respective FMPs. The FMPs were prepared by the Council(s) and are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On September 26, 2011, NMFS published a notice of availability for CE–BA 2 and requested public comment (76 FR 59371). On November 8, 2011, NMFS published a proposed rule for CE–BA 2 and requested public comment (76 FR 69230). The proposed rule and CE–BA 2 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

This rule modifies the FMU for octocorals under the Coral FMP to include octocorals in the EEZ off North Carolina, South Carolina, and Georgia only. Federal management of octocorals in the EEZ off Florida is no longer included under the Coral FMP. Florida's Fish and Wildlife Conservation Commission (FWC) is currently responsible for the majority of the management, implementation, and enforcement of octocorals, because the majority of octocoral harvest occurs in Florida state waters. The FWC intends to extend management of octocorals into Federal waters off Florida.

This rule specifies an ACL of zero for octocorals in the South Atlantic EEZ. Prior to implementation of this final rule, a 50,000 colony quota for octocorals was in place in the Gulf of Mexico (Gulf) and South Atlantic regions and a prohibition was in effect to harvest octocorals north of Florida. Florida has implemented regulations compatible to the applicable Federal regulations, which allow the state octocoral fishery to close when the Federal quota is met. Because the majority of octocoral harvest occurs in state waters off Florida and the prohibition on the harvest of octocorals north of Florida would continue, the Council voted to remove octocorals off Florida from the FMU and establish an ACL of zero for octocorals off Georgia, South Carolina, and North Carolina.

This final rule limits the harvest and possession of South Atlantic snapper-grouper species and CMP species (with the use of all non-prohibited fishing gear) in the SMZs off South Carolina to the recreational bag limit. This rule prohibits fishermen from harvesting commercial quantities of snapper-grouper and CMP in these SMZs.

This final rule also modifies the sea turtle and smalltooth sawfish release gear requirements. The sea turtle and smalltooth sawfish release gear requirements are revised based on the freeboard height of the vessels to provide flexibility to fisherman based on their vessel characteristics.

CE–BA 2 also amends South Atlantic FMPs as needed to designate new EFH and EFH–HAPCs. CE–BA 2 amends the Snapper-Grouper FMP to designate deepwater marine protected areas (MPAs) as EFH–HAPCs. The Coral FMP is amended to designate deep-water coral HAPCs as EFH–HAPCs. To meet the Magnuson-Stevens Act requirement that all federally managed species have EFH designated, CE–BA 2 amends the *Sargassum* FMP to designate the top 33 ft (10 m) of the water column in the South Atlantic EEZ bounded by the Gulf Stream, as EFH for pelagic *Sargassum.* The addition of this information does not require any changes in regulatory language.

Comments and Responses

NMFS received two comment letters with a total of five separate comments, on CE–BA 2 and the proposed rule. One comment letter was in support of the actions in CE–BA 2. The other comment letter, from an industry group, restated their previous recommendations made to the Council regarding the actions in CE–BA 2. Comments related to the actions contained in the amendment or the proposed rule are summarized and responded to below.

Comment 1: One commenter supports the actions to modify management in the SMZs of South Carolina, establish EFH–HAPCs for the snapper-grouper fishery, and establish EFH for the *Sargassum* fishery.

Response: NMFS concurs and believes that these actions are consistent with the Magnuson-Stevens Act and CE–BA 2.

Comment 2: One commenter supports retaining Florida octocorals in the FMU, the 50,000 colony octocoral quota, and extending octocoral management into the Gulf.

Response: The commenter did not provide any rationale for the recommendations submitted, and the comments were previously submitted to the Council before the current preferred alternatives were selected. The Council recommended revising the FMU for the Coral FMP to include only octocorals off Georgia, North Carolina, and South Carolina because the need for Federal conservation and management off Florida no longer exists. The FWC is responsible for most of the management, implementation, and enforcement of octocorals because the majority of the harvest occurs in Florida state waters, and the Federal quota has never been reached. In a letter dated April 11, 2011, the FWC describes octocoral

management measures it would implement if the Federal FMU is modified to remove the octocorals off Florida. According to the FWC letter, the FWC intends to extend Florida octocoral regulations into the Federal waters off Florida (Gulf and South Atlantic), to establish an annual quota of 70,000 colonies for allowable octocoral harvest in state and Federal waters combined off Florida, and to prohibit the harvest of octocorals in Florida waters north of Cape Canaveral, Florida and in the Coral HAPCs off Florida. The Gulf Fishery Management Council has also recommended removing octocorals in the Gulf off Florida from their FMU within the FMP for Coral and Coral Reefs of the Gulf for consistency of management.

In addition, the Council recommended the establishment of an ACL equal to zero for octocorals off South Carolina, North Carolina, and Georgia in the revised FMU. Functionally, this would not have any impact on active octocoral harvesters as there has been a prohibition on octocoral harvest north of Cape Canaveral, Florida since 1995. Under this scenario, management of octocorals off Florida would continue to be managed by the FWC.

Comment 3: One commenter recommended that the Council select Alternative 5, which modifies the design specifications of the current sea turtle release gear requirements to allow for more appropriate gear with respect to the lighter tackle used by snapper-grouper fishermen.

Response: The Council selected Alternative 4, and associated sub-alternatives 4a and 4b as the Preferred Alternative for the action to have the sea turtle release gear requirements dependent on vessel freeboard height, to accommodate both smaller vessels using lighter tackle to harvest snapper-grouper species (vessels with a freeboard height of 4 ft (1.2 m) or less) and larger vessels using heavier gear (vessels with a freeboard height of 4 ft (1.2 m) or more). This Preferred Alternative is consistent with the requirements of the June 7, 2006, Biological Opinion on the Snapper-Grouper Fishery and responds to the concerns of fishermen that sea turtle handling gear are unwieldy and inappropriate for all vessel sizes. While Alternative 5, and associated sub-alternatives, may also be consistent with the biological opinion, the Council sought to maximize biological benefits by allowing sea turtle release gear that is more appropriate to a particular vessel. Alternative 4, and associated sub-alternatives, is also consistent with sea turtle release gear requirements in the Gulf, and simplifies requirements for fishermen participating in both fisheries.

Comment 4: One commenter supports the alternative that would not designate new EFH–HAPCs in the Coral FMP and would allow the existing designations to remain in effect.

Response: The commenter provided no rationale for its recommendation. The establishment of EFH and EFH–HAPCs requires that further consideration be given to fishing and non-fishing activities that occur in these areas. However, in itself, the establishment of EFH and EFH–HAPCs does not modify Federal fishery regulations in any way. The Council and NMFS also expect that the establishment of the EFH and EFH–HAPCs will benefit ocean and coastal habitats in the future through the EFH consultation process. Through that process, the Council will be in a better position to evaluate whether further protections are necessary.

Comment 5: One commenter does not support the establishment of EFH–HAPCs for *Sargassum.*

Response: In March 2011, the Council decided to remove this action from consideration within CE–BA 2 because the areas proposed for this designation (the Charleston Bump Complex, and The Point, NC) were already designated as EFH–HAPCs for snapper-grouper and dolphin and wahoo, and conservation of these specific EFH–HAPCs would be addressed through actions associated with EFH consultations pertaining to existing EFH–HAPC designations. Therefore, EFH for *Sargassum* is designated as the top 33 ft (10 m) of the water column in the South Atlantic EEZ bounded by the Gulfstream, but no EFH–HAPCs were designated for *Sargassum* in CE–BA 2.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within CE–BA 2 and is consistent with the Magnuson-Stevens Act, and other applicable law.

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

NMFS prepared an IRFA for the proposed rule that described the economic impact of the rule. As described in the IRFA, the only action in this rule that may have any direct adverse economic effect on the profits of any small entities is the limitation on harvest of snapper-grouper and CMP species in the SMZs off South Carolina to the recreational bag limit. Because data on the number of commercial vessels that fish in these SMZs, and the associated harvest, is not available at sufficient spatial resolution to quantitatively assess the impacts of the action, it is not possible to determine if the reduction in profits for any small entities would be significant. However, based on tabulation of the number of appropriate commercial permits in nearby coastal areas, the IRFA determined that the number of affected vessels would encompass at most approximately 4 percent of South Atlantic vessels with king mackerel permits, 2 percent of South Atlantic vessels with Spanish mackerel permits (king mackerel and Spanish mackerel permits allow fishing in both the Gulf and South Atlantic and, because of the narrow geographic applicability this action, only counts for permits with homeport addresses in the South Atlantic were included in the assessment), and 9 percent of vessels with snapper-grouper permits. Additionally, because the problem of commercial harvest in the SMZs is believed to be mostly limited to vessels using spear gear (hand spear or spear guns), which is not the dominant gear type used to harvest these species, substantially fewer vessels than these maximum amounts would be expected to be affected. As a result, only a small number of vessels in the CMP and snapper-grouper fleets would be expected to be directly affected by this rule. Because of this finding, the IRFA concluded that the actions in this rule would not be expected to significantly reduce profits for a substantial number of small entities. Nevertheless, because of the lack of data on vessels that historically harvest commercial quantities of these species from these areas, public comment was requested on this determination and a certification was not prepared. No comments were received regarding the determination. Therefore, NMFS concluded that the determination was correct and the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration at this stage in the rulemaking that this action will not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 22, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.1, paragraph (b), Table 1, the entry for ''FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region'' is revised and footnote 7 is added to read as follows:

§ 622.1 Purpose and scope.

* * * * *

(b) * * *

TABLE 1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
*	*	*
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic.[7]
*	*	*

[7] Octocorals are managed by the FMP or regulated by this part only in the EEZ off North Carolina, South Carolina, and Georgia.

* * * * *

■ 2. In § 622.10, paragraphs (c)(1)(ii) and (iii), are revised to read as follows:

§ 622.10 Conservation measures for protected resources.

* * * * *

(c) * * *

(1) * * *

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in Appendix E to this part.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board and must use a dipnet, cushioned/support device, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in Appendix E to this part. Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, cushioned/support device, long-handled line clipper, a short-handled and a long-handled dehooker, a long-handled device to pull an inverted ''V'', long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in Appendix E to this part.

* * * * *

■ 3. In § 622.32, paragraph (b)(3)(viii) is added to read as follows:

§ 622.32 Prohibited and limited harvest species.

* * * * *

(b) * * *

(3) * * *

(viii) Octocoral may not be harvested or possessed in or from the portion of the South Atlantic EEZ managed under the FMP. Octocoral collected in the portion of the South Atlantic EEZ managed under the FMP must be released immediately with a minimum of harm.

* * * * *

■ 4. In § 622.35, in paragraph (e)(2), the first entry in the table is revised to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(e) * * *

(2) * * *

In SMZs Specified in the following paragraphs of § 622.35	These restrictions apply
(e)(1)(i) through (x), (e)(1)(xx), and (e)(1)(xxii) through (xxxix).	Use of a powerhead to take South Atlantic snapper-grouper is prohibited. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in, or after having fished in, one of these SMZs constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ. Harvest and possession of a coastal migratory pelagic fish or a South Atlantic snapper-grouper is limited to the bag-limits specified in § 622.39(c)(1) and (d)(1), respectively.
*	*

■ 5. In § 622.42, paragraph (b) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(b) *Gulf allowable octocoral.* The quota for all persons who harvest allowable octocoral in the Gulf EEZ is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

* * * * *

■ 6. Appendix E is added to part 622 to read as follows:

Appendix E to Part 622—Specifications for Sea Turtle Mitigation Gear and Sea Turtle Handling and Release Requirements

A. *Sea turtle mitigation gear.*

1. *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any

remaining gear upon release. NMFS has established minimum design standards for the line cutters. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards, and may be purchased or fabricated from readily available and low-cost materials. One long-handled line clipper or cutter and a set of replacement blades are required to be onboard. The minimum design standards for line cutters are as follows:

(a) *A protected and secured cutting blade.* The cutting blade(s) must be capable of cutting 2.0–2.1 mm (0.078 in.–0.083 in.) monofilament line (400-lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(b) *An extended reach handle.* The line cutter blade must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

2. *Long-handled dehooker for internal hooks.* A long-handled dehooking device is intended to remove internal hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device to remove internal hooks is required onboard. The minimum design standards are as follows:

(a) *Hook removal device.* The hook removal device must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel or similar material and have a dehooking end no larger than 1 7/8-inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

3. *Long-handled dehooker for external hooks.* A long-handled dehooker is required for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for internal hooks described in paragraph 2. of this Appendix E would meet this requirement. The minimum design standards are as follows:

(a) *Construction.* A long-handled dehooker must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel rod and have a dehooking end no larger than 1 7/8-inches (4.76 cm) outside diameter. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Extended reach handle.* The handle must be a minimum length equal to the freeboard of the vessel or 6 ft (1.83 m), whichever is greater.

4. *Long-handled device to pull an ''inverted V''.* This tool is used to pull a ''V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in the document entitled ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' for disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'' is required onboard. If a 6-ft (1.83 m) J-style dehooker is used to comply with paragraph 4. of this Appendix E, it will also satisfy this requirement. Minimum design standards are as follows:

(a) *Hook end.* This device, such as a standard boat hook, gaff, or long-handled J-style dehooker, must be constructed of stainless steel or aluminum. The semicircular or ''J'' shaped end must be securely attached to a handle. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(b) *Extended reach handle.* The handle must have a minimum length equal to the freeboard of the vessel, or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

5. *Dipnet.* One dipnet is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles must not be brought onboard without the use of a dipnet or hoist. The minimum design standards for dipnets are as follows:

(a) *Size of dipnet.* The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (0.914 m) carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) by 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where it is attached to the handle. There is no requirement for the hoop to be circular as long as it meets the minimum specifications.

(b) *Extended reach handle.* The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must be made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and be able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

6. *Cushion/support device.* A standard automobile tire (free of exposed steel belts), a boat cushion, a large turtle hoist, or any other comparable cushioned elevated surface, is required for supporting a turtle in an upright orientation while the turtle is onboard. The cushion/support device must be appropriately sized to fully support a range of turtle sizes.

7. *Short-handled dehooker for internal hooks.* One short-handled device for removing internal hooks is required onboard. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(a) *Hook removal device.* The hook removal device must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel, and must allow the hook to be secured and the barb shielded without re-engaging during the removal process. It must be no larger than 1 7/8-inches (4.76 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a 3/4-inch (1.91 cm) inside diameter high impact plastic cylinder (*e.g.,* Schedule 80 PVC) that is 4 to 6 inches (10.2 to 15.2 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Handle length.* The handle should be approximately 16 to 24 inches (40.64 cm to 60.69 cm) in length, with approximately a 4 to 6-inch (10.2 to 15.2-cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

8. *Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks is required onboard. The short-handled dehooker for internal hooks required to comply with paragraph 7. of this Appendix E will also satisfy this requirement. Minimum design standards are as follows:

(a) *Hook removal device.* The dehooker must be constructed of approximately 3/16-inch (4.76 cm) to 5/16-inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Handle length.* The handle should be approximately 16 to 24 inches (40.64 to 60.69 cm) long with approximately a 5-inch (12.7 cm) long tube T-handle, wire loop handle or similar, of approximately 1 inch (2.54 cm) in diameter.

9. *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal or for removing hooks from the front of the mouth. They can also hold PVC splice couplings, when used as mouth openers, in place. Minimum design standards are as follows:

(a) *General.* They must be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(b) [Reserved]

10. *Bolt cutters.* One pair of bolt cutters is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. Minimum design standards are as follows:

(a) *General.* They must be approximately 14 to 17 inches (35.56 to 43.18 cm) in total length, with approximately 4-inch (10.16 cm) long blades that are 2¼ inches (5.72 cm) wide, when closed, and with approximately 10 to 13-inch (25.4 to 33.02-cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to 1/4-inch (6.35 mm) diameter.

(b) [Reserved]

11. *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. Minimum design standards are as follows:

(a) *General.* Monofilament line cutters must be approximately 7½ inches (19.05 cm) in length. The blades must be 1 inch (4.45 cm) in length and ⅝ inches (1.59 cm) wide, when closed.

(b) [Reserved]

12. *Mouth openers/mouth gags.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing internal hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required:

(a) *A block of hard wood.* Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (*e.g.* maple) with rounded edges should be sanded smooth, if necessary, and soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) by 1 inch (2.54 cm) by 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(b) *A set of three canine mouth gags.* Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. These tools are only for use on small and medium sized turtles, as larger turtles may be able to crush the mouth gag. A set of canine mouth gags must include one of each of the following sizes: Small (5 inches) (12.7 cm), medium (6 inches) (15.24 cm), and large (7 inches) (17.78 cm). They must be constructed of stainless steel. The ends must be covered with clear vinyl tubing, friction tape, or similar, to pad the surface.

(c) *A set of two sturdy dog chew bones.* Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½–8 inches (13.97 cm–20.32 cm) in length), and one small (3½–4½ inches (8.89 cm–11.43 cm) in length) canine chew bones.

(d) *A set of two rope loops covered with protective tubing.* A set of two pieces of poly braid rope covered with light duty garden hose or similar flexible tubing each tied or spliced into a loop to provide a one-handed method for keeping the turtle's mouth open during hook and/or line removal. A required set consists of two 3-ft (0.91 m) lengths of poly braid rope (⅜-inch (9.52 mm) diameter suggested), each covered with an 8-inch (20.32 cm) section of ½ inch (1.27 cm) or ¾ inch (1.91 cm) tubing, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(e) *A hank of rope.* Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-ft (1.83 m) lanyard of approximately 3/16-inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed, however it must create a hank of approximately 2–4 inches (5.08 cm–10.16 cm) in thickness.

(f) *A set of four PVC splice couplings.* PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inch (3.18 cm), 1½ inch (3.81 cm), and 2 inches (5.08 cm).

(g) *A large avian oral speculum.* A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9-inches (22.86 cm) long, and constructed of 3/16-inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16-inch (7.9 mm) outside diameter, 3/16-inch (4.76 mm) inside diameter), friction tape, or similar to pad the surface.

B. *Sea turtle handling and release requirements.* Sea turtle bycatch mitigation gear, as specified in paragraphs A.1. through 4. of this Appendix E, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as specified in paragraphs A.5. through 12. of this Appendix E, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in § 622.10(c)(1), and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1) of this title.

1. *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as specified in paragraph A.5. of this Appendix E. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit.

(a) A boated turtle should be placed on a cushioned/support device, as specified in paragraph A.6. of this Appendix E, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using monofilament cutters as specified in paragraph A.11. of this Appendix E, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using bolt cutters as specified in paragraph A.10. of this Appendix E. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as specified in paragraph A.12. of this Appendix E, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for internal hooks, or long-nose or needle-nose pliers, as specified in paragraphs A.7. and A.8. of this Appendix E, respectively, should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in § 622.10(c)(1), and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(b) [Reserved]

2. *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear specified in paragraphs A.1. through 4. of this Appendix E must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in § 622.10(c)(1).

(a) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as specified in paragraph A.1. of this Appendix E. If the hook can be removed, it must be removed using a long-handled dehooker as specified in paragraphs A.2. and A.3. of this Appendix E. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in § 622.10(c)(1), and the handling and resuscitation requirements specified in § 223.206(d)(1) for additional information.

(b) [Reserved]

[FR Doc. 2011–33300 Filed 12–29–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786–1781–01]

RIN 0648–XA795

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Interim 2012 Summer Flounder, Scup, and Black Sea Bass Specifications; 2012 Research Set-Aside Projects

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

ACTION: Interim specifications; request for comments.

SUMMARY: NMFS is implementing interim catch levels and management measures, called specifications, for the 2012 summer flounder, scup, and black sea bass fisheries, and is also providing notice of projects likely to request research set-aside related to exempted fishing permits. Interim specifications are necessary to ensure that fishing quotas for the summer flounder, scup, and black sea bass fisheries are in place at the start of the fishing year on January 1, 2012, to ensure the three species are not overfished or subject to overfishing in 2012. Notice of exempted fishing permit requests is necessary to allow public comment on the fishing regulation exemptions requested by research set-aside participants.

DATES: Effective January 1, 2012, through December 31, 2012; comments must be received on or before January 30, 2012.

ADDRESSES: You may submit comments, identified by NMFS–NOAA–2011–0280, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NMFS–NOAA–2011–0280 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.
- *Fax:* (978) 281–9135, Attn: Comments on 2012 Interim Summer Flounder, Scup, and Black Sea Bass Specifications, NMFS–NOAA–2011–0280.
- *Mail and hand delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2012 Interim Summer Flounder, Scup, and Black Sea Bass Specifications, NMFS–NOAA–2011–0280.''

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 to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the 2012 specifications document, including the Environmental Assessment Analysis (EA), is available from Patricia Kurkul, Northeast Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

Specifications

General Specification Background

Fishery specifications include various catch and landing subdivisions, including the commercial and recreational sector annual catch limits (ACLs), annual catch targets (ACTs), sector-specific landing limits, (*i.e.,* the commercial fishery quota and recreational harvest limit) and research set-aside (RSA) established for the upcoming fishing year. An explanation of each subdivision appears later in this rule.

Rulemaking for measures used to manage the recreational fisheries for these three species occurs separately and typically takes place in the first quarter of the fishing year. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations outline the Council's process for establishing specifications. Implementing regulations for these fisheries are found at 50 CFR part 648, subpart A (General Provisions), subpart G (summer flounder), subpart H (scup), and subpart I (black sea bass).

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

All requirements of the Magnuson-Stevens Fishery Conservation and

Management Act (MSA), including the 10 national standards, also apply to specifications.

Background for the 2012 Specifications

In a typical year, the Council's Scientific and Statistical Committee (SSC) reviews updated stock assessment information in July as the starting point in the specifications process. The specification process also allows changes to a select number of management measures such as commercial minimum fish size and minimum trawl net mesh sizes. The Council convenes in August to make specification recommendations to NMFS. NMFS reviews these recommendations for consistency with applicable law and other requirements before proceeding to implement the measures via notice-and-comment rulemaking. The rulemaking process usually takes place from October–December. Final specifications are typically in place on or about January 1, as this is both the start of the fishing year, and the annual date NMFS has used to implement the requirement specified in a 1997 Court order (*North Carolina Fisheries Assoc. Inc. et al.* v. *Daley* Civil NO. 2:97cv339 (RGD)) directing the agency to finalize each year's fishing quota within a reasonable period of time.

For the 2012 summer flounder, scup, and black sea bass specifications, the rulemaking process has encountered some complications. As usual, the SSC and Council met in July and August, respectively, and conveyed recommendations to NMFS for review, rulemaking, and implementation. The Council then provided its recommendation and supporting analyses to NMFS in late September. While NMFS was reviewing the Council's recommendations and preparing a proposed rule, the Northeast Fisheries Science Center (NEFSC) published new assessment information for both summer flounder and scup. These assessment updates presented different results regarding the status of both stocks from the information available to the Council in August. Specifically, the new assessments concluded that the 2012 specification recommendations from the Council could result in overfishing of summer flounder and scup, and that summer flounder could be subject to overfishing during 2011 if the catch approaches the established allowance for this year. The updated stock assessment did provide verification that the summer flounder stock was rebuilt in 2010, ending the rebuilding program that had been in place since 2000.

The SSC and Council met December 14, 2011, to reconsider the new assessment information and will provide revised recommendations to NMFS. The Council voted to recommend specifications based on the new summer flounder and scup assessment information at this meeting. The Council will be forwarding recommendations to NMFS to implement revised summer flounder and scup specifications. The exact timing and process for this resubmission of recommendations is unclear; however, it is clear that it would not be possible to implement the Council's revised specifications for summer flounder, scup, and black sea bass by the start of the 2012 fishing year on January 1.

In response to these complications that have impaired the normal timing and process, NMFS is implementing interim measures consistent with the new stock assessments to ensure specifications that prevent overfishing and that apply the best available science are in place on January 1, 2012. NMFS is soliciting comment on these interim measures and may adjust, as needed, the final 2012 specifications based on Council recommendations and public comment on the interim measures. NMFS notes that the Council recommendations from the December meeting were for the same summer flounder and scup ACLs and ACTs being implemented by this interim rule. The black sea bass measures of this interim rule are consistent with the Council's recommendations from its August 2011 meeting.

If NMFS had not implemented interim measures, no quotas for summer flounder, scup, or black sea bass would be in place on January 1, 2012. There are no quota rollover provisions for these species, so inaction would result in no quotas being in place for the start of the 2012 fishing year. This result would be inconsistent with the MSA, the FMP, the standing Court order, and would cause additional, substantial complications for all those involved in fishing for or managing summer flounder, scup, and black sea bass.

2012 Interim Specifications

NMFS developed these interim specifications for summer flounder and scup using the updated assessment information for both species and by applying the same calculations used by the SSC, Monitoring Committees, and the Council. Both species' stock assessments were categorized as Level 3 under the ABC Control Rules at 50 CFR 648.20. Assessments categorized at this level are judged by the SSC to over- or underestimate the accuracy of the Overfishing Limit (OFL). NMFS replicated the SSC's ABC derivation approach using an assumed coefficient of variance of the Overfishing Limit (OFL) with a lognormal distribution of 100 percent. NMFS also determined the biomass ratio (biomass(B)/$B_{\text{MAXIMUM SUSTAINABLE YIELD (MSY)}}$) based on the 2012 stock projections, categorized both species as having a typical life history, and applied the Council's risk policy (P*= risk of overfishing the stock) as described in § 648.21. These approaches are the same used by the SSC and Council. The Monitoring Committees did not recommend to the Council any reduction from the ACL to ACT to address management uncertainty for summer flounder and scup. NMFS also adopted this approach in deriving summer flounder and scup ACTs based on the updated stock assessment information. Thus, there is no offset between ACL and ACT to address management uncertainty in these interim specifications for summer flounder and scup. More detail is provided in the following sections.

Summer Flounder

The updated stock assessment OFL is 31,588,000 lb (14,328 mt). This amount represents a 28-percent reduction from the OFL of 43.89 million lb (19,908 mt) provided in the July 2011, stock projection information. The projected 2012 spawning stock biomass (SSB) is 134,667,008 lb (61,084 mt), above the SSB_{MSY} level of 132,440,000 lb (60,074 mt). Thus, the B/B_{MSY} ratio is 1.01. Applying the Council's risk policy results in an overfishing risk tolerance (P*) of 0.40, or a 40-percent risk of overfishing the summer flounder stock. Using this information, the resulting ABC is 25,581,054 lb (11,603 mt), which is a 28-percent reduction from the Council's original recommendation submitted to NMFS in September, and a 25-percent reduction from the 2011 ABC. This ABC is 81 percent of the OFL (*i.e.,* scientific uncertainty offset is a 19-percent reduction from OFL).

Consistent with § 648.102(a), for summer flounder, the sum of the recreational and commercial sector ACLs is equal to ABC. ACL is an expression of total catch (*i.e.,* landings and dead discarded fish). To derive the ACLs, NMFS used the methods developed by the Council: The sum of the sector-specific estimated discards is removed from the ABC to derive the landing allowance. The resulting landing allowance is apportioned to the commercial and recreational sectors by applying the FMP allocation criteria: 60 percent to the commercial fishery and

40 percent to the recreational fishery. Using this method ensures that each sector is accountable for its respective discards, rather than simply apportioning the ABC by the allocation percentages to derive the sector ACLs. This means that the derived ACLs are not split exactly at 60/40; however, the landing portions of the ACLs do preserve the 60/40 allocation split, consistent with the FMP. The NMFS-derived commercial ACL is 14,002,000 lb (6,351 mt); the recreational ACL is 11,579,000 lb (5,252 mt).

As previously mentioned, NMFS is adopting the Council's recommended approach for 2012 and did not reduce ACT from the ACL for the interim summer flounder specifications. Thus, the sector ACTs are equal to the sector ACLs, and management uncertainty is assumed to be zero. The estimated sector-specific commercial discards for summer flounder total 459,000 lb (208 mt), which, when removed from the commercial ACT, results in a commercial quota of 13,136,000 lb (5,958 mt). Sector-specific recreational discards estimated for 2012 are 2,550,000 lb (1,157 mt), resulting in a recreational harvest limit (*i.e.,* recreational landing quota) of 8,758,000 lb (3,973 mt). Consistent with the FMP and the Council's previous recommendation, up to 3 percent of the total landing allowances may be set aside for research; 3 percent of the recalculated landings in this interim rule is 677,128 lb (307 mt). This amount has been preliminarily awarded through the grant award process for 2012.

As stated previously, the timing and change in information resulting from the updated stock assessments leaves no option except implementing interim measures to ensure some summer flounder catch constraints are in place at the start of the fishing year. The Council's previous catch quota recommendation for summer flounder was inconsistent with the MSA and FMP, as overfishing would result if those catch levels were fully attained in 2012. NMFS will review the Council's revised recommendation and public input on the interim measures, and may adjust the interim measures through a final rule in early 2012.

Table 1 presents the interim allocations of summer flounder by state with and without the commercial portion of the RSA deduction. Consistent with the revised quota setting procedures for the FMP (67 FR 6877, February 14, 2002), summer flounder overages are determined based upon landings for the period January–October 2011, plus any previously unaccounted-for overages from January–December 2010. Table 1 summarizes, for each state, the commercial summer flounder percent shares as outlined in § 600.102(c)(1)(i), the resultant 2011 commercial quota (both initial and less the RSA), the quota overages as described above, and the final adjusted 2011 commercial quota, less the RSA. Delaware and New York both have overages requiring reduction of their 2012 state commercial quota allocations. For New York, the overage was from 2010 and not previously accounted for in the 2011 specifications rulemaking. The Delaware overage is explained in the next section.

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TABLE 1. INTERIM STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2012

	FMP Percent Share	Initial Commercial Quota		Initial Quota, less RSA		2011 Quota Overages (through 10/31/11)		Adjusted Quota, less RSA	
State		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	6,247	2,834	6,054	2,746	0	0	6,054	2,746
NH	0.00046	60	27	59	27	0	0	59	27
MA	6.82046	895,936	406,396	868,226	393,827	0	0	868,226	393,827
RI	15.68298	2,060,116	934,469	1,996,400	905,567	0	0	1,996,400	905,567
CT	2.25708	296,490	134,488	287,320	130,328	0	0	287,320	130,328
NY	7.64699	1,004,509	455,645	973,441	441,553	50,736	23,014	922,705	418,539
NJ	16.72499	2,196,995	996,557	2,129,045	965,735	0	0	2,129,045	965,735
DE	0.01779	2,337	1,060	2,265	1,027	54,982	24,940	-52,717	-23,913
MD	2.03910	267,856	121,500	259,572	117,742	0	0	259,572	117,742
VA	21.31676	2,800,170	1,270,157	2,713,565	1,230,873	0	0	2,713,565	1,230,873
NC	27.44584	3,605,286	1,635,358	3,493,779	1,584,778	0	0	3,493,779	1,584,778
Total	100.00	13,136,001	5,958,490	12,729,724	5,774,203	105,718	47,954	12,676,724	5,750,162

Notes: 2011 quota overage is determined through comparison of landings for January through October 2011, plus any landings in 2010 in excess of the 2010 quota (that were not previously addressed in the 2011 specifications) for each state. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all states with an allocation. A state with a negative number has a 2012 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

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Delaware summer flounder closure. Table 1 indicates that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2012. As a result, there is no quota available for 2012 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Administrator, Northeast Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2012, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2012 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register.** Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2012 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Scup

The OFL for scup, as revised by the October assessment update, is 50.48 million lb (22,897 mt). This OFL is 23 percent lower than the 65.88-million-lb (29,883-mt) OFL the Council used as the foundation of its August 2011 scup specification recommendations to NMFS. The ABC calculated from the revised OFL using the SSC's Level 3 control rule and applying the Council's risk policy (P*=0.4) is 40,879,639 lb (18,543 mt). This is also a 23-percent reduction from the Council's initial ABC recommendation of 53.35 million lb (24,199 mt).

The scup management measures at § 648.120(a) specify that ABC is equal to the sum of the commercial and recreational sector ACLs. The Council did not recommend any offset to address scup management uncertainty in either the commercial or recreational sectors. Under the Council recommendation, the sector ACTs are equal to the ACLs. NMFS is adopting this approach in these interim specifications. Using the same derivation methods as the Council with the ABC based on the revised OFL, the commercial sector ACL/ACT is 31,887,000 lb (14,464 mt), and the recreational sector ACL/ACT is 8,994,000 lb (4,079 mt).

The Council recommended up to 3 percent of the landings for RSA. NMFS is applying the amount of RSA preliminarily identified in the grant award process, resulting in an RSA of up to 571,058 lb (259 mt). After RSA is removed, the interim commercial quota becomes 27,908,575 lb (12,659 mt), and the interim recreational harvest limit 8,446,367 lb (3,831 mt). Although these amounts are 82- and 96-percent increases from the 2011 commercial quota and recreational harvest limit, respectively; they are a reduction of 16 and 20 percent, respectively, from the 2012 quota and recreational limits recommended by the Council in August.

The scup commercial quota is divided into three commercial fishery quota periods. There were no previous commercial overages applicable to the 2012 scup commercial quota. The period quotas, after deducting for RSA are: Winter I (January–April)—45.11 percent, or 12.59 million lb (5,711 mt); Summer (May–October)—38.95 percent, 10.87 million lb (4,931 mt); and Winter II (November–December)—15.94 percent, 4.45 million lb (2,018 mt). Unused Winter I quota is carried over for use in the Winter II period. Based on the recommendation of the Council, NMFS is also increasing the Winter I possession limit from 30,000 lb (13,608 kg) to 50,000 lb (22,680 kg) per trip.

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TABLE 2. INTERIM COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2012 BY QUOTA PERIOD

		Commercial Annual Catch Limit		Estimated Discards		Initial Quota		Initial Quota less Overages (through 10/31/2009)		Adjusted Quota less Overages and RSA		Federal Possession Limits (Per Trip)	
Quota Period	Percent Share	Lb	mt	Lb	mt	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	14,384,226	6,525	1,593,736	723	12,790,489	5,802	N/A	N/A	12,589,558	5,711	50,000	22,680
Summer	38.95	12,419,987	5,634	1,376,104	624	11,043,883	5,009	N/A	N/A	10,870,390	4,931	N/A	N/A
Winter II	15.94	5,082,788	2,306	563,160	255	4,519,628	2,050	N/A	N/A	4,448,627	2,018	2,000	907
Total	100.0	31,887,000	14,464	3,533,000	1,603	28,354,000	12,861	N/A	N/A	27,908,575	12,659	N/A	N/A

Notes: The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the Federal Register.
Metric tons are as converted from pounds and may not necessarily add due to rounding.
N/A=Not applicable.

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Consistent with the unused Winter I commercial scup quota rollover provisions at § 648.122(d), this rule maintains the Winter II possession limit-to-rollover amount ratios that have been in place since the 2007 fishing year, as shown in Table 3. The Winter II possession limit will increase by 1,500 lb (680 kg) for each 500,000 lb (227 mt) of unused Winter I period quota transferred, up to a maximum possession limit of 8,000 lb (3,629 kg).

TABLE 3. POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0-499,999	0-227	0	0	2,000	907
2,000	907	500,000-999,999	227-454	1,500	680	3,500	1,588
2,000	907	1,000,000-1,499,999	454-680	3,000	1,361	5,000	2,268
2,000	907	1,500,000-1,999,999	680-907	4,500	2,041	6,500	2,948
2,000	907	2,000,000-2,500,000	907-1,134	6,000	2,722	8,000	3,629

Black Sea Bass

This interim rule implements the Council's recommended measures for black sea bass: An ABC of 4.5 million lb (2,041 mt). The black sea bass stock remains a Level 4 stock for ABC calculation purposes. The SSC rejected the OFL estimate provided from the stock assessment, stating that it was highly uncertain and not sufficiently reliable to use as the basis of management advice. This ABC is the status quo.

The Council recommends and NMFS is implementing a commercial ACL and ACT of 1,980,000 lb (898 mt). For the recreational fishery, the Council recommends a 26-percent reduction from ACL to the ACT designed to mitigate uncertainty in recreational black sea bass discards. Analyses from the Black Sea Bass Monitoring Committee indicate that the post-season, actual recreational discards have often been higher than the projections available prior to the fishing year. If this trend occurs in 2012, the ACL would likely be exceeded if the ACT was set equal to ACL. Accordingly, the Council recommends an ACL of 2,520,000 lb (1,143 mt) and an ACT of 1,860,000 lb (844 mt) to mitigate the potential that the recreational sector ACL will be exceeded in 2012.

Removing discards from the ACTs produces the total landings allowed from the 2012 black sea bass fishery. The Council recommends up to 3 percent of the landings as RSA which equals 92,600 lb (42 mt). This amount has preliminarily been awarded through the grant award process for 2012. When RSA is removed, the remaining available landings are the recreational harvest limit of 1.32 million lb (598 mt) and commercial quota of 1.71 million lb (774 mt). There are no prior year commercial black sea bass overages that require adjustment of the interim commercial quota for 2012. NMFS is implementing these recommendations as the interim measures for the 2012 black sea bass fishery.

Explanation of RSA and Exempted Fishing Permit (EFP) Requests for Public Comment

In 2001, NMFS implemented Framework Adjustment 1 to the FMP to allow up to 3 percent of the Total Allowable Landings (TAL) for each species to be set aside each year in support of scientific research. For the 2012 fishing year, NMFS solicited research proposals for the Mid-Atlantic RSA program through a Federal Funding Opportunity announcement published on January 6, 2011.

The project selection and award process has not concluded; however, three projects have been preliminarily selected for approval by the NEFSC.

These projects have collectively requested 689,932 lb (312,948 kg) of summer flounder, 509,160 lb (230,951 kg) of scup, 184,280 (83,588 kg) of black sea bass, 250,580 lb (113,661 kg) of longfin squid, 200,000 lb (90,718 kg) of butterfish, and 200,000 lb (90,718 kg) of bluefish. Project awards are pending a review by the NOAA Grants Office. If any portion of the RSA quota is not awarded, NMFS will notify the public and return the unissued amount to the general fishery either through the specification rule or through the publication of a separate notice in the **Federal Register.**

These interim specifications include a brief description of the preliminarily selected 2012 Mid-Atlantic RSA projects, including a description of applicable summer flounder, scup, and black sea bass regulation exemptions that will likely be required to conduct the proposed research and compensation fishing. The MSA requires that interested parties be

provided an opportunity to comment on all proposed EFPs. Persons interested in commenting on the proposed exemptions should provide their comments through any of the methods described in the **ADDRESSES** section of this rule.

EFPs are issued to enable research and/or compensation fishing activities. Compensation fishing EFPs are issued to all projects. Vessels harvesting RSA quota on compensation fishing trips in support of approved research projects would be issued EFPs authorizing them to exceed applicable Federal possession limits and to fish during Federal quota closures. These exemptions allow project investigators to recover research expenses, as well as adequately compensate fishing industry participants harvesting RSA quota. Vessels harvesting RSA quota would operate within all other regulations that govern the commercial and recreational fisheries, unless otherwise exempted through a separate EFP. The harvest of RSA quota would occur January 1–December 31, 2012, by vessels conducting research and/or compensation fishing.

The need for research EFPs depends on the nature of the research activity and whether the activity conflicts with fishing regulations. Not all projects need an EFP to conduct the research.

Project 1 Description. The proposed project is the continuation of a scup survey of 10 hard-bottom sites in Southern New England (SNE) that are not sampled by current state and Federal finfish trawl surveys. Unvented fish pots would be fished on each site from June through October in coastal waters of Nantucket Sound, Martha's Vineyard Sound, and Buzzard's Bay, MA; and Rhode Island Sound, RI. The length frequency distribution of the catch would be compared statistically to each of the other collection sites, and to finfish trawl data collected by NMFS and state agencies to gain greater understanding of the scup stock structure.

Research Vessel Exemptions. Research vessels for Project 1 would require an EFP exempting them from minimum scup and black sea bass pot vent size requirements to ensure that scup length frequency data are representative and not biased. If a participating vessel holds a Federal lobster permit, it would need exemption from lobster pot vent size requirements, as well. Exemption from scup and black sea bass closures and time restrictions would be needed to ensure the survey is not disrupted by such regulations. Exemption from scup and black sea bass minimum fish sizes and possession limits would also be needed for data collection purposes only. All undersized fish would be discarded as soon as practicable to minimize mortality, and fish in excess of possession limits would either be discarded as soon as practicable or landed as RSA quota.

Compensation Vessel Exemptions. Vessels harvesting RSA quota would require exemptions for fishery closures and possession limits to facilitate compensation fishing activities.

Project 2 Description. The proposed project is a black sea bass survey of sites in SNE and Mid-Atlantic waters. Unvented black sea bass pots would be fished on each site, with one in Massachusetts, one south of Rhode Island, one south of New Jersey, and one south of Virginia, for 5 months, running from June through October in SNE, and April through August in the Mid-Atlantic. The project is designed to collect black sea bass from sites that are not sampled by current state and Federal finfish bottom trawl surveys. The length frequency distribution of the catch would be compared statistically to each of the other collection sites, and to finfish trawl data collected by NMFS and state agencies to gain greater understanding of the black sea bass stock structure.

Research Vessel Exemptions. Research vessels for Project 2 would require an EFP exempting them from minimum scup and black sea bass pot vent size requirements to ensure that black sea bass length frequency data are representative and not biased. If a participating vessel holds a Federal lobster permit, it would need to be exempted from lobster pot vent size requirements, as well. Exemption from scup and black sea bass closures and time restrictions would be needed to ensure the survey is not disrupted by such regulations. Exemption from scup and black sea bass minimum fish sizes and possession limits would also be needed for data collection purposes only. All undersized fish would be discarded as soon as practicable to minimize mortality, and fish in excess of possession limits would either be discarded as soon as practicable or landed as RSA quota.

Compensation Vessel Exemptions. Vessels harvesting RSA quota for Project 2 would require exemptions from fishery closures and possession limits to facilitate compensation fishing activities.

Project 3 Description. The proposed project would continue a spring and fall trawl survey in shallow waters between Martha's Vineyard, MA, and Cape Hatteras, NC, that are not sampled by the NMFS trawl survey. The project investigators plan to provide stock assessment data for Mid-Atlantic RSA species, including summer flounder, scup, black sea bass, longfin squid, butterfish, and Atlantic bluefish, and assessment-quality data for weakfish, Atlantic croaker, spot, several skate and ray species, smooth dogfish, horseshoe crab, and several unmanaged but important forage species.

Research Vessel Exemptions. Vessels conducting this near-shore trawl survey would not require any exemptions from regulations implemented under the Summer Flounder, Scup, and Black Sea Bass FMP.

Compensation Vessel Exemptions. Vessels harvesting RSA quota for Project 3 would require the exemptions from fishery closures and possession limits to facilitate compensation fishing activities.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this interim rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest.

The timing of the normal specification process has been interrupted by the introduction of new stock status information provided by the NEFSC for summer flounder and scup. Under the MSA, NMFS and the Council must respond to this information to ensure these two stocks are not subject to overfishing in 2012. It is essential that some catch restrictions be established and put in place by January 1, 2012. These restrictions would not only control landings so that overfishing does not occur, but would allow the agency to comply with a longstanding Court order (see *North Carolina Fisheries Assoc. Inc. et al.* v. *Daley* Civil NO. 2:97cv339 (RGD)), which compels NMFS to put in place annual quotas within a reasonable period of time, which NMFS has satisfied by publishing such quotas on or before January 1 of each year. The FMP does not provide any year-to-year quota rollover. Thus, if NMFS took no action 2011 to set the 2012 summer flounder and scup quotas, there would be no catch constraints on those fisheries when the 2012 fishing year begins. This result would be

inconsistent with the MSA, the FMP, and the Court order.

Normally, the Council decides on its summer flounder and scup specification recommendations in August and provides its analytical documentation in support of those recommendations to NMFS in September. NMFS reviews the recommendations and analyses for consistency with applicable law and other requirements, and then conducts notice-and-comment rulemaking over the course of October, November, and early December. The process typically culminates in a final rule to implement specifications in December. Even under ideal circumstances, the rulemaking associated with a typical specification process from Council decision to agency rulemaking usually requires NMFS to waive the 30-day delay in effectiveness to ensure these management measures are in place by January 1.

The introduction of new summer flounder and scup stock status information in late October presents a substantial complication in the specification process. The Council and NMFS are obligated by the MSA and National Standard 2 to utilize the best available scientific information in fisheries management. The updated stock status information for both species indicates that the Council's previous specification recommendations would result in overfishing both stocks in 2012. Under the MSA, NMFS may not authorize a level of catch that would knowingly result in overfishing a stock; thus, it would not be appropriate to implement the Council's initial specification recommendations for these two species. Nor would it be appropriate to maintain the status quo, as the 2011 catch levels would also be too high and would require rulemaking to maintain (*i.e.,* they cannot be automatically carried over year-to-year).

Following the release of the new information in late October, there was insufficient time for the Council to convene its collective committees and its full membership to consider the new information and reconsider its recommendation to NMFS. Announcement of Council and Council committee meetings are required to provide specific advance notice in the **Federal Register**. Here, even had the Council been able to convene quickly and provide NMFS revised recommendations for summer flounder and scup sufficient to ensure that overfishing would not occur in 2012, there would have been insufficient time for NMFS to review the recommendations and to conduct notice-and-comment rulemaking with an effective date on or before January 1, 2012. This is true even if an abbreviated public comment period and waiver of the 30-day delay in effectiveness were used by NMFS.

The Council proposed revised recommendations for summer flounder and scup during its December 13–15, 2011, meeting. NMFS is soliciting public comment on the interim measures contained in this rule and will issue final measures, if necessary, as soon as possible in early 2012 that respond to both the Council's revised recommendation and comments received on the interim measures.

While this procedure is not completely comparable to the notice-and-comment process typically used, NMFS views this as the only tenable solution to implement measures that ensure overfishing does not occur. This process will ensure that appropriate measures are implemented for the start of the fishing year and provides a meaningful way for the public to comment on those measures as part of the development process for final measures. NMFS recognizes this is not ideal; however, for the unforeseeable reasons outlined above, it would be impracticable to conduct standard notice-and-comment rulemaking for the 2012 specifications, and failing to implement them would undermine the intent of the MSA, and prevent NMFS from undertaking its legal duties. The delay that would result from doing so would allow the fishery to begin with no effective catch constraints in place and would violate the MSA, the FMP, and introduce significant complications in the fishery management program. While less than ideal, the alternative of putting in measures through an interim rule at least ensures that catch constraints are in place at the start of the fishing year and provides a process for public input on final measures to be implemented at a later date.

The Assistant Administrator further finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the reasons outlined above. These specifications must be in place on January 1, 2012, to ensure catch constraints are in place for the start of the fishing year.

These interim specifications are exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

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

Dated: December 22, 2011.

Samuel D. Rauch III,

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

[FR Doc. 2011–33442 Filed 12–29–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111128700–1702–01]

RIN 0648–BB66

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Recreational Accountability Measures

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

ACTION: Interim rule; request for comments.

SUMMARY: This interim final rule implements a possession limit and increases the minimum fish size for haddock caught in the Gulf of Maine by recreational anglers aboard private or charter/party vessels. This action is intended to address an overage of the fishing year 2010 GOM haddock sub-annual catch limit by the recreational fishery, and prevent a similar overage from occurring in the future. NMFS implements this interim final rule pursuant to its authority under the Magnuson-Stevens Fishery Conservation and Management Act and the Northeast Multispecies Fishery Management Plan and its implementing regulations.

DATES: Effective January 6, 2012 through December 30, 2012. Comments must be received by January 17, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0252, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''Submit a Comment'' icon, then enter ''FDMS Docket Number NOAA–NMFS–2011–0252'' 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 Daniel Morris, Acting Regional

Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: ''Comments on NE Multispecies Recreational AMs.''

• *Fax:* (978) 281–9135; Attn: Douglas Christel.

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.

The analysis of the impacts of the measures implemented by this action is included in the Final Environmental Impact Statement (FEIS) prepared for Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and summarized in the Classification section of the preamble of this interim final rule. Copies of Amendment 16, its Regulatory Impact Review (RIR), and the FEIS are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street Mill 2, Newburyport, MA 01950. The FEIS/RIR is also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html.*

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

In 2007, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was reauthorized to require that fishery management councils establish a mechanism for specifying annual catch limits (ACLs) for each managed fishery such that overfishing does not occur in the fishery. The reauthorized Magnuson-Stevens Act also required that FMPs include measures to ensure accountability in case ACLs were exceeded, and to prevent future overages from occurring. The final rule implementing Amendment 16 to the NE Multispecies FMP (April 9, 2010, 75 FR 18262) established a process to set and distribute ACLs among the various components of the fishery that catch regulated NE multispecies and ocean pout (also known as groundfish) stocks. Amendment 16 also established accountability measures (AMs) that would be implemented if any ACL is exceeded during a particular fishing year (FY).

The recreational groundfish fishery consists of anglers on private recreational and charter/party vessels. This fishery is responsible for nearly 30 percent of haddock catch in the Gulf of Maine (GOM) in recent years. Accordingly, Amendment 16 allocated the recreational fishery 27.5 percent of the GOM haddock ACL available to the groundfish fishery. Amendment 16 also specified that if the sub-ACL allocated to the recreational fishery is exceeded, the Regional Administrator must implement the appropriate AMs in the subsequent FY to address the overage and prevent such an overage from occurring in the future following consultation with the New England Fishery Management Council (Council). The recreational AM may include adjustments to season, minimum fish size, or possession limits. Separate AMs may be specified for the private boat and charter/party components of the recreational fishery. Due to the availability of recreational catch data, Amendment 16 anticipated that an overage would be implemented by January of the FY following the overage, and may remain in effect for an undefined period of time.

In FY 2010, the recreational fishery was allocated 324 mt of GOM haddock as part of Framework Adjustment 44 to the FMP (April 9, 2010, 75 FR 18356). Based on available information, NMFS has determined that the recreational fishery caught 396.3 mt of GOM haddock during FY 2010. This represents an overage of 72.3 mt, or 22.3 percent. In November 2011, NMFS consulted with the Council and its Recreational Advisory Panel to seek input on the appropriate AMs to address this overage. The Recreational Advisory Panel recommended that NMFS implement increases in the GOM haddock size limit to address the overage, while the Council recommended that NMFS consider a possession limit first, adjustments to the current minimize fish size second, and additional closed seasons last in developing recreational AMs to address the overage.

Management Measures Implemented by This Interim Final Rule

This interim final rule implements a 9-fish possession limit (a reduction, as previously there was no constraint on possession) and increases the minimum fish size for haddock caught in the GOM Regulated Mesh Area from 18 inches (45.72 cm) to 19 inches (48.26 cm) total length. These measures will remain in effect until changed in a future action. Based on the flexibility provided in Amendment 16, as codified at § 648.89(f), the effective period of such measures could be modified through notice consistent with the Administrative Procedure Act if it is determined that such measures are not necessary to prevent overfishing or ensure that a similar overage does not occur during future FYs. NMFS is specifically interested in public input regarding the duration necessary for these measures.

The AMs implemented by this action were selected because they are expected to achieve the necessary fishing mortality reduction due to the overage of the FY 2010 sub-ACL for this stock, reflect the Council's general preference for recreational AMs, are similar to measures in place for this stock until recently, and could be implemented in a timely manner. For example, a 10-fish possession limit was in effect for GOM haddock until 2004, and the minimum size limit for GOM haddock was only recently reduced from 19 inches (48.26 cm) to 18 inches (45.7 cm) in 2009. Because these AMs have already been analyzed under the Amendment 16 FEIS, no additional analysis is necessary for such measures. This minimizes unnecessary delays in implementing this action. Implementation of these measures in a timely manner is critical to enabling charter/party operations to finalize business plans and advertising strategies as quickly as possible.

These AMs conflict with the Recreational Advisory Panel's recommendation to address the 2010 overage using only increases in size limits. However, during the discussion at the Recreational Advisory Panel, private anglers supported possession limits in conjunction with an increased size limit as an acceptable AM, despite opposition from charter/party vessel operators.

The 9-fish possession limit and 19-inch (48.26 cm) minimum size limit for GOM haddock were originally considered during the development of Amendment 16 as one of several options designed to reduce the fishing mortality rate (F) on GOM haddock by the recreational fishery. Amendment 16

considered such measures in the context of effort reductions that would have been necessary if other options to distribute the GOM haddock ACL between the commercial and recreational groundfish fisheries were adopted by the Council. However, such measures can also be used to reduce recreational catch as part of AMs, as described in this action.

The biological and economic impacts of the AMs implemented by this action were analyzed in Section 7.2.2.3.2.3 and 7.5.2.3.2.3 of the Amendment 16 FEIS, respectively. The F reduction resulting from the measures implemented by this action is nearly identical to the amount of overage of the GOM haddock sub-ACL during FY 2010 (22.3 percent), and is expected to result in the necessary reduction in catch once implemented.

The Amendment 16 analysis does not quantify the precise economic impacts of these measures, but indicates that a 9-fish possession limit and a 19-inch (48.26 cm) minimum fish size may result in greater negative economic impacts than increasing the minimum fish size to 21 inches (53.34 cm) to reduce recreational catch of GOM haddock, and less economic impacts than implementing a 7-fish possession limit and an 18-inch (45.72 cm) minimum fish size. The analysis notes that anglers likely prefer options that focus on maintaining a higher possession limit because of the reliance upon high possession limits to attract customers for charter/party trips. However, it was suggested that because haddock do not grow as large as cod, exclusive reliance upon size limits to achieve the necessary F reductions for GOM haddock may reduce the probability of catching and being able to keep a legal-sized fish to such an extent that anglers may prefer a lower possession limit to a higher size limit.

Classification

The Administrator, Northeast Region, NMFS, determined that the management measures implemented by this interim final rule are necessary for the conservation and management of the NE multispecies fishery, and that they are consistent with the Magnuson-Stevens Act and other applicable law.

There is good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive prior notice and opportunity for public comment, and the 30-day delay in effective date, respectively, for the measures implemented by this interim final rule because such a delay would be impracticable and contrary to the public interest. This interim final rule is necessary to implement AMs to address an overage of the FY 2010 GOM haddock sub-ACL by the recreational groundfish fishery and prevent a similar overage from occurring in the future. Data available to estimate the recreational catch of GOM haddock come from the Marine Recreational Fisheries Statistics Survey (MRFSS), a telephone and shore-side intercept survey of fishing effort and angler catch. This process results in ''waves'' (a 2-month period) of data that estimate catch throughout the year. Catch data through the end of a particular FY (April of each year) are only available in June or July. These data must then be analyzed based on the distribution of anglers and fishing effort to estimate the catch of haddock in the GOM and on Georges Bank, the two stocks of haddock managed under the FMP. An estimate of the recreational catch of GOM haddock during FY 2010 (May 2010–April 2011) was made available to NMFS and the Council just before the September Council meeting. However, because the issue was not on the published Council agenda and there was no information available on which to base potential AMs at the time of the meeting, the Council did not offer recommendations about the appropriate AMs to address the FY 2010 overage by the recreational fishery. Further, there were substantial concerns raised by the Council about the accuracy of the recreational data, primarily because the existing MRFSS process is expected to be replaced in the near future by a more accurate and thorough process for estimating recreational catch. It is unclear at this time whether the updated methodology will result in different estimates of recreational catch of GOM haddock during FY 2010, or other years. As a result, it was not until November that the Council or its advisory bodies were able to discuss the recreational overage of the FY 2010 GOM haddock sub-ACL, and recommend appropriate AMs to NMFS, as required by the existing regulations. Thus, it was impracticable for NMFS to publish rulemaking soliciting public comment on appropriate AMs in the recreational fishery until first consulting with the Council at its November 15–17, 2011, meeting.

As noted above, this interim final rule immediately reduces fishing mortality on GOM haddock by the recreational fishery in order to address an overage of the FY 2010 recreational sub-ACL. This is important for preventing overfishing from occurring, as required in the Magnuson-Stevens Act, especially considering that the biomass for GOM haddock is expected to continue to decline over the next few years. The recreational fishing season, particularly for charter/party vessels, begins in earnest in March and April of each year. Charter/party operations advertise and try to book fishing trips prior to the start of the fishing season as part of their yearly business plans. As a result, it is important to implement recreational AMs in a timely manner and before the recreational fishing begins to not only increase the effectiveness of such measures at achieving desired F reductions in the recreational fishery, but also to enable charter/party vessel operators to effectively plan, advertise, and book trips for the upcoming fishing season. Delays in implementing recreational AMs to consider additional public input for the measures implemented by this action will only complicate business plans currently being developed by charter/party operations for the upcoming fishing season. Further, delays in implementing such measures could result in the AMs becoming effective midway into the spring recreational fishing season. This could result in unanticipated negative economic impacts to charter/party vessel operators and associated supporting businesses due to confusion in applicable regulations, changes to advertisements, and potentially cancelled trips. In addition, mid-season implementation may undermine compliance with such measures and reduce the effectiveness of the AMs and their benefits to the GOM haddock stock. If such measures are not effective at reducing recreational catch and, therefore, F on this stock, further measures may be necessary in the future to ensure that overfishing does not occur, as required by the Magnuson-Stevens Act. Therefore, it is contrary to the public interest to unnecessarily delay the implementation of such measures due to the potential biological and economic impacts that may result.

The measures implemented by this interim final rule have already been considered by the public as part of Amendment 16 to the FMP. During the development of Amendment 16, several public meetings were held in which these measures were discussed. Further, the public had an opportunity to comment on these measures as part of the public review of the notices of availability for both the Amendment 16 Draft Environmental Impact Statement (DEIS) and FEIS that were published in the **Federal Register** on April 24, 2009 (74 FR 18705), and October 30, 2009 (74 FR 56194), respectively. During both comment periods, public comments were received concerning recreational measures considered in Amendment 16,

including specific comments regarding the haddock minimum size limit and the recreational AMs. These comments were considered during the decision by the Council to adopt final measures in Amendment 16 (DEIS comments only), and by the Secretary in the partial approval of Amendment 16. Moreover, the public also had an opportunity to discuss such measures during the comment period for the proposed rule to implement measures adopted by the Council in Amendment 16 (December 31, 2009, 74 FR 69382). As noted above, NMFS consulted with the Council, the Groundfish Recreational Advisory Panel, and the Groundfish Oversight Committee at meetings in November 2011 to elicit their input into appropriate AMs to address the recreational fishery overage of the GOM haddock sub-ACL during FY 2010. During the Advisory Panel and Committee meetings, the measures implemented by this interim final rule were specifically discussed as potential AMs to address the overage. The public, including both private recreational anglers and charter/party vessel operators, provided input into their preference for AMs to address this overage during these meetings. Finally, additional public comment on these measures is being sought through the implementation of this action as an interim final rule.

Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has initially determined that this interim rule is not significant.

This interim final rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

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

Dated: December 22, 2011.

Samuel D. Rauch III,

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

[FR Doc. 2011–33319 Filed 12–29–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 251
Friday, December 30, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 51, and 52

[NRC–2011–0297]

General Site Suitability Criteria for Nuclear Power Stations

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide DG–4021, ''General Site Suitability Criteria for Nuclear Power Stations.'' This guide describes a method that the NRC staff considers acceptable to implement the site suitability requirements for nuclear power stations.

DATES: Submit comments by February 25, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please include Docket ID NRC–2011–0297 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0297. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Jacob Philip, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7471 or email *Jacob.Philip@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov*. DG–4021 is available electronically under ADAMS Accession Number ML102380302. The regulatory analysis may be found in ADAMS under Accession No. ML102380311.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0297.

Further Information

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, ''General Site Suitability Criteria for Nuclear Power Stations,'' is temporarily identified by its task number, DG–4021, which should be mentioned in all related correspondence. DG–4021 is proposed Revision 3 of Regulatory Guide 4.7, dated April 1998.

This guide discusses the major site characteristics related to public health and safety and environmental issues that the NRC staff considers in determining the suitability of sites for light-water-cooled nuclear power stations. Applicants may use the guidelines in identifying suitable candidate sites for nuclear power stations. The decision that a station may be built on a specific candidate site is based on a detailed evaluation of the proposed site-plant combination and a cost-benefit analysis comparing it with alternative site-plant combinations, as discussed in Regulatory Guide 4.2, ''Preparation of Environmental Reports for Nuclear Power Stations.''

Backfitting and Issue Finality

Issuance of this draft regulatory guide in final form does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. This regulatory guide will not apply to any

construction permits, operating licenses, early site permits, limited work authorizations issued under 10 CFR 50.10 for which the NRC issued a final environmental impact statement (EIS) preceded by a draft EIS under 10 CFR 51.76 or 51.75, or combined licenses, any of which were issued by the NRC prior to issuance of the final regulatory guide. The NRC has already completed its siting determination for those construction permits, operating licenses, early site permits, limited work authorizations, and combined licenses. Therefore, no further NRC regulatory action on siting will occur for those licenses, permits, and authorizations, for which the guidance in the regulatory guide would be relevant.

This regulatory guide may be applied to applications for early site permits, combined licenses, and limited work authorizations issued under 10 CFR 50.10, which includes information under 10 CFR 51.49(b) or (f), where the application is docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for construction permits, early site permits, combined licenses, and limited work authorizations, which includes information under 10 CFR 51.49(b) or (f), where the application is submitted after the issuance of the final regulatory guide. Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in Part 52.

Dated at Rockville, Maryland, this 21st day of December 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–33577 Filed 12–29–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1100; Directorate Identifier 2009–NE–37–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD), for all International Aero Engines AG (IAE) V2500–A1, V2525–D5 and V2528–D5 turbofan engines, and certain serial numbers (S/Ns) of IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines. The existing AD currently requires initial and repetitive on-wing ultrasonic inspections (USIs) of certain high-pressure compressor (HPC) stage 3 to 8 drums, and replacement of drum attachment nuts. This proposed AD would expand the affected population for initial and repetitive on-wing inspections of the HPC stage 3 to 8 drum, introduce an eddy current inspection (ECI) procedure, and require additional cleaning and repetitive on-wing USI or ECI of some HPC stage 3 to 8 drums. We are proposing this AD to prevent failure of the HPC stage 3 to 8 drum, uncontained engine failure, and damage to the airplane.

DATES: We must receive comments on this proposed AD by February 28, 2012.

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

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

For service information identified in this AD, contact International Aero Engines AG, 628 Hebron Avenue, Suite 400, Glastonbury, CT 06033; phone: (860) 368–3700; fax: (860) 368–4600; e-mail: *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 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: 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:

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-2009-1100; Directorate Identifier 2009–NE–37–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

On September 15, 2010, we issued AD 2010–20–07, Amendment 39–16441 (75 FR 59067, September 27, 2010), for IAE V2500–A1, V2525–D5, and V2528–D5 turbofan engines and certain S/Ns of IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines. That AD requires initial and repetitive on-wing USI of the HPC stage 3 to 8 drum for cracks for certain S/Ns of V2500–A1, V2522–A5, V2524–A5, V2527–A5,

V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 series turbofan engines. As mandatory terminating action to the repetitive inspections, that AD requires removal from service of the fully silver plated nuts attaching the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum, removal of silver residue from the HPC stage 3 to 8 drum, and FPI of the stage 3 to 8 drum within a specified time. For all other engines, that AD requires removal from service of the fully silver plated nuts attaching the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum, removal of silver residue from the HPC stage 3 to 8 drum, and FPI of the HPC stage 3 to 8 drum at the next drum piece-part exposure. That AD resulted from reports of 39 HPC stage 3 to 8 drums found cracked since March 2009. We issued that AD to prevent failure of the HPC stage 3 to 8 drum, uncontained engine failure, and damage to the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2010–20–07 (75 FR 59067, September 27, 2010), inspections have found 50 additional HPC drums with cracks. Some reports have indicated that the FPI may miss small cracks. This has necessitated the expansion of the compliance requirements.

Relevant Service Information

We reviewed IAE Service Bulletin (SB) V2500–ENG–72–0615, Revision 3, dated September 20, 2011. That SB will replace IAE SB V2500–ENG–72–0594, Revision 6, dated April 12, 2010 and IAE SB V2500–ENG–72–0603, Revision 1, dated February 17, 2011. We have also reviewed IAE SB No. V2500–ENG–72–0601, Revision 2, dated April 12, 2010. That SB describes procedures for removing the silver residue from the HPC stage 3 to 8 drum. We have also reviewed IAE SB V2500–ENG–72–0615, Revision 3, dated September 20, 2011 and IAE SB No. V2500–ENG–72–0608, Revision 3, dated September 20, 2011. Those SBs describe procedures for performing USIs of the HPC stage 3 to 8 drum. We have also reviewed IAE SB V2500–ENG–72–0625, dated September 20, 2011 which introduces an ECI procedure that will improve the ability to detect cracks of the HPC 3 to 8 drum.

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 retain certain requirements of AD 2010–20–07. The proposed AD has the same applicability requirements as AD 2010–20–07. This proposed AD, however, would expand the initial and repetitive on-wing USIs of the HPC stage 3 to 8 drum for cracks to a larger population of S/Ns of V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines and all V2525–D5 and V2528–D5 turbofan engines. This proposed AD would introduce an ECI procedure that will improve the ability to detect cracks of the HPC stage 3 to 8 drum. This proposed AD would require repetitive on-wing USI of the HPC stage 3 to 8 drum after removal from service of all of the fully silver plated nuts attaching the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum; removal of silver residue from the HPC stage 3 to 8 drum; and FPI or ECI of the stage 3 to 8 drum. This proposed AD would also remove the mandatory terminating action and replace it with an optional terminating action.

Costs of Compliance

We estimate that this proposed AD would affect about 906 IAE V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines installed on airplanes of U.S. registry. We estimate that 906 of these engines would require USIs, and that it would take about 3 work-hours per engine to perform one USI. We estimate that it would take about 2 work-hours per engine to perform the FPI of the HPC stage 3 to 8 drum, and that the average labor rate is $85 per work-hour. We also estimate that removal of silver residue from the engine would cost about $2,600 per engine. Required parts would cost about $795 per engine. We also estimate the cost of replacing a drum if found cracked would be $189,000. We have no way of determining the number of aircraft that might need this replacement. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $4,385,040.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

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 airworthiness directive (AD) 2010–20–07, Amendment 39–16441 (75 FR 59067, September 27, 2010), and adding the following new AD:

International Aero Engines AG: Docket No. FAA–2009–1100; Directorate Identifier 2009–NE–37–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by February 28, 2012.

(b) Affected ADs

This AD supersedes AD 2010–20–07, Amendment 39–16441 (75 FR 59067, September 27, 2010).

(c) Applicability

This AD applies to:

(1) All International Aero Engines AG (IAE) V2500–A1 turbofan engines; and

(2) All IAE V2525–D5 and V2528–D5 turbofan engines; and

(3) IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines with serial numbers (S/Ns) up to and including V13181, and with S/Ns from V15000 up to and including V15245.

(d) Unsafe Condition

This AD results from reports of 50 additional high-pressure compressor (HPC) stage 3 to 8 drums found cracked since AD 2010–20–07 was issued. We are issuing this AD to prevent failure of the HPC stage 3 to 8 drum, uncontained engine failure, and damage to the airplane.

(e) Compliance

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

(f) Initial Ultrasonic Inspections (USIs) of the HPC Stage 3 to 8 Drum

(1) Using IAE Service Bulletin (SB) No. V2500–ENG–72–0615, Revision 3, dated September 20, 2011, Accomplishment Instructions, paragraph 3, perform an initial USI of the HPC stage 3 to 8 drum:

(i) For IAE V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines with S/Ns in ''Group A'' in Paragraph 1.A. in IAE SB No. V2500–ENG–72–0615, Revision 3, dated September 20, 2011, before accumulating 5,000 cycles-since-new (CSN) or within 500 cycles from the effective date of this AD, whichever occurs later.

(ii) For IAE V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines with S/Ns in ''Group B'' in Paragraph 1.A. in IAE SB No. V2500–ENG–72–0615, Revision 3, dated September 20, 2011, before accumulating 12,500 CSN or within 500 cycles from the effective date of this AD, whichever occurs later, not to exceed 13,700 CSN.

(2) For all IAE V2525–D5 and V2528–D5 turbofan engines, using IAE SB No. V2500–ENG–72–0608, Revision 3 dated September 20, 2011, Accomplishment Instructions, paragraph 3, perform an initial USI of the HPC stage 3 to 8 drum before accumulating 12,500 CSN or within 500 cycles from the effective date of this AD, whichever occurs later, not to exceed 13,700 CSN.

(3) If cracks or crack indications are identified, remove the drum from service before further flight.

(g) Removal of All Fully Silver Plated Nuts

(1) At the next piece part exposure of the HPC stage 3 to 8 drum after the effective date of this AD, but no later than 8 years from the effective date of this AD, do the following before returning any HPC stage 3 to 8 drum to service:

(i) Remove from service all fully silver plated nuts, part number (P/N) AS44862 or equivalent, that attach the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum.

(ii) Remove the silver residue from the HPC stage 3 to 8 drum using the IAE SB No. V2500–ENG–72–0601, Revision 2, dated April 12, 2010, Accomplishment Instructions, paragraph 3. Drums cleaned before the effective date of this AD using engine manual task 72–41–11–110–001 satisfy this requirement.

(2) Perform an inspection using one of the following methods:

(i) Fluorescent penetrant inspect (FPI) the HPC stage 3 to 8 drum for cracks, and remove from service any drum found cracked. You can find guidance on performing an FPI of the HPC stage 3 to 8 drum in IAE engine manual task 72–41–11–200–001.

(ii) Eddy Current Inspect (ECI) the HPC stage 3 to 8 drum for cracks, using IAE SB No. V2500–ENG–72–0625, dated September 20, 2011, and remove from service any drum found cracked.

(3) If cracks or crack indications are identified, remove the drum from service before further flight.

(h) Repetitive USIs of the HPC Stage 3 to 8 Drum

Perform repetitive USIs of the HPC stage 3 to 8 drum for cracks in accordance with paragraphs (f)(1) or (f)(2) of this AD as follows:

(1) Within every 750 cycles-since-last USI; or

(2) Within 2,500 cycles-since-last FPI; or

(3) Within 13,000 cycles-since-last ECI, whichever occurs latest.

(i) Optional Terminating Action

Accomplishment of paragraphs (h)(1) and (h)(2) of this AD, eliminate the cleaning and inspection requirements of this AD and no further actions are required.

(1) Remove from service all fully silver plated nuts, P/N AS44862 or equivalent, that attach the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum.

(2) Install a zero-time HPC stage 3 to 8 drum or a drum that has never operated with fully silver plated nuts, P/N AS44862 or equivalent, that attach the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum.

(j) Definitions

For the purpose of this AD, piece-part exposure is removal of the HPC stage 3 to 8 drum from the engine and removal of all blades from the drum.

(k) Previous Credit

(1) Initial or repetitive USIs of the HPC stage 3 to 8 drum using IAE SB No. V2500–ENG–72–0594, Revision 3, dated August 7, 2009, or Revision 4, dated October 13, 2009, or Revision 5, dated November 23, 2009, or Revision 6, dated April 12, 2010, before the effective date of this AD, meets the inspection requirements of paragraphs (f)(1) through (f)(3) of this AD.

(2) Initial or repetitive USIs of the HPC stage 3 to 8 drum using IAE SB No. V2500–ENG–72–0603, Original Issue, dated November 24 2009, or Revision 1, dated December 18, 2009, or Revision 2, dated March 17, 2010, before the effective date of this AD, meets the inspection requirements of paragraphs (f)(1) through (f)(3) of this AD.

(3) Initial or repetitive USIs of the HPC stage 3 to 8 drum using IAE SB No. V2500–ENG–72–0608, Revision 3, dated September 20, 2011, before the effective date of this AD, meets the inspection requirements of paragraphs (f)(1) through (f)(3) of this AD.

(4) Initial or repetitive USIs of the HPC stage 3 to 8 drum using IAE SB No. V2500–ENG–72–615, Revision 3, dated September 20, 2011, before the effective date of this AD, meets the inspection requirements of paragraphs (f)(1) through (f)(3) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

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

Issued in Burlington, Massachusetts, on December 23, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–33536 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1414; Directorate Identifier 2011–NM–227–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft 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 Cessna Aircraft Company Model 560XL airplanes. This proposed AD was prompted by reports of jammed or stiff rudder control due to water freezing on the rudder bias cables and pulleys of the stinger. This proposed AD would require modification of the drain installation of the tailcone stinger on the aft canted bulkhead, inspections for drain holes in the forward and aft frames, and modification of the drain holes. We are proposing this AD to prevent ice accumulation on the cables and pulleys of the stinger, which could result in jamming of the rudder and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by February 13, 2012.

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

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

For service information identified in this proposed AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone (316) 517–6215; fax (316) 517–5802; email *citationpubs@cessna.textron.com;* Internet *https://www.cessnasupport.com/newlogin.html*. 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: David Fairback, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: (316) 946–4154; fax: (316) 946–4107; email: *david.fairback@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–2011–1414; Directorate Identifier 2011–NM–227–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of jammed or stiff rudder control due to water freezing on the rudder bias cables and pulleys of the stinger. The cause of this is attributed to a large amount of water entering the stinger and pooling at the lowest point due to inadequate drainage. This water sprays onto the rudder bias cables and pulleys due to the inflow of air into the stinger. Therefore, as the airplane climbs to temperatures below 32 degrees Fahrenheit the water freezes on the cables, pulleys, and mounting brackets. The ice acts as an adhesive, which prevents the pulleys from rotating and the cables from sliding on the pulleys. These conditions, if not corrected, could result in jamming of the rudder and consequent reduced controllability of the airplane.

Relevant Service Information

We reviewed Cessna Service Bulletin SB560XL–53–16, dated October 4, 2011, including Service Bulletin Supplemental Data SB560XL–53–16, Revision A, dated October 20, 2011, which describes procedures for modifying the drain installation of the tailcone stinger on the aft canted bulkhead. The modification includes installing a drain and rubber seals to reduce the amount of water entering the stinger and improve drainage. That service bulletin recommends prior or concurrent accomplishment of Cessna Alert Service Letter ASL560XL–53–08, dated January 21, 2011, which describes procedures for modification of the drain holes. The modification includes inspections for a missing drain hole and drilling a larger drain hole if there is not a number 7 (0.201 inch-diameter) drain hole at that location, sealing existing drain holes in the tailcone stinger, or adding drain holes in the aft canted bulkhead.

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 this same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

Cessna Service Bulletin SB560XL–53–16, dated October 4, 2011, specifies a compliance time of ''within 1,200 flight hours or 18 months from the date of receipt, whichever occurs first,'' for the modification of the stinger drain installation. Cessna Alert Service Letter ASL560XL–53–08, dated January 21, 2011, specifies a compliance time of ''within 90 flight hours or 90 days from the date of receipt, whichever occurs first,'' for modification of the drain holes. However, this proposed AD would require accomplishment of the modification of the stinger drain installation within 800 flight hours or 12 months after the effective date of this

AD, whichever occurs first; and prior or concurrent accomplishment of the modification of the drain holes. We find that these compliance times represent appropriate intervals of time for affected airplanes to continue to operate without compromising safety.

Cessna Service Bulletin SB560XL–53–16, dated October 4, 2011; and Cessna Alert Service Letter ASL560XL–53–08, dated January 21, 2011; both recommend submitting certain maintenance information to the manufacturer, but this proposed AD does not include that requirement.

Costs of Compliance

We estimate that this proposed AD affects 475 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
Modification of stinger drain installation	10 work-hours × $85 per hour = $850	$489	$1,339	$636,025
Prior/concurrent modification of drain holes	5 work-hours × $85 per hour = $425	255	680	323,000

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):

Cessna Aircraft Company: Docket No. FAA–2011–1414; Directorate Identifier 2011–NM–227–AD.

(a) Comments Due Date

We must receive comments by February 13, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Cessna Aircraft Company Model 560XL airplanes; certificated in any category; serial numbers –5002 through –5372 inclusive, –5501 through –5830 inclusive, –6002 through –6080 inclusive, and –6082 through –6086 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53: Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of jammed or stiff rudder control due to water freezing on the rudder bias cables and pulleys of the stinger. We are issuing this AD to prevent ice accumulation on the cables and pulleys of the stinger, which could result in jamming of the rudder and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Modification of the Drain Installation

Within 800 flight hours or 12 months after the effective date of this AD, whichever occurs first: Modify the drain installation of the tailcone stinger on the aft canted bulkhead (*i.e.,* install a drain and rubber seals), in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB560XL–53–16, dated October 4, 2011.

(h) Modification of the Drain Holes

For airplanes identified in Cessna Alert Service Letter ASL560XL–53–08, dated January 21, 2011: Prior to or concurrently with the modification required by paragraph (g) of this AD, modify the drain holes, including inspecting for a missing drain hole and, before further flight, drilling a larger drain hole as applicable; in accordance with the Accomplishment Instructions of Cessna Alert Service Letter ASL560XL–53–08, dated January 21, 2011.

Note 1: 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).

(i) No Reporting

Although Cessna Service Bulletin SB560XL–53–16, dated October 4, 2011; and Cessna Alert Service Letter ASL560XL–53–08, dated January 21, 2011; both specify to submit certain maintenance information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), ACE–115W, 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.

(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.

(k) Related Information

(1) For more information about this AD, contact David Fairback, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: (316) 946–4154; fax: (316) 946–4107; email: *david.fairback@faa.gov*.

(2) For service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277; telephone (316) 517–6215; fax (316) 517–5802; email *citationpubs@cessna.textron.com*; Internet *https://www.cessnasupport.com/newlogin.html*. 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 23, 2011.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33563 Filed 12–29–11; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1411; Directorate Identifier 2011–NM–074–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 Model 737 airplanes. This proposed AD would incorporate design changes to improve the reliability of the cabin altitude warning system by requiring installation of a redundant switch of the cabin altitude pressure, replacing the aural warning module (AWM) with a new or reworked AWM, changing certain wire bundles, and connecting certain previously capped and stowed wires, as necessary. This proposed AD, for certain airplanes, would also require modifying the instrument panels, installing light assemblies, modifying the wire bundles, and installing a new circuit breaker, as necessary. This proposed AD was prompted by a report of a lack of cabin pressurization event caused by the flightcrew not receiving an aural warning because of the failure of the cabin altitude pressure switch. We are proposing this AD to prevent failure of the flightcrew to recognize and react to a lack of cabin pressurization, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in the body), and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by February 13, 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:* 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 proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For BAE Systems service information identified in this proposed AD, contact BAE Systems, Attention: Commercial Product Support, 600 Main Street, Room S18C, Johnson City, NY 13790–1806; telephone (607) 770–3084; fax (607) 770–3015; email *CS–Customer.Service@baesystems.com;* Internet *http://www.baesystems-ps.com/customersupport.* 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: Jeffrey Palmer, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6481; fax: (425) 917–6590; email: *jeffrey.palmer@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–2011–1411; Directorate Identifier 2011–NM–074–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 a report from an operator of an event in which the flightcrew was not aware of cabin depressurization. The flightcrew also were not aware that passenger oxygen masks had deployed until they were notified by a member of the cabin crew. Further investigations revealed that the flightcrew did not receive an aural warning because of the failure of the cabin altitude pressure switch at 10,000 feet. This condition, if not corrected, could result in failure of the flightcrew to recognize and react to a lack of cabin pressurization, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in the body), and consequent loss of control of the airplane.

Relevant Service Information

We reviewed the following service information:

• Boeing Special Attention Service Bulletin 737–21–1164, dated February 10, 2011 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes); and

• Boeing Special Attention Service Bulletin 737–21–1165, Revision 1, dated July 16, 2010 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes).

The service information describes procedures for installing a redundant switch of the cabin altitude pressure, replacing the AWM with a new or reworked AWM, changing certain wire bundles, and connecting certain capped and stowed wires, as necessary.

The service information refers to BAE Systems Service Bulletin 69–78214–31–03, dated January 15, 2009, for guidance on reworking the AWM.

Boeing Special Attention Service Bulletin 737–21–1164, dated February 10, 2011, specifies the concurrent accomplishment of the actions specified in Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes). Boeing Special Attention Service Bulletin 737–21–1165, Revision 1, dated July 16, 2010, specifies the concurrent accomplishment of the actions specified in Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes).

For certain airplane configurations, Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010; and Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010; describe procedures for modifying the instrument panels, installing light assemblies, modifying the wire bundles, and installing a new circuit breaker, as necessary. We have also received Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes), which added airplanes to the effectivity.

Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011, refers to BAE Systems Service Bulletins 233A2221–31–01, Revision 1, dated March 10, 2011; 233A2221–31–02, dated April 16, 2009; 233A2221–31–03, Revision 1, dated March 10, 2011; 233A2221–31–05, Revision 1, dated March 10, 2011; 233A2222–31–01, Revision 1, dated March 10, 2011; 233A2222–31–02, Revision 1, dated March 10, 2011; 233A2222–31–03, Revision 1, dated March 10, 2011; 233A2222–31–05, Revision 1, dated March 3, 2011; 233A3213–21–01, dated August 12, 2010; and 69–37319–31–05, dated August 26, 2010; as additional sources of guidance for modifying the instrument panels and installing the light assemblies.

Other Relevant Rulemaking

On January 25, 2011, the FAA issued AD 2011–03–14, Amendment 39–16598 (76 FR 6529, February 7, 2011), for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, which currently requires installing two warning level indicator lights on the P2–2 center instrument panel in the flight compartment, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010.

In addition, on March 14, 2011, the FAA issued Notice of Proposed Rulemaking (NPRM) FAA–2011–0258 (76 FR 16579, March 24, 2011), for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, which currently proposes installing two warning level indicator lights on each of the P1–3 and P3–1 instrument panels in the flight compartment, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010. We are considering revising NPRM FAA–2011–0258 to refer to Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011.

AD 2011–03–14, Amendment 39–16598 (76 FR 6529, February 7, 2011), and NPRM FAA–2011–0258 (76 FR 16579, March 24, 2011), were prompted by a design change in the cabin altitude warning system. The actions required by that AD and proposed by that NPRM are intended to prevent failure of the flightcrew to recognize and react to a lack of cabin pressurization, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in the body), and consequent loss of control of the airplane.

FAA's Determination

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

Proposed AD Requirements

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

Costs of Compliance

We estimate that this proposed AD affects 1,405 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install a redundant switch of the cabin altitude pressure, replace the AWM with a new or reworked AWM, change certain wire bundles, and connect certain capped and stowed wires.	Up to 31 work-hours × $85 per hour = up to $2,635.	$4,082	Up to $6,717	Up to $9,437,385.
Modify the instrument panels, install light assemblies, modify the wire bundles, and install a new circuit breaker.	Up to 84 work-hours × $85 per hour = up to $7,140.	5,292	Up to 12,432	Up to $17,466,960.

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–2011–1411; Directorate Identifier 2011–NM–074–AD.

(a) Comments Due Date

We must receive comments by February 13, 2012.

(b) Affected ADs

None.

(c) Applicability

The Boeing Company airplanes; certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 737–100, –200, –200C, –300, –400, and –500 series airplanes as identified in Boeing Special Attention Service Bulletin 737–21–1164, dated February 10, 2011.

(2) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes as identified in Boeing Special Attention Service Bulletin 737–21–1165, Revision 1, dated July 16, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 21; Air Conditioning.

(e) Unsafe Condition

This AD was prompted by the report of a lack of cabin pressurization event caused by the flightcrew not receiving an aural warning because of the failure of the cabin altitude pressure switch. We are issuing this AD to prevent failure of the flightcrew to recognize and react to a lack of cabin pressurization, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in the body), and consequent loss of control of the airplane.

(f) Compliance

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

(g) Installation

Within 72 months after the effective date of this AD, install a redundant switch of the cabin altitude pressure, replace the aural warning module (AWM) with a new or reworked AWM, change certain wire bundles, and connect certain capped and stowed wires, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–21–1164, dated February 10, 2011 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes); and Boeing Special Attention Service Bulletin 737–21–1165, Revision 1, dated July 16, 2010 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes).

Note 1: Additional guidance on reworking the AWM can be found in BAE Systems Service Bulletin 69–78214–31–03, dated January 15, 2009.

(h) Concurrent Actions

For airplanes identified in Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes); and Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes): Before or concurrently with accomplishment of the actions specified in paragraph (g) of this AD, as applicable, modify the instrument panels, install light assemblies, modify the wire bundles, and install a new circuit breaker, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes); and Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes).

Note 2: Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011, refers to BAE Systems Service Bulletins 233A2221–31–01, Revision 1, dated March 10, 2011; 233A2221–31–02, dated April 16, 2009; 233A2221–31–03, Revision 1, dated March 10, 2011; 233A2221–31–05, Revision 1, dated March 10, 2011; 233A2222–31–01, Revision 1, dated March 10, 2011; 233A2222–31–02, Revision 1, dated March 10, 2011; 233A2222–31–03, Revision 1, dated March 10, 2011; 233A2222–31–05, Revision 1, dated March 3, 2011; 233A3213–21–01, dated August 12, 2010; and 69–37319–31–05, dated August 26, 2010; as additional sources of guidance for modifying the instrument panels and installing the light assemblies.

Note 3: AD 2011–03–14, Amendment 39–16598 (76 FR 6529, February 7, 2011), requires accomplishing the actions specified in Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes). Notice of Proposed Rulemaking FAA–2011–0258 (76 FR 16579, March 24, 2011), is proposing to require Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes). We are considering revising NPRM FAA–2011–0258 to refer to Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010, are considered acceptable for compliance with the corresponding action specified in this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Seattle 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.

(k) Related Information

(1) For more information about this AD, contact Jeffrey Palmer, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6481; fax: (425) 917–6590; email: *jeffrey.palmer@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; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For BAE Systems service information identified in this AD, contact BAE Systems, Attention: Commercial Product Support, 600 Main Street, Room S18C, Johnson City, NY 13790–1806; telephone (607) 770–3084; fax (607) 770–3015; email *CS–Customer.Service@baesystems.com;* Internet *http://www.baesystems-ps.com/customersupport.* 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 16, 2011.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33575 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1412 Directorate Identifier 2011–NM–158–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. This proposed AD was prompted by reports of cracked retract actuator fuse pins that can fail earlier than the previously determined safe life limit of the pins. A fractured retract actuator fuse pin can cause the main landing gear (MLG) to extend without restriction and attempt to lock into position under high dynamic loads. This proposed AD would require an inspection for the part number of the fuse pin, and replacement of the pin if necessary. We are proposing this AD to prevent structural damage to the side and drag brace lock assemblies, which could result in landing gear collapse during touchdown, rollout, or taxi.

DATES: We must receive comments on this proposed AD by February 13, 2012.

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

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1412; Directorate Identifier 2011–NM–158–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of cracked retract actuator fuse pins that can fail earlier than previously determined safe life limit of the pins. A fractured retract actuator fuse pin can cause the main landing gear (MLG) to extend without restriction and attempt to lock into position under high dynamic loads. Unrestricted MLG extension could cause structural damage to the side and drag brace lock assemblies. This condition, if not corrected, could result in structural damage to the side and drag brace lock assemblies, which could result in landing gear collapse during touchdown, rollout, or taxi.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 777–32–0083, Revision 1, dated February 17, 2011. The service information describes procedures for inspecting the retract actuator fuse pin to identify the part number of the pin and, if an affected pin is found, replacing it with a new part number pin.

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 these same type designs.

Proposed AD Requirements

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

Costs of Compliance

We estimate that this proposed AD affects 35 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
Inspection	4 work-hours × $85 per hour = $340	$0	$340	$11,900

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Pin replacement	1 work-hour × $85 per hour = $85 per pin	$769 per pin	$854 per pin.

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–2011–1412; Directorate Identifier 2011–NM–158–AD.

(a) Comments Due Date

We must receive comments by February 13, 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, as identified in Boeing Special Attention Service Bulletin 777–32–0083, Revision 1, dated February 17, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 32, Main landing gear.

(e) Unsafe Condition

This AD was prompted by reports of cracked retract actuator fuse pins that can fail earlier than the previously determined safe life limit of the pins. A fractured retract actuator fuse pin can cause the main landing gear (MLG) to extend without restriction and attempt to lock into position under high dynamic loads. We are issuing this AD to prevent structural damage to the side and drag brace lock assemblies, which could result in landing gear collapse during touchdown, rollout, or taxi.

(f) Compliance

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

(g) Inspection of Retract Actuator Fuse Pin

Within 6 months after the effective date of this AD: Inspect the part number of the fuse pins of the left and right MLG retract actuators, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–32–0083, Revision 1, dated February 17, 2011. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the installed actuator fuse pin can be conclusively determined from that review.

(1) If any retract actuator fuse pin having part number 112W1769–3 is found installed, no further action is required by this paragraph for that fuse pin.

(2) If any retract actuator fuse pin having part number 112W1769–1 is found installed and the pin has accumulated more than 10,000 total flight cycles as of the effective date of this AD: Within 6 months after the effective date of this AD, replace the fuse pin with a new part number 112W1769–3 fuse pin, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–32–0083, Revision 1, dated February 17, 2011.

(3) If any retract actuator fuse pin having part number 112W1769–1 is found installed and the pin has accumulated 8,000 or more, but fewer than or equal to 10,000 total flight cycles, as of the effective date of this AD: Before the accumulation of 10,000 total flight cycles on the pin, or within 12 months after the effective date of this AD, whichever occurs later, replace the fuse pin with a new part number 112W1769–3 fuse pin, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–32–0083, Revision 1, dated February 17, 2011.

(4) If any retract actuator fuse pin having part number 112W1769–1 is found installed and the pin has accumulated fewer than 8,000 total flight cycles as of the effective date of this AD: Before the accumulation of 8,000 total flight cycles on the pin, or within 24 months after the effective date of this AD, whichever occurs later, replace the fuse pin with a new part number 112W1769–3 fuse pin, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–32–0083, Revision 1, dated February 17, 2011.

(h) Parts Installation

As of the effective date of this AD, no person may install a retract actuator fuse pin having P/N 112W1769–1 on any airplane.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 777–32–0083, dated February 5, 2009, are acceptable for compliance with the corresponding requirements of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

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

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

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

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–33544 Filed 12–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO01

Grants for Transportation of Veterans in Highly Rural Areas

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations in part 17 to establish a new program to provide grants to eligible entities to assist veterans in highly rural areas through innovative transportation services to travel to VA medical centers, and to otherwise assist in providing transportation services in connection with the provision of VA medical care to these veterans. This rulemaking is necessary to implement new statutory authority by establishing procedures for evaluating grant applications under the new grant program, and otherwise administering the new grant program. This proposed rule would implement section 307 of title III of the Caregivers and Veterans Omnibus Health Services Act of 2010 (the 2010 Act).

DATES: Comments must be received by VA on or before February 28, 2012.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO01, Grants for Transportation of Veterans in Highly Rural Areas.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David Riley, Director, Veterans Transportation Service, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 2957 Clairmont Road, Atlanta, GA 30329, (404) 828–5601. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 307 of the 2010 Act, requires that VA ''establish a grant program to provide innovative transportation options to veterans in highly rural areas.'' To comply with section 307 of the 2010 Act, VA will award grants to eligible entities to assist veterans in highly rural areas to travel to VA medical centers, and to otherwise assist in providing transportation in connection with the provision of VA medical care to these veterans. This proposed rule would establish the grant program in accordance with paragraph (a) of section 307 of the 2010 Act, and establish regulations for evaluating grant applications and otherwise administering the grant program in accordance with paragraph (b) of section 307 of the 2010 Act.

Section 307(d) of the 2010 Act authorizes $3,000,000 of appropriated funds for each fiscal year beginning 2010 through 2014 to carry out the grant program. We would indicate this funding limitation for each of the fiscal years in a Notice of Fund Availability (NOFA) publication in the **Federal Register**, to adequately provide notice to eligible recipients of the grants. It is not necessary to include the funding limitation or to indicate the specific fiscal years for the program's funding in the proposed rule, however, because the amount of authorized appropriations may change after fiscal year 2014 and Congress could extend the program past fiscal year 2014. Section 307 of the 2010 Act is not designated by Congress to be a pilot program, and the law does not otherwise contain a provision that it will cease to have effect after a specific date unless extended. By not including the funding limitation or the specific fiscal years the program is to be funded in the proposed rule, we would prevent having a regulation in the Code of Federal Regulations that appeared to restrict or stop the grant program beyond a certain date, when VA may still be compelled to administer the grant program. If funding ceases to be provided or the grant program is not extended beyond 2014, we would not

publish a subsequent NOFA in the **Federal Register** for that following fiscal year, and we would amend our regulations to remove the rule from the Code of Federal Regulations.

17.700 Purpose and Scope

Proposed § 17.700 would establish the grant program and explain what the program provides. This section would indicate that VA would provide grants to eligible entities to assist veterans in highly rural areas to travel to VA medical centers and to otherwise assist in providing transportation in connection with the provision of VA medical care to such veterans, in accordance with paragraph (a) of section 307 of the Act.

17.701 Definitions

Proposed § 17.701 would define terms to be used throughout all proposed sections, and in Notices of Fund Availability to be published in the **Federal Register**. ''Applicant'' would be defined as an eligible entity that submits an application for a grant announced in a Notice of Fund Availability. An ''eligible entity'' would be defined as either Veterans Service Organizations, or State veterans service agencies, in accordance with paragraphs (a)(2)(A)–(B) of section 307 of the 2010 Act. A ''grantee'' would be defined as an applicant that is awarded a grant under this proposed rule. A ''highly rural area'' would be defined as an area consisting of a county or counties having a population of less than seven persons per square mile, consistent with paragraph (c)(1) of section 307 of the 2010 Act. VA currently monitors and maintains a specific listing of such highly rural areas, and grants will only be awarded to applicants whose programs will service one or more of these areas, as identified in the application. VA will provide the listing of specific highly rural areas in the Notice of Fund Availability for the proposed rule. A ''Notice of Fund Availability'' would be defined as a Notice of Fund Availability published in the **Federal Register** in accordance with § 17.710 of the proposed rule. A ''participant'' would be defined as a veteran in a highly rural area who receives transportation services from a grantee. A ''State veterans service agency'' would be defined as the element of a State government that has responsibility for programs and activities of that government relating to veterans benefits, for instance the ''Maryland Department of Veterans Affairs.'' We do not interpret section 307 of the 2010 Act as permitting VA to consider cities or counties to be ''State veterans service agencies'' for purposes of this proposed rule, as we read the plain language of the statute to authorize only a State level entity to be a grantee within the meaning of this definition. By definition, VA would not limit these entities to include only those which are formally recognized by VA under 38 U.S.C. 5902, though VA in practice does recognize under section 5902 veterans service agencies for 46 States. We believe this ensures that there is the same regulatory distinction between the two eligible entity types as Congress intended in section 307 of the 2010 Act. This would also ensure that every State entity which is responsible for programs and activities relating to veterans benefits will be able to apply for grants even if not recognized by VA under section 5902. For instance, Alaska and Wyoming are not among the 46 States recognized under section 5902, but each has a formal State level entity responsible for programs and activities related to veterans benefits, as well as identified highly rural areas that would benefit from grants awarded under the proposed rule.

The ''provision of VA medical care'' would be defined as the provision of medical services as defined in section 1710 of title 38 United States Code. Though paragraph (a)(3)(B) of section 307 of the 2010 Act only specifies ''the provision of medical care'' without distinguishing that the care would be VA medical care, it is reasonable to conclude that the intent of section 307 of the 2010 Act is that the transportation services provided would be in connection with medical care provided by VA. We believe this conclusion is supported by reading paragraphs (a)(3)(A) and (B) together: Grant funds must be used to ''assist veterans in highly rural areas to travel to Department of Veterans Affairs medical centers'' and to ''otherwise assist in providing transportation in connection with the provision of medical care to veterans in highly rural areas.'' We interpret the use of the term ''otherwise'' in paragraph (a)(3)(B) to expand travel to VA facilities other than VA medical centers for the provision of medical care, but not to expand the type of medical care provided beyond that provided by VA. Section 307 of the Act clearly seeks to improve access to VA medical care for veterans in highly rural areas through transportation assistance, and it is this assistance that negates the need for a veteran to seek what is perhaps more conveniently located non-VA medical care. ''Transportation services'' would be defined as the direct provision of transportation, or assistance with providing transportation, to travel to VA medical centers or in connection with the provision of VA medical care. We believe section 307 of the 2010 Act supports awarding grants for programs that may not directly transport veterans, as section 307(a)(3)(A)–(B) makes clear that an eligible entity may use grant funds to ''assist'' veterans to travel to care, or to otherwise ''assist'' in providing transportation in connection with the provision of care to a veteran. For instance, grantees may use funds to initiate ride sharing or car pooling programs, whereby veterans could be matched with and share vehicles with others traveling to the same destinations at the same times. ''Veterans Service Organization'' would be defined as an organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38 United States Code, in accordance with paragraph (c)(2) of section 307 of the 2010 Act. These organizations have multiple representative groupings which are recognized throughout the United States. Each of these groupings would be individually eligible to apply for a grant, to ensure grant funds are distributed as broadly as needed.

17.702 Grants—General

Proposed § 17.702 would establish the general parameters of the grants themselves. Proposed paragraph (a) would indicate that VA may award one grant per fiscal year to a grantee for each highly rural area in which the grantee provides transportation services, and that transportation services may not be simultaneously provided by more than one grantee in any single highly rural area. We would allow a grantee to receive a grant for each highly rural area in which the grantee provides transportation services, to permit State entities to receive as many grants as they have designated highly rural areas. This would help ensure that each highly rural area receives the maximum amount of assistance contemplated under section 307 of the 2010 Act. Designating that grants are awarded per fiscal year would ensure that grants are awarded only when funding is available, in accordance with paragraph (d) of section 307 of the 2010 Act. The prohibition of simultaneous delivery of transportation services by more than one grantee in one area would ensure that as many geographic areas are serviced as possible each fiscal year, by preventing a concentration of grant awards for any single highly rural area. Proposed paragraph (b) would establish that the grant amounts will be specified

in the Notice of Fund Availability, but that no single grant will exceed $50,000, to comply with paragraph (a)(4) of section 307 of the 2010 Act. Proposed paragraph (c) would specify that an applicant would not be required to provide matching funds as a condition of receiving a grant, in accordance with paragraph (a)(5) of section 307 of the 2010 Act. Proposed paragraph (d) would specify that a veteran who is provided transportation services via grant funds will not be charged for such services, to ensure that veterans in highly rural areas have the most access to these transportation services as feasible, regardless of their ability to pay.

17.703 Eligibility and Application

Proposed § 17.703 would address grant eligibility and application procedures. Proposed paragraphs (a)(1)–(2) establish that the only entities eligible to receive grants are either Veterans Service Organizations, or State veterans service agencies, to comply with paragraphs (a)(2)(A)–(B) of section 307 of the Act. Proposed paragraph (b) would require applicants to submit a complete grant application package to be considered for an initial grant, and would specify that the initial grant application procedures to be followed are described in the Notice of Fund Availability. Proposed paragraph (c) would require applicants to submit a complete renewal grant application package to be considered for a renewal grant, if the grantee's program would remain substantially the same, and would specify that the renewal grant application procedures to be followed would be described in the Notice of Fund Availability. By allowing grantees to submit a renewal grant application, additional grant funds could be sought for subsequent fiscal years with little or no interruption in the provision of transportation services.

17.705 Application Scoring Criteria and Selection

Proposed § 17.705 would establish scoring and selection categories for the award of grants in accordance with the mandate in paragraph (b)(1) of section 307 of the 2010 Act, which requires that VA prescribe regulations to evaluate grant applications. Proposed paragraphs (a)(1)–(4) would specify the scoring criteria for initial grant applications. These proposed criteria are weighted according to their probability of influencing an applicant's development of a successful program, as well as meeting the requirement for innovation in paragraph (a)(1) of section 307 of the 2010 Act.

The most significant criterion is proposed paragraph (a)(1), which would require the application to have a clearly defined plan for successful program implementation demonstrated by scope, budget, staffing, and timeframe. The existence of basic parameters such as these is a reliable indicator that the program is well thought out, and likely to be successfully implemented. Therefore, under this scoring system, VA would award up to 40 points using this criterion.

In contrast, we would limit the scoring significance of the criterion in proposed paragraph (a)(4) related to the innovative nature of transportation services to be provided. VA would award only up to 10 points based upon this criterion. We believe this would ensure that applicants do not focus excessively on using new or potentially undeveloped resources or ideas in their programs, and are instead able to maximize the number of veterans in highly rural areas who would be provided with VA medical care through transportation services.

Proposed paragraph (b) would specify the process VA will use to award initial grants, where VA would score applications using the criteria in proposed paragraph (a) and rank applications that receive at least the minimum amount of total points and points per category set forth in the Notice of Fund Availability. VA would then award grants for the highest ranked applications for which funding is available.

Proposed paragraphs (c)(1)–(3) would specify the scoring criteria for renewal grant applications. These proposed criteria are similarly weighted as those for initial grant applications, but are specific to renewal grant applications to assist VA in evaluating those programs which would already be operating. Accordingly, points would be awarded based on a grantee's program's success, cost effectiveness, and compliance with the grant agreement and other applicable laws and regulations.

Proposed paragraph (d) would specify the process VA would use to award renewal grants, where VA would score applications using the criteria in proposed paragraph (c) and rank applications that receive at least the minimum amount of total points and points per category set forth in the Notice of Fund Availability. VA would then award grants for the highest ranked applications for which funding is available.

17.710 Notice of Fund Availability

Proposed § 17.710 would establish that VA will publish a Notice of Funds Availability (NOFA) in the **Federal Register** when funds are available to award grants. Proposed paragraphs (a)–(g) would specify that the NOFA would identify the location for obtaining grant applications; the date, time, and place for submitting completed grant applications; the estimated amount and type of grant funding available; the length of term for the grant award; the minimum number of total points and points per category that an applicant or grantee must receive in order for a grant to be awarded; the timeframes and manner for payments under the grant; and lastly would specify that the NOFA will provide access to the list of ''highly rural areas'' recognized by VA in which transportation services may be provided, and consequently those areas in which grantees may execute their programs. All of these criteria would ensure that eligible entities have the information required to apply for grants.

17.715 Grant Agreements

Proposed § 17.715 would establish that upon a grantee being awarded a grant, VA would draft a grant agreement to be executed by VA and the grantee. Upon execution, VA would obligate the grant amount. Proposed paragraph (a)(1) would require that a grantee agree to operate the program in accordance with the provisions of the grant program and in accordance with the grant application. Proposed paragraphs (a)(2)(i)–(iv) would mandate the following criteria for grant agreements where vehicles would be procured and used to provide transportation services: Showing of vesting of title solely with the grantee or with the lender of leased vehicles; showing that adequate insurance coverage exists; showing that all vehicle operators are properly licensed to operate said vehicles; and assurance that vehicles be maintained in safe working order in accordance with the manufacturer's recommendations. We recognize that VA grants awarded to State entities and to non-profit entities are also governed by 38 CFR parts 43 and 49, respectively, and all applicable Office of Management and Budget (OMB) Regulations and Circulars. Particularly, the determination of allowable costs which may be charged to or accounted as a part of a federally funded project is controlled by OMB Circular A–122, Cost Principles for Non-Profit Organizations (codified at 2 CFR part 230), and by OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments. Proposed paragraphs (b)(i)–(ii) would specify these additional requirements for State veterans service agencies and for Veterans Service Organizations.

17.720 Payments Under the Grant

Proposed § 17.720 would notify grantees that information regarding the timeframe and manner of payment of grants would be described in the Notice of Fund Availability.

17.725 Grantee Reporting Requirements

Proposed § 17.725 would require grantees to report to VA information necessary to analyze the performance of a grantee's program. Proposed paragraphs (a)(1)–(7) would specify that all grantees must submit an annual report with the following information: The time expended assisting with the provision of transportation services; the grant funds expended assisting with the provision of transportation services; the number of trips completed by grantee; the total distance covered by grantee; the number of veterans served by grantee; the locations serviced by grantee; and the results of a veterans satisfaction survey.

Proposed paragraph (b) would require that all grantees also submit quarterly fiscal reports identifying expenditures of the funds which VA authorized and obligated. Proposed paragraph (c) would require that any changes occurring in a grantee's program which deviate from the grant agreement must be reported to VA. Review of the reports detailed in proposed paragraphs (a)–(c) would ensure that grant funds were being consistently used in accordance with the grant agreements. Proposed paragraph (d) would allow VA to request other information or documentation related to a grant, in the event that information is necessary to fully assess the success of the program. This would further assist VA in determining whether grant funds were used appropriately if any part of the required reports as submitted by a grantee is inadequate.

17.730 Recovery of Funds by VA

Proposed § 17.730 would establish that VA may recover grant funds from a grantee under certain circumstances. Proposed paragraph (a) would provide that VA may recover grant funds where the funds were not used in accordance with the grant agreement. Proposed paragraph (a) would also explain that VA would issue a notice to the grantee expressing VA's intent to recover funds and that VA would provide the grantee an opportunity to respond prior to VA's final decision that action be taken to recover the funds. Proposed paragraph (b) would specify that, where VA makes a final decision that action be taken to recover grant funds from a grantee, the grantee would be prohibited from receiving further grant funds from VA. This would help safeguard federal funds and ensure the best use of the grants.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule includes a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) that requires approval by the Office of Management and Budget (OMB). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking to OMB for review. OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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. Proposed §§ 17.703 and 17.725 contain collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to: Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AO01, Grants for Transportation of Veterans in Highly Rural Areas.''

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

The proposed amendments to title 38 CFR part 17 contain collections of information under the Paperwork Reduction Act for which we are requesting approval by OMB. These collections of information are described immediately following this paragraph, under their respective titles.

Title: Grants for Transportation of Veterans in Highly Rural Areas.

Summary of collections of information: The proposed rule at proposed § 17.703(b) contains application provisions for initial grants, and at proposed § 17.703(c) application provisions for renewal grants. The proposed rule at proposed § 17.725(a)–(b) contains requirements that each grantee submit to VA annual and quarterly reports; the annual reports would include veteran satisfaction survey results. These veteran satisfaction surveys would be collections by grantees from participants.

Grant Applications

Description of the need for information and proposed use of information: This information is needed to award initial grants and to award renewal grants to eligible entities.

Description of likely respondents: Veterans Service Organizations and State veterans service agencies.

Estimated number of respondents per year: Initial Grants 100. Renewal Grants 50.

Estimated frequency of responses per year: Initial Grants 1. Renewal Grants 1

Estimated total annual reporting and recordkeeping burden: 3000 hours.

Estimated annual burden per response: Initial Grant 25 hours. Renewal Grants 10 hours.

Annual Reports

Description of the need for information and proposed use of information: This information is needed to determine compliance with the requirements for a grant.

Description of likely respondents: Veterans Service Organizations and State veterans service agencies.

Estimated number of respondents per year: 150.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 300 hours.

Estimated annual burden per response: 2 hours.

Quarterly Fiscal Reports

Description of the need for information and proposed use of information: This information is needed to determine compliance with the requirements for a grant.

Description of likely respondents: Veterans Service Organizations and State Veterans Service Agencies.

Estimated number of respondents per year: 150.

Estimated frequency of responses per year: 4.

Estimated total annual reporting and recordkeeping burden: 300 hours.

Estimated annual burden per response: 30 minutes.

Participant Satisfaction Surveys

Description of the need for information and proposed use of information: This information is needed for VA to evaluate grantees' performance and participants' satisfaction with the transportation services they receive.

Description of likely respondents: Veterans living in highly rural areas.

Estimated number of respondents per year: 7,500.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 1875 hours.

Estimated annual burden per response: 15 minutes.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. We do not believe that many small entities such as independently owned taxi cab services or other small transportation businesses frequently or routinely access highly rural areas as defined in the rule, or that such access is often for the express purpose of transporting veterans to VA medical centers or transporting veterans in connection with receiving VA medical care. We believe that veterans in these highly rural areas who must pay for transportation services to receive medical care would seek more conveniently located non-VA care, versus VA care that may require traveling greater distances. There would be no economic impact on any of the eligible entities, as they are not required to provide matching funds to obtain the maximum grant allowance as stated in section 307 of the Act. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.009 Veterans Medical Care Benefits, and 64.024 VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 23, 2011, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: December 23, 2011.

Robert C. McFetridge,

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

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as stated in specific sections.

2. Amend part 17 by adding an undesignated center heading ''Grants for Transportation of Veterans in Highly

Rural Areas'' and §§ 17.700 through 17.730 to read as follows:

Grants for Transportation of Veterans in Highly Rural Areas

Sec.
17.700 Purpose and scope.
17.701 Definitions.
17.702 Grants—general.
17.703 Eligibility and application.
17.705 Scoring criteria and selection.
17.710 Notice of Fund Availability.
17.715 Grant agreements.
17.720 Payments under the grant.
17.725 Grantee reporting requirements.
17.730 Recovery of funds by VA.

Authority: Pub. L. 111–163, 38 U.S.C. 501, and as noted in specific sections)

§ 17.700 Purpose and scope.

This section establishes the Grants for Veterans Service Organizations for Transportation of Veterans in Highly Rural Areas program. Under this program, the Department of Veterans Affairs (VA) provides grants to eligible entities to assist veterans in highly rural areas through innovative transportation services to travel to VA medical centers, and to otherwise assist in providing transportation services in connection with the provision of VA medical care to these veterans.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

§ 17.701 Definitions.

For the purposes of this section and any Notice of Fund Availability issued pursuant to this section:

Applicant means an eligible entity that submits an application for a grant announced in a Notice of Fund Availability.

Eligible entity means:

(1) Veterans Service Organizations, or

(2) State veterans service agencies.

Grantee means an applicant that is awarded a grant under this section.

Highly rural area means an area consisting of a county or counties having a population of less than seven persons per square mile.

Notice of Fund Availability means a Notice of Fund Availability published in the **Federal Register** in accordance with § 17.710.

Participant means a veteran in a highly rural area who is receiving transportation services from a grantee.

State veterans service agency means the element of a State government that has responsibility for programs and activities of that government relating to veterans benefits.

The provision of VA medical care means the provision of medical services as defined in section 1710 of title 38 United States Code.

Transportation services means the direct provision of transportation, or assistance with providing transportation, to travel to VA medical centers and otherwise to travel in connection with the provision of VA medical care.

Veterans Service Organization means an organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38 United States Code.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

§ 17.702 Grants—general.

(a) *One grant per highly rural area.* VA may award one grant per fiscal year to a grantee for each highly rural area in which the grantee provides transportation services. Transportation services may not be simultaneously provided by more than one grantee in any single highly rural area.

(b) *Maximum amount.* Grant amounts will be specified in the Notice of Funding Availability, but no grant will exceed $50,000.

(c) *No matching requirement.* A grantee will not be required to provide matching funds as a condition of receiving such grant.

(d) *Veterans will not be charged.* Transportation services provided to veterans through utilization of a grant will be free of charge.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

§ 17.703 Eligibility and application.

(a) *Eligible entity.* The following may be awarded a grant:

(1) Veterans Service Organizations.

(2) State veterans service agencies.

(b) *Initial Application:* To apply for an initial grant, an applicant must submit to VA a complete grant application package, as described in the Notice of Fund Availability.

(c) *Renewal application.* Grantees may apply for one renewal grant per fiscal year, after receiving an initial grant, if the grantee's program will remain substantially the same. The grantee must submit to VA a complete renewal application as described in the Notice of Fund Availability.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

§ 17.705 Scoring criteria and selection.

(a) *Initial grant scoring.* Applications will be scored using the following selection criteria:

(1) VA will award up to 40 points based on the program's plan for successful implementation, as demonstrated by the following:

(i) Program scope is defined, and applicant has specifically indicated the mode(s) or method(s) of transportation services to be provided.

(ii) Program budget is defined, and applicant has indicated that grant funds will be sufficient to completely implement the program.

(iii) Program staffing plan is defined, and applicant has indicated that there will be adequate staffing for delivery of transportation services according to the program's scope.

(iv) Program timeframe for implementation is defined, and applicant has indicated that the delivery of transportation services will be timely.

(2) VA will award up to 30 points based on the program's evaluation plan, as demonstrated by the following:

(i) Measurable goals for determining the success of delivery of transportation services.

(ii) Ongoing assessment of paragraph (a)(2)(i) of this section, with a means of adjusting the program as required.

(3) VA will award up to 20 points based on the applicant's community relationships in the areas to receive transportation services, as demonstrated by the following:

(i) Applicant has existing relationships with state or local agencies or private entities, or will develop such relationships, and has shown these relationships will enhance the program's effectiveness.

(ii) Applicant has established past working relationships with state or local agencies or private entities which have provided transportation services similar to those offered by the program.

(4) VA will award up to 10 points based on the innovative aspects of the program, as demonstrated by the following:

(i) How program will identify and serve veterans who otherwise would be unable to obtain VA medical care through conventional transportation resources.

(ii) How program will use new or alternative transportation resources.

(b) *Initial grant selection.* VA will use the following process to award initial grants:

(1) VA will rank those applications that receive at least the minimum amount of total points and points per category set forth in the Notice of Fund Availability. The applications will be ranked in order from highest to lowest scores.

(2) VA will use the applications' ranking as the basis for awarding grants. VA will award grants for the highest ranked applications for which funding is available.

(c) *Renewal grant scoring.* Renewal applications will be scored using the following selection criteria:

(1) VA will award up to 55 points based on the success of the grantee's program, as demonstrated by the following:

(i) Application shows that the grantee provided transportation services which allowed participants to be provided medical care timely and as scheduled.

(ii) Application shows that participants were satisfied with the transportation services provided by the grantee, as described in the Notice of Fund Availability.

(2) VA will award up to 35 points based on the cost effectiveness of the program, as demonstrated by the following:

(i) The grantee administered the program on budget.

(ii) Grant funds were utilized in a sensible manner, as interpreted by information provided by the grantee to VA under § 17.725(a)(1)–(7).

(3) VA will award up to 15 points based on the extent to which the program complied with:

(i) The grant agreement.

(ii) Applicable laws and regulations.

(d) *Renewal Grant Selection.* VA will use the following process to award renewal grants:

(1) VA will rank those applications that receive at least the minimum amount of total points and points per category set forth in the Notice of Fund Availability. The applications will be ranked in order from highest to lowest scores.

(2) VA will use the applications' ranking as the basis for awarding grants. VA will award grants for the highest ranked applications for which funding is available.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

§ 17.710 Notice of Fund Availability.

When funds are available for grants, VA will publish a Notice of Fund Availability in the **Federal Register**. The notice will identify:

(a) The location for obtaining grant applications;

(b) The date, time, and place for submitting completed grant applications;

(c) The estimated amount and type of grant funding available;

(d) The length of term for the grant award;

(e) The minimum number of total points and points per category that an applicant or grantee must receive in order for a supportive grant to be funded;

(f) The timeframes and manner for payments under the grant; and

(g) Those areas identified by VA to be the ''highly rural areas'' in which grantees may provide transportation services funded under this rule.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

§ 17.715 Grant agreements.

(a) *General.* After a grantee is awarded a grant in accordance with § 17.705(b) or § 17.705(d), VA will draft a grant agreement to be executed by VA and the grantee. Upon execution of the grant agreement, VA will obligate the approved amount to the grantee. The grant agreement will provide that the grantee agrees to:

(1) Operate the program in accordance with the provisions of this section and the grant application.

(2) *Procurement and operation of vehicles.* Where a grant agreement outlines a program where funds will be used to procure or operate vehicles to directly provide transportation services, the grant agreement must detail the following:

(i) Title to the vehicles must vest solely in the grantee, or with leased vehicles in an identified lender.

(ii) The grantee shall, at a minimum, provide motor vehicle liability insurance for the vehicles to the same extent they would insure vehicles procured with their own funds.

(iii) All vehicle operators must be licensed in a U.S. State or Territory to operate such vehicles.

(iv) Vehicles will be safe and maintained in accordance with the manufacturer's recommendations.

(b) *Additional requirements.* Grantees are subject to the following additional requirements:

(i) State veterans service agencies are subject to the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments under 38 CFR part 43, as well as to OMB Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments, and 2 CFR parts 25 and 170, if applicable.

(ii) Veterans Service Organizations are subject to the Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations under 38 CFR part 49, as well as to OMB Circular A–122, Cost Principles for Non-Profit Organizations, codified at 2 CFR part 230, and 2 CFR parts 25 and 170, if applicable.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

§ 17.720 Payments under the grant.

Grantees are to be paid in accordance with the timeframes and manner set forth in the Notice of Fund Availability.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

§ 17.725 Grantee reporting requirements.

(a) *Annual report.* All grantees who receive either an initial or renewed grant must submit to VA an annual report which indicates the following information:

(1) Record of time expended assisting with the provision of transportation services.

(2) Record of grant funds expended assisting with the provision of transportation services.

(3) Trips completed.

(4) Total distance covered.

(5) Veterans served.

(6) Locations which received transportation services.

(7) Results of veteran satisfaction survey.

(b) *Quarterly fiscal report.* All grantees who receive either an initial or renewal grant must submit to VA a quarterly report which identifies the expenditures of the funds which VA authorized and obligated.

(c) *Program variations.* Any changes in a grantee's program activities which result in deviations from the grant agreement must be reported to VA.

(d) Additional reporting requirements may be requested by VA to allow VA to fully assess program effectiveness.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

§ 17.730 Recovery of funds by VA.

(a) *Recovery of funds.* VA may recover from the grantee any funds that are not used in accordance with a grant agreement. If VA decides to recover funds, VA will issue to the grantee a notice of intent to recover grant funds, and grantee will then have 30 days to submit documentation demonstrating why the grant funds should not be recovered. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds.

(b) *Prohibition of Further Grants.* When VA determines action will be taken to recover grant funds from the grantee, the grantee is then prohibited from receipt of any further grant funds.

(Authority: Pub. L. 111–163, 38 U.S.C. 501)

[FR Doc. 2011–33435 Filed 12–29–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2011–0729; FRL–9614–7]

RIN 2060–AR05

Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing revisions to rules that pertain to the regional haze program. In this action, the EPA is proposing that the trading program in the recently promulgated Transport Rule, also known as the Cross-State Air Pollution Rule, achieves greater reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas than source-specific Best Available Retrofit Technology (BART) in those states covered by the Transport Rule. In this action, the EPA is also proposing a limited disapproval of the regional haze State Implementation Plans (SIPs) that have been submitted by Alabama, Florida, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina and Texas. These states relied on requirements of the Clean Air Interstate Rule (CAIR) to satisfy certain regional haze requirements. To address deficiencies in all of the CAIR-dependent regional haze SIPs, in this action, the EPA is proposing Federal Implementation Plans (FIPs) to replace reliance on the CAIR requirements in these SIPs with reliance on the Transport Rule as an alternative to BART. States are encouraged, at any time, to submit a revision to their regional haze SIP incorporating the requirements of the Transport Rule at which time we will withdraw the FIP being proposed in this action.

DATES: *Comments.* Comments must be received on or before February 13, 2012.

Public Hearing. The public hearing will be held January 17, 2012. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0729, by one of the following methods:

- *www.regulations.gov.* Follow the online instructions for submitting comments. Attention Docket ID No. EPA–HQ–OAR–2011–0729.
- *Email: a-and-r-docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2011–0729.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2011–0729.
- *Mail:* EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2011–0729, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2011–0729. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0729. The 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 the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Public Hearing. The public hearing will be held on January 17, 2012, at the U.S. Environmental Protection Agency, 1st Floor, Building C, Room C111C, 109 T. W. Alexander Drive, Research Triangle Park, NC 27709. The public hearing will start at 10 a.m. and end at 3 p.m. or until the last registered speaker has spoken. Because this hearing is being held at U.S. government facilities, everyone planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used inside the classroom and outside of the building, and demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: For technical information on this document, contact Ms. Martha Keating, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539–04, Research Triangle Park, NC 27711, telephone (919) 541–9407; fax number: (919) 541–0824; email address: *keating.martha@epa.gov.*

To register to speak at the hearing or attend the hearing on this document, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C504–01, Research Triangle Park, NC 27711, telephone (919) 541–0641; fax number: (919) 541–5509; email address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This proposed action does not directly regulate emission sources. It will affect state and local air pollution control agencies located within the geographic areas covered by the Transport Rule [1] and whose regional haze state implementation plan relied on CAIR [2] as an alternative to BART for sulfur dioxide (SO_2) and/or Nitrogen Oxide (NO_X)for electric generating units (EGUs) subject to BART requirements. Some of the EGUs located in such geographic areas may also be affected by the FIPs that may result from final rulemaking on this proposed action in that the final rule would allow states the option of not requiring them to meet source-specific BART emission limits to which they otherwise could be subject.

These sources are in the following groups:

Industry group	SIC [a]	NAICS [b]
Electric Services	492	221111, 221112, 221113, 221119, 221121, 221122

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

B. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI. Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be posted at *http://www.epa.gov/ttn/oarpg/new.html* under ''Recent Actions.''

D. What information should I know about a public hearing?

The hearing will be held on January 17, 2012, at the U.S. Environmental Protection Agency, 1st Floor, Building C, Room C111C, 109 T. W. Alexander Drive, Research Triangle Park, NC 27709. The public hearing will start at 10 a.m. and end at 3 p.m. or until the last registered speaker has spoken. Because this hearing is being held at U.S. government facilities, everyone planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used inside the classroom and outside of the building, and demonstrations will not be allowed on federal property for security reasons. To register to speak at the hearing on this document, contact Ms. Pamela Long at (919) 541–0641 before 5 p.m. on January 13, 2012. For updates and additional information on a public hearing, please check the EPA's Web site at *http://www.epa.gov/ttn/oarpg/new.html* under ''recent actions.''

E. How is this notice organized?

The information presented in this notice is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments for the EPA?
1. Submitting CBI
2. Tips for Preparing Your Comments
C. Where can I get a copy of this document and other related information?
D. What information should I know about a public hearing?
E. How is this notice organized?
II. What action is the EPA proposing to take?
III. What is the background for the EPA's proposed action?
A. The Regional Haze Problem
B. Clean Air Act Requirements for Addressing Regional Haze
C. Alternative Measures In Lieu of BART
1. Criteria for Comparing Visibility Progress of an Alternative Program to BART
2. What is the Relationship between BART and CAIR?
3. Remand of CAIR and Implications for State Regional Haze Implementation Plans
4. The Transport Rule and Regional Haze State Implementation Plans
IV. Proposed Determination That the Transport Rule Is an Approvable Alternative to BART
A. Application of the Two-Pronged Test
B. Identification of Affected Class I Areas
C. Scenarios Examined
D. Emission Projections
E. Air Quality Modeling Results
F. Proposed Amendment to the Regional Haze Rule
V. Proposed Limited Disapproval of Certain States' Regional Haze SIPs
VI. Proposed FIPs
VII. Statutory and Executive Order Review
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

[1] *See* Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone, 76 FR 48208 (August 8, 2011).

[2] *See* Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule, 70 FR 25162 (May 12, 2005).

II. What action is the EPA proposing to take?

In this action, the EPA is proposing to find that the trading programs in the Transport Rule [3] achieve greater reasonable progress towards the national goal of achieving natural visibility conditions in mandatory Class I federal areas than source-specific BART in the states in which the Transport Rule applies. Specifically, we are proposing that the trading programs set out in the Transport Rule meet the requirements of an alternative program as prescribed in the Regional Haze Rule (RHR) at 40 CFR 51.308(e)(3) and are proposing to revise the regional haze regulations at 40 CFR 51.308(e)(4) accordingly to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. In addition, we are also proposing to find that any approved SIPs revising or adopting the Transport Rule trading programs, which must control emissions at least as stringently as the Transport Rule FIPs, will also meet the requirements for an alternative to BART for EGUs for the pollutants which the Transport Rule limits in that state.

In this action, we are also proposing a limited disapproval of the regional haze SIPs that have been submitted by Alabama, Florida, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina and Texas. These states, fully consistent with the EPA's regulations at the time, relied on CAIR requirements to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.[4] CAIR and the CAIR FIP requirements, however, will only remain in force to address emissions through the 2011 control period and thus CAIR cannot be relied upon in a SIP as a substitute for BART or as part of a long-term control strategy. The EPA has already proposed limited disapproval of certain other state regional haze SIPs that relied on CAIR.[5] We plan to take final action on both groups of SIPs when this action is finalized.

In this action we are also proposing FIPs for all the states for which we have previously proposed limited disapproval and for all the states for which we are proposing a limited disapproval of their regional haze SIP in this action due to the change in status of CAIR. Regional haze SIPs were due in December 2007. For a number of the states identified above, we made a finding on January 15, 2009, that the states had failed to timely submit a regional haze SIP. Most of these states have subsequently submitted SIPs, but we have not yet acted on them. Under the CAA, the EPA is required to promulgate a FIP within 2 years after finding that a state has failed to make a required submission or after disapproving a SIP in whole or in part, unless the state first adopts and we have fully approved a SIP. CAA § 110(c)(1). Given these CAA requirements and the fact that the Transport Rule has now replaced CAIR, we consider it appropriate at this time to issue FIPs to address the deficiencies in the regional haze SIPs related to the termination of CAIR. Our adoption of these FIPs at this time avoids the near-term need for additional administrative steps on the part of these states. The proposed regional haze FIPs also allow states the option of a less costly approach to meeting the regional haze requirements of the CAA since the proposed FIPs rely on the trading program already promulgated in the Transport Rule. We encourage states, at any time, to submit a revision to their regional haze SIP incorporating the requirements of the Transport Rule at which time we will withdraw the FIP we are proposing in this action. States may also include in such a SIP revision provisions applicable to specific EGU BART sources that they anticipate (or find after implementation of the Transport Rule) to continue to cause visibility impairment that the state wishes to reduce. However, we anticipate that some states may choose to remain subject to the proposed FIP and not submit a SIP revision. Our proposed finding that the Transport Rule makes greater reasonable progress than BART for EGUs in these states will hold true regardless of whether a state chooses to submit a SIP revision under subpart 52.38 and 52.39 or remain subject to a FIP.

We are not proposing to disapprove the reasonable progress targets for 2018 that are an element of the long-term strategies for these states. The affected states originally set the reasonable progress goals in their SIPs based on the emission reductions expected to be achieved by CAIR, along with other emission reductions qualified for that purpose. The overall EGU emission reductions from the Transport Rule are larger than the EGU reductions achieved by CAIR and the substitution of the Transport Rule for CAIR does not weaken any affected state's long-term strategy. We intend to act on the reasonable progress goals and long-term strategies (including the Transport Rule) and other requirements of the RHR (monitoring, consultation with federal land managers, *etc.*) for each state in an individual notice at or after the time of the final rule for this action.

III. What is the background for the EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.,* SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity and alters the color of scenes, and reduces the distance at which one can see a scene. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [6] in many mandatory Class I federal areas [7] in the

[3] *See* Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone, 76 FR 48208 (August 8, 2011), and Federal Implementation Plans for Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin To Reduce Interstate Transport of Ozone finalized on December 15, 2011 for more details. For purposes of this proposed rule, the Transport Rule includes all of the states (28) included in the final Transport Rule and the supplemental rule.

[4] The states for which we are proposing limited disapproval in this action are those that both relied on CAIR to satisfy BART requirements and are now covered by the requirements of the Transport Rule, for which we have not already made such a proposal.

[5] The states for which the EPA has previously proposed limited disapproval of regional haze SIPs because of reliance on CAIR are Kentucky, Tennessee, Virginia and West Virginia.

[6] Visual range is the greatest distance at which a dark object can be viewed against the sky.

[7] Areas designated as mandatory Class I federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks

Continued

western United States is about 60–100 miles, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 20 miles, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

B. Clean Air Act Requirements for Addressing Regional Haze

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I federal areas which impairment results from manmade air pollution.'' On December 2, 1980, the EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment''. 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. The EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. The EPA promulgated the RHR to address regional haze on July 1, 1999 (64 FR 35713). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in the EPA's visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

Section 169A of the CAA and the EPA's implementing regulations require states to establish long-term strategies for making reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Implementation plans must also give specific attention to certain stationary sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [8] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART, as described below.

C. Alternative Measures In Lieu of BART

1. Criteria for Comparing Visibility Progress of an Alternative Program to BART

Criteria for determining if an alternative measure achieves greater reasonable progress than source-specific BART are set out in the RHR at § 51.308(e)(3). The ''better-than-BART'' test may be satisfied as follows: If the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress. If the distribution of emissions is significantly different, then states are directed to conduct an air quality modeling study to determine differences in visibility between BART and the alternative program for each impacted Class I area for the worst and best 20 percent of days.[9] The two-pronged visibility test would demonstrate ''greater reasonable progress'' under the alternative program if both of the following criteria are met:

—Visibility does not decline in any Class I area,[10] and

—There is an overall improvement in visibility, determined by comparing the average differences between BART and the alternative over all affected Class I areas.

The EPA's authority to establish non-BART alternatives has been judicially challenged and upheld twice, firmly establishing that the CAA allows states to substitute other programs for BART where the alternative achieves greater progress. In the first case, the court affirmed our interpretation of CAA 169A(b)(2) as allowing for alternatives to BART where those alternatives will result in greater reasonable progress than BART. *Center for Energy and Economic Development* v. *EPA,* 398 f.3d 653, 660 (DC Cir. 2005) (''CEED'') (finding reasonable the EPA's interpretation of CAA section 169(a)(2) as requiring BART only as necessary to make reasonable progress). In the second case, *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (DC Cir. 2006), the court found EPA's two-pronged visibility test to be a ''reasonable notion of reasonable progress'' and upheld our determination that states could rely on CAIR, as discussed below, as an alternative program to BART for EGUs in the CAIR-affected states.

2. What is the relationship between BART and CAIR?

In May 2005, the EPA published CAIR, which required 28 states and the District of Columbia to reduce emissions of SO_2 and NO_X that significantly contribute to, or interfere with maintenance of, the 1997 national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. The CAIR established emission budgets for SO_2 and NO_X for states that contribute significantly to nonattainment in downwind states and required the significantly contributing states to submit SIP revisions that implemented these budgets. Because

that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I federal areas.'' Each mandatory Class I federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I federal area.''

[8] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

[9] While the RHR directs the state to conduct the air quality modeling study, as described in section III.C.2, the EPA itself conducted such a study for CAIR and through a notice-and-comment rulemaking codified the conclusion that the stated criteria were met by adding specific provisions allowing the use of CAIR in lieu of source-specific BART.

[10] As explained in section IV.A., the ''decline'' is relative to modeled future baseline visibility conditions in the absence of any BART or alternative program control requirements.

such SIP revisions were already overdue, CAIR also promulgated FIPs for the affected states establishing a cap-and-trade program for EGUs with opt-in provisions for other sources. States had the flexibility to subsequently adopt SIP revisions mirroring CAIR requirements or otherwise providing emission reductions sufficient to address interference with attainment or maintenance of the NAAQS in other states. Many affected states adopted CAIR-mirroring SIPs, while others chose to remain under CAIR FIPs.

As noted in Section III.C.1, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program has been demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. The EPA made just such a demonstration for CAIR in revisions to the regional haze program made in 2005. 70 FR 39104 (July 6, 2005). In those revisions, we amended our regulations to provide that states participating in the CAIR cap-and-trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or states that remain subject to the CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4).

As a result of our determination that CAIR was ''better-than-BART,'' a number of states in the CAIR region, fully consistent with our regulations, designed their regional haze implementation plans to rely on the CAIR cap-and-trade program as an alternative to BART for EGU emissions of SO_2 and NO_X. These states also relied on CAIR as an element of a long-term strategy for achieving their reasonable progress goals.

3. Remand of CAIR and Implications for State Regional Haze Implementation Plans

Following our determination in 2005 that CAIR was ''better-than-BART'' and the upholding of this determination by the court in 2006, the DC Circuit Court ruled on several petitions for review challenging CAIR on various grounds. As a result of this litigation, the DC Circuit Court remanded CAIR to the EPA, but later decided not to vacate the rule.[11] The court thereby left CAIR and CAIR SIPs and FIPs in place in order to ''temporarily preserve the environmental values covered by CAIR'' until the EPA replaced it with a rule consistent with the court's opinion. 550 F.3d at 1178. The EPA replaced CAIR with the Transport Rule on August 8, 2011.[12] The Transport Rule will take effect on January 1, 2012. The CAIR and the CAIR FIPs will remain in place to address emissions through the end of the 2011 control periods.

Many states relied on CAIR as an alternative to BART for SO_2 and NO_X for subject EGUs, as allowed under the BART provisions at 40 CFR 51.308(e)(4). These states also relied on the improvement in visibility expected to result from controls planned or already installed on sources in order to meet CAIR provisions in developing their long-term visibility strategy. In addition, many states relied upon their own CAIR SIPs or the CAIR FIPs for their states as legal justification for these planned controls and consequently did not include separate enforceable measures in their long-term strategies (a required element of a regional haze SIP submission) to ensure these EGU reductions. These states also submitted demonstrations showing that no additional controls on EGUs beyond CAIR would be reasonable for the first 10-year implementation period of the regional haze program.

Since states in the CAIR-affected region have based a number of required elements of their regional haze programs on CAIR, which has now been replaced by the Transport Rule, we cannot fully approve regional haze SIP revisions that have relied on CAIR for emission reduction measures. To date, we have proposed limited disapprovals for some states whose regional haze SIP revisions rely on CAIR (for example, for the State of Tennessee, 76 FR 33662 (June 9, 2011)). We intend to take final action on those proposed limited disapprovals of SIPs when this action is finalized. However, there are other states whose regional haze SIP relied on CAIR but for which the EPA has not yet proposed to take action. In this action we are proposing a limited disapproval of the regional haze SIPs that have been submitted by Alabama, Florida, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina and Texas. These states relied on CAIR requirements to satisfy both the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals, and they are now covered by the Transport Rule requirements.

4. The Transport Rule and Regional Haze State Implementation Plans

The Transport Rule sunsets CAIR and the CAIR FIPs for control periods in 2012 and beyond. The Transport Rule requires 28 states in the eastern half of the United States to significantly improve air quality by reducing EGU SO_2 and NO_X emissions that cross state lines and contribute to ground-level ozone and/or fine particle pollution in other states. The rule allows air-quality-assured allowance trading among covered sources, utilizing an allowance market infrastructure modeled after existing allowance trading programs. The Transport Rule allows sources to trade emissions allowances with other sources in the same or different states, while firmly constraining any emissions shifting that may occur by establishing an emission ceiling for each state.

In developing the Transport Rule, we did not conduct any technical analysis to determine whether compliance with the Transport Rule would satisfy regional haze BART-related requirements. Accordingly, in the final Transport Rule, the EPA did not make a determination or establish any presumption that compliance with the Transport Rule would satisfy BART-related requirements for EGUs. We have now completed such a technical analysis and it is the basis of this action in which we are proposing to find that in affected mandatory Class I federal areas, the Transport Rule achieves greater reasonable progress towards the national goal of achieving natural visibility conditions than source-specific BART. Specifically, we are proposing that participation by EGUs in the Transport Rule trading program set out in 40 CFR part 97 subparts AAAAA–DDDDD meets the requirements of an alternative program as prescribed in the RHR at § 51.308(e)(3), and we are proposing to revise the regional haze regulations at 40 CFR 51.308(e)(4) accordingly. The EPA invites comments on these proposed revisions.

The proposed determination in this action that participation in the Transport Rule trading program may substitute for BART applies only to EGUs in the states in the Transport Rule region and only to the pollutants subject to the requirements of the Transport Rule (*i.e.,* SO_2 and/or NO_X). BART for emissions of other visibility impairing pollutants (*e.g.,* primary $PM_{2.5}$, NH_3 or VOC) must still be evaluated according to the RHR Guidelines. Non-EGU sources also remain subject to requirements of the RHR.

[11] *See North Carolina* v. *EPA,* 531 F.3d 896; modified by 550 F.3d 1176 (DC Cir. 2008).

[12] *See* Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone 76 FR 48208 (August 8, 2011).

Under the proposed revision to this section, a state in the Transport Rule region whose EGUs are subject to the requirements of the Transport Rule trading program only for annual NO_X or ozone season NO_X would be allowed to rely on our proposed determination that the Transport Rule makes greater reasonable progress than source-specific BART for NO_X. Such a state would still need to address BART for SO_2 and other visibility impairing pollutants.

In this action we are also proposing a FIP for those Transport Rule states for which we already have or now are proposing a limited disapproval due to the termination of CAIR. For these states, the proposed FIP would replace reliance on the CAIR requirements with reliance on the Transport Rule as an alternative to BART for SO_2 and NO_X emissions from EGUs and as a long-term strategy measure.

We are proposing to leave unchanged the final sentence of section 51.308(e)(4) in the regional haze regulations. This language allows a state to address BART, when it is required based on reasonable attribution of visibility impairment at a Class I area to a particular source by a federal land management agency, by including a geographic enhancement in its SIP.[13] For example, a geographic enhancement in the form of adjusted allocations at a BART-subject source might take the place of source-specific emission rate limits. Use of a geographic enhancement in the context of reasonable attribution of visibility impairment at a Class I area will be addressed in separate EPA or state actions on a case-by-case basis in accordance with 40 CFR 51.302.

IV. Proposed Determination That the Transport Rule Is an Approvable Alternative to BART

A. Application of the Two-Pronged Test

As described in section III.C.1, the two-pronged test for determining if an alternative program achieves greater reasonable progress than source-specific BART is set out in the RHR at 40 CFR 51.308(e)(3). The underlying purpose of both prongs of the test is to assess whether visibility conditions at Class I areas would be better with the alternative program in place than they would without it. The first prong ensures that the alternative program will not cause a decline in visibility at any affected Class I area. It addresses the possibility that the alternative program might cause local changes in emissions that could result in localized visibility degradation. The second prong ensures that the program results in improvements in average visibility across all affected Class I areas as compared to adopting source-specific BART. Together, these tests ensure that the alternative program provides for greater reasonable progress than would source-specific BART.

In the case of the Transport Rule as an alternative to source-specific BART, the logical reference point for the first prong is visibility conditions as they are expected to be at the time the Transport Rule is implemented but in the absence of BART. This ensures that the predicted visibility differences are due to the Transport Rule alternative and not to other extrinsic factors. For example, if large increases in wildfires are expected, due to accumulation of fuel from past forest management practices, a degradation of visibility from current conditions may be expected. It would be irrational to disapprove an alternative program as not meeting the first prong of the test because of a modeled degradation from current conditions, where that degradation is actually anticipated because of smoke from wildfires—sources which are not subject to the CAA BART provisions. By comparing the Transport Rule alternative to future projected baseline conditions without any BART program, such extrinsic variables are accounted for. The future projected baseline also accounts for other non-Transport Rule constraints on EGU emissions including the Acid Rain Program, the NO_X SIP Call, New Source Performance Standards, Title V permits, any state laws and consent order requiring emission reductions, and any other permanent and enforceable binding reduction commitments. We are thus able to ascertain (to the extent possible where future projections are concerned) whether visibility under the alternative would decline at any affected Class I area, all other things being equal. Therefore, in applying the first prong of the test to the Transport Rule, we used a future (2014) projected baseline.[14] Similarly, in applying the second prong of the test, we assumed identical future conditions (the same as in the future 2014 baseline case) for non-EGU sources for both the source-specific BART scenario and the Transport Rule scenario.

To satisfy each prong of the test, we examined visibility differences on both the worst and best 20 percent of days. Thus, under the first prong, visibility must not decline at any affected Class I area on either the best 20 percent or the worst 20 percent days as a result of implementing the Transport Rule. In addition, under the second prong, the 20 percent best and 20 percent worst days should be considered in determining whether the Transport Rule produces greater average improvement than source-specific BART over all affected Class I areas.

B. Identification of Affected Class I Areas

In applying the two-pronged test to the Transport Rule, we first identified the Class I areas in the 48 contiguous states with sufficiently complete monitoring data available to support the analysis.[15] There were 140 such Class I areas represented by 96 IMPROVE monitors; nine Class I areas were excluded that did not have sufficient historical ambient data from the IMPROVE monitoring program to support the technical analysis.[16] After identifying these areas we then considered two possible approaches we could use to identify which of these areas are ''affected'' Class I areas in terms of the potential effect of the Transport Rule as an alternative control program to source-specific BART. In the first approach, we identified as affected Class I areas 60 mandatory Class I Federal areas represented by 46 IMPROVE monitors located in 37 complete states and four partial states that are contained in the eastern portion

[13] Under section 51.302, the affected federal land manager may certify that there exists reasonably attributable visibility impairment (RAVI) in a mandatory Class I federal area. This certification is an extraordinary measure to address localized impacts due to a specific source or sources. The EPA and federal land managers will work together regarding the review of SIPs (or the development of FIPs) to respond to a RAVI certification when one is made, within the better-than-BART construct for regional haze and in accordance with section 51.302 and section 51.308(e)(4). States may also include in their SIPs provisions applicable to a specific source even if no federal land management agency has made such a reasonable attribution.

[14] The 2014 baseline modeling for this analysis is identical to the Transport Rule 2014 baseline. The 2014 baseline does not include the Transport Rule, BART, or CAIR control programs.

[15] The modeling used a 2005 base case projected to a 2014 future year. The modeling days for the analysis were based on the observed 20 percent best and 20 percent worst days from 2005 at each IMPROVE site. Therefore, the analysis could not be completed for IMPROVE sites that did not have complete ambient data for 2005.

[16] In the Regional Haze Program, there are 110 ambient monitoring sites which represent 155 Class I areas. Therefore, some monitors represent air quality at more than one Class I area. *See* Guidance for Tracking Progress under the Regional Haze Rule, U.S. EPA, EPA–454/B–03–004, September 2003, which is found at: *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*. In our analysis we calculated visibility changes at each individual Class I area. Therefore, some IMPROVE monitors are counted more than once in the averaging of the visibility data. This does not affect the proposed finding that the Transport Rule is better than source-specific BART.

of the Transport Rule modeling domain.[17] The second approach we considered was a national approach in which visibility impacts on 140 Class I areas across the 48 contiguous states were evaluated.

In the Transport Rule, the determination of states that contribute significantly to downwind nonattainment and/or maintenance focused on the 37 states that are fully contained in this eastern modeling domain. The eastern modeling domain also includes large parts of Montana, Wyoming, Colorado, and New Mexico. In the Transport Rule, EPA did not determine that Montana, Wyoming, Colorado, New Mexico or the six New England states were contributing to violations of the 1997 ozone NAAQS or the 1997 and 2006 $PM_{2.5}$ NAAQS, or interfering with maintenance in downwind states and therefore they are not included in the Transport Rule program.[18] However, we included Class I areas located in these non-Transport Rule states and partial states in the first approach for identifying ''affected areas''. It is conceivable that because of proximity, emissions from the Transport Rule states could impact any of the Class I areas in the eastern Transport Rule modeling domain. Specifically, in this first approach for identifying ''affected areas'' in the Transport Rule region, we examined impacts on 27 Class I areas located within the Transport Rule states and 33 additional Class I areas located in non-Transport Rule states but within the eastern Transport Rule modeling domain, for a total of 60 Class I areas.

The eastern Transport Rule modeling domain lies within a larger modeling domain which covers the lower 48 states and adjacent portions of Canada and Mexico. In the Transport Rule, the results obtained with this national domain were used to calculate boundary conditions for the eastern Transport Rule region. The EPA did not use the national domain to investigate interstate contributions to nonattainment or interference with maintenance, in part because the air quality model structure for the national domain is less suitable for that type of use.[19] In the second approach to identifying which areas are ''affected'' Class I areas, we used data from the larger domain to estimate potential visibility impacts on Class I areas located to the west of the Transport Rule modeling region boundary. The additional 80 Class I areas under this national approach are in states or part of states that were not part of the eastern modeling domain for the Transport Rule, but were part of the western modeling domain.[20] In this approach, the eastern domain 12 km modeling results were used to calculate visibility changes in the 60 eastern Class I areas and the national domain 36 km modeling results were used to calculate visibility changes in the 80 western Class I areas. Consideration of this national region would encompass the possibility that the Transport Rule might have the effect of increasing EGU emissions in the most western portion of the United States due to shifts in electricity generation or other market effects. In total, the national domain includes 140 Class I areas (including the 60 contained within the Transport Rule region).

We request comment on whether the ''affected Class I areas'' should be considered to be the 60 Class I areas located in the Transport Rule eastern modeling domain, the larger set of 140 Class I areas in the larger national domain, or some other set. We note that given the modeling results presented in section VI.E, the choice between the 60 Class I areas or the 140 Class I areas does not affect our proposed conclusion that both prongs of the two-prong test are met.

C. Scenarios Examined

The Transport Rule requires 28 states in the eastern half of the United States to reduce EGU SO_2 and NO_X emissions that cross state lines and contribute to ground-level ozone and fine particle pollution in other states. BART, on the other hand, is applicable nationwide and covers 26 industrial categories, including EGUs, of a certain vintage. In our comparison, we sought to determine whether the Transport Rule cap-and-trade program for EGUs will achieve greater reasonable progress than would BART for EGUs only. Therefore, we examined two relevant control scenarios. The first control scenario examined SO_2 and NO_X emissions from all EGUs nationwide after the application of BART controls to all BART-eligible EGUs (''Nationwide BART''). In the second scenario, EGU SO_2 and NO_X emissions reductions attributable to the Transport Rule were applied in the Transport Rule region and BART controls were applied to all BART-eligible EGUS outside the Transport Rule region (''Transport Rule + BART-elsewhere''). The latter scenario reflects the fact that source-specific BART would remain a regional haze SIP element outside the Transport Rule region. In order to more accurately project the Transport Rule emissions, it is necessary to assume EGU BART controls outside the Transport Rule region to account for potential load and emission shifting among EGUs.

For both the ''Nationwide BART'' scenario and the ''Transport Rule + BART-elsewhere'' scenario, we modeled the presumptive EGU BART limits for SO_2 and NO_X emission rates as specified in the BART Guidelines (Guidelines for BART Determinations Under the Regional Haze Rule, 70 FR 39104, July 6, 2005), unless an actual emission rate at a given unit with existing controls is lower. In the latter case, we modeled the lower emission rates. In addition, we modeled the impacts of BART using stringent assumptions regarding the EGUs (or specific units at EGUs) that would be subject to BART. Specifically, we assumed that all BART-eligible EGUs were actually subject to BART requirements. We also assumed that presumptive BART limits would be applied to much smaller units. In this analysis we assumed the threshold for BART-eligibility was 100 megawatts (MW) for SO_2 and 25 MW for NO_X and did not eliminate any sources based on their annual total emissions. (By comparison, the RHR BART Guidelines only apply presumptive limits to EGUs having a total generating capacity of 750 MW and exempt BART-eligible units with the potential to emit less than 40 tons per year of either SO_2 or NO_X.)

The RHR BART Guidelines specify presumptive SO_2 BART limits for an EGU with an existing scrubber as 95 percent scrubber control efficiency or 0.15 pounds per million Btu (lbs/MMBtu). We used the National Electric Energy Data System (NEEDS), an EPA database of existing and planned-committed EGUs, to identify which BART-eligible units have existing scrubbers.[21] The NEEDS also contains information on scrubber efficiency and emission rates. For scrubbed BART-

[17] The ''eastern'' Transport Rule modeling grid used a horizontal resolution of 12 kilometers (km).

[18] The Transport Rule determined that the six New England states did not contribute to nonattainment or interfere with maintenance in downwind states. The Transport Rule did not make a determination whether Montana, Wyoming, Colorado, and New Mexico contribute to nonattainment or interfere with maintenance in neighboring states.

[19] The eastern modeling domain used a 12 km grid size, while the national modeling domain used a 36 km grid size. *See* Air Quality Modeling Final Rule Technical Support Document, U.S. EPA, June 2011, which is found at: *http://www.epa.gov/airtransport/pdfs/AQModeling.pdf.*

[20] *See* Air Quality Modeling Final Rule Technical Support Document, U.S. EPA, June 2011, which is found at: *http://www.epa.gov/airtransport/pdfs/AQModeling.pdf.*

[21] *See* The NEEDS User Guide: *http://www.epa.gov/airmarkets/progsregs/epa-ipm/CSAPR/docs/Guide_to_NEEDSv410.pdf* which is found at *http://www.epa.gov/airmarkets/progsregs/epa-ipm/transport.html.*

eligible units, we based our BART emission rate on a comparison of the emission rate listed for that unit in NEEDS to the presumptive SO_2 emission rate. That is, if the unit has at least a 95 percent efficient scrubber, the emission rate being achieved at that control efficiency was modeled for that unit even if the emission rate was higher than 0.15 lbs/MMBtu. Conversely, if an emission rate of 0.15 lbs/MMBtu or lower is being achieved, we modeled that emission rate for the unit, even if the scrubber is less than 95 percent efficient. For BART-eligible units without existing scrubbers, we modeled an emission rate that reflected 95 percent control based on a new installation of a highly efficient scrubber.

The RHR BART Guidelines specify presumptive limits for NO_X based on coal type and boiler configuration. The BART guidelines also specify that existing NO_X controls must be operated year round. For the source-specific ''Nationwide BART'' scenario and for the ''elsewhere'' EGUs in the ''Transport Rule + BART-elsewhere'' scenario, we assumed that any BART-subject unit with existing NO_X controls in the future baseline case would retain at least those controls and would be required to operate them year round. If the existing NO_X controls in the future baseline case did not meet the presumptive BART limits (with the modifications about applicability as described above), we assumed installation of post-combustion controls that would meet the BART guidelines with year round operation. In the ''Transport Rule + BART-elsewhere'' scenario, there are 5 states that are subject to the Transport Rule requirements during the ozone season only.[22] For these states, NO_X controls were assumed to operate only during ozone season as required by the Transport Rule. The RHR BART Guidelines also specify presumptive limits for NO_X based on coal type and boiler configuration. Table 1 summarizes the NO_X emission limits we applied to BART-eligible units of 25 MW or greater. For units firing a coal blend, which the BART Guidelines do not address, we calculated a weighted presumptive NO_X limit based on the percentage of each coal type fired.

TABLE 1—BART PRESUMPTIVE NO_X LIMITS BY BOILER CONFIGURATION AND COAL TYPE

[lbs/MMBtu]

	Bituminous	Subbituminous	Lignite
Dry bottom wall-fired	0.39	0.23	0.29
Tangential-fired	0.28	0.15	0.17
Cell burners	0.40	0.45	[*]
Dry turbo-fired	0.32	0.23	[*]
Wet bottom tangential-fired	0.62	[*]	[*]
Cyclone	0.10	0.10	0.10

* Not applicable.

Certain EGUs in the analysis were constrained by emission limits other than presumptive limits due to a proposed or final regional haze SIP, a proposed or final regional haze FIP, a final consent decree, or state rules. These units and their emission limits are detailed in the Technical Support Document (TSD) for this proposed rule. (*See* Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket EPA–HQ–OAR–2011–0729.)

D. Emission Projections

To estimate emissions expected from the scenarios described in section IV.C, we used the Integrated Planning Model (IPM). The IPM is a multi-regional, dynamic, deterministic linear programming model of the electric power sector. It is used extensively by the EPA to support regulatory activities. The IPM provides forecasts of least-cost capacity expansion, electricity dispatch, and emission control strategies for meeting electricity demand subject to environmental, transmission, dispatch, and reliability constraints. The IPM was used in this case to evaluate the emissions impacts of the described scenarios limiting the emissions of SO_2 and NO_X from EGUs. This analysis used the most recently updated IPM platform which is documented at *http://www.epa.gov/crossstaterule/*.[23] Table 2 presents the annual emissions for each policy scenario as projected by the IPM. As shown by the numbers in the far right column, ''Transport Rule + BART-elsewhere'' achieved greater emission reductions nationwide[24] for both pollutants than source-specific ''Nationwide BART'' alone.

TABLE 2—EGU SO_2 AND NO_X ANNUAL EMISSIONS AS PROJECTED BY IPM

[In thousands of tons per year]

	2014 Base Case EGU emissions	2014 ''Nationwide BART''	2014 ''Transport Rule + BART-elsewhere''	Additional reduction from ''Transport Rule + BART-elsewhere'' (''Nationwide BART'' minus ''Transport Rule + BART-elsewhere'')
Nationwide SO_2	7,160	3,820	2,918	902
Nationwide NO_X	1,946	1,798	1,756	42

[22] States subject to the Transport Rule requirements during the ozone season only are Oklahoma, Arkansas, Louisiana, Mississippi and Florida.

[23] Extensive documentation of the IPM platform may be found at *http://www.epa.gov/airmarkets/progsregs/epa-ipm/transport.html.*

[24] In the context of this action, when we refer to nationwide emissions or a nationwide analysis, we are referring to the contiguous 48 states.

The IPM projections of NO_X and SO_2 emissions from EGUs for the ''Transport Rule + BART-elsewhere'' control scenario summarized on an annual basis in Table 2, which were used to arrive at the modeling results presented in section VI.E, are based on the state budgets prescribed in the final Transport Rule published on August 8, 2011, and the supplemental proposal finalized on December 15, 2011.[25] On October 14, 2011, the EPA issued a proposed notice that would increase NO_X and SO_2 budgets for certain states in accordance with revisions to certain unit-level input data. 76 FR 63860. Even if these proposed increases to state budgets are finalized, emissions of both NO_X and SO_2 in the Transport Rule states in the ''Transport Rule + BART-elsewhere'' control scenario will still be substantially below emissions in the ''Base Case'' scenario. Therefore, we believe that the modeling results in section VI.E comparing these two scenarios based on the emissions from the final Transport Rule, showing that the first prong of the better-than-BART test is satisfied, are also sufficient for determining that the Transport Rule as modified by the proposed increases in the state budgets also would meet the first prong.

Also, even if the proposed increases to state budgets are finalized, the ''Transport Rule + BART-elsewhere'' control scenario is still projected to result in about 26,000 tons more NO_X emission reductions than ''Nationwide BART'' and about 821,000 tons more SO_2 emission reductions than ''Nationwide BART.'' We believe the changes in the emissions differences between these two scenarios that would result if the proposed increases in state budgets are finalized are unlikely to affect the determination of whether ''Transport Rule + BART-elsewhere'' provides greater visibility improvement than ''Nationwide BART'' averaged across all affected Class I areas, as assessed by the second prong of two-pronged test. A sensitivity analysis that examines the impact of the proposed state budget increases on visibility improvement is presented in Appendix C of the TSD. We request comment on this aspect of our proposed determination.

E. Air Quality Modeling Results

To assess the air quality metrics that are part of the two–pronged test, we used the IPM emission projections summarized in Table 2 as inputs to an air quality model to determine the impact of ''Transport Rule + BART-elsewhere'' and ''Nationwide BART'' controls on visibility in the affected Class I areas. To project air quality impacts we used the Comprehensive Air Quality Model with Extension (CAMx) version 5.3. The air quality modeling analysis and related analyses to project visibility improvement are described in more detail in the TSD for the Transport Rule.[26] The base year meteorology used in the CAMx modeling was 2005. The base year IMPROVE ambient monitoring data for the years 2003–2007 were used to project visibility to 2014 and to compare the visibility improvements from the two control scenarios. The 2003–2007 IMPROVE data were used because these are the 5 years of data which straddle the base 2005 modeling year. The post-processing calculations for visibility are consistent with the RHR tracking progress guidance[27] and the regional haze air quality modeling guidance.[28] The visibility projections for each Class I area are presented in the air quality modeling TSD.[29]

The cornerstone of our modeling process was the 2014 ''Base Case'' modeling scenario, which contains emissions for 2014 based on predicted growth and existing emissions controls. We used model-predicted changes in visibility impairment along with the observed base year visibility values to estimate future visibility impairment at each Class I area. We applied the relative predicted change in visibility (expressed as a percent) from the model, due to emissions changes, to the base year visibility values to estimate future visibility. The projected visibility values were based on emissions changes between the 2005 base year inventory and the 2014 inventory. After we established the future year 2014 ''Base Case'' visibility values, we calculated estimated visibility improvements at each Class I area by modeling the ''Transport Rule + BART-elsewhere'' control strategy as well as the ''Nationwide BART'' strategy in 2014.

We did two separate analyses to assess the potential visibility impacts of ''Transport Rule + BART-elsewhere'' and ''Nationwide BART'' controls on 60 Class I areas in the Transport Rule region and on 140 Class I areas in the contiguous 48 states (referred to as the national region). For both visibility scenarios we quantified the visibility impacts on the 20 percent best and 20 percent worst visibility days for the 2014 future-year base case, the ''Transport Rule + BART-elsewhere'' scenario, and the ''Nationwide BART'' control scenario.

Under the first prong of the test, visibility cannot degrade at any affected Class I area. To determine if ''Transport Rule + BART-elsewhere'' resulted in degradation of visibility at any affected Class I area, we compared the visibility impacts of ''Transport Rule + BART-elsewhere'' to base case 2014 visibility conditions. As described in detail in the TSD for this action, the ''Transport Rule + BART-elsewhere'' alternative passed this first prong in the Transport Rule region by not causing visibility degradation at any of the 60 affected Class I areas in the eastern Transport Rule modeling domain (*i.e.,* when using the first approach to identifying affected areas), on either the 20 percent best or the 20 percent worst days. In the national region (*i.e.,* when using the second approach to identifying affected areas), the ''Transport Rule + BART-elsewhere'' alternative was also predicted to not cause visibility degradation at any affected Class I area on either the 20 percent best or the 20 percent worst days, with a few exceptions. The exceptions were predicted average degradations of 0.23, 0.23, and 0.26 deciviews, respectively, at Pine Mountain Wilderness, Arizona, Mazatzal Wilderness, Arizona, and Saguaro National Park, Arizona, on the 20 percent worst days.[30] There was also a predicted degradation of 0.05 deciviews on the 20 percent best days at Bryce Canyon National Park in Utah.[31] While not part of the two-pronged test, we also compared the

[25] *See* Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone 76 FR 48208 (August 8, 2011). The ozone season state budgets for the states affected by the supplemental proposal finalized on December 15, 2011, are included in the ''Transport Rule + BART-elsewhere'' control scenario. (The ozone season budget for Kansas was not finalized on December 15, 2011.)

[26] *See* Air Quality Modeling Final Rule Technical Support Document, U.S. EPA, June 2011, which is found at: *http://www.epa.gov/airtransport/pdfs/AQModeling.pdf.*

[27] *See* Guidance for Tracking Progress Under the Regional Haze Rule, U.S. EPA, EPA–454/B–03–004, September 2003, which is found at: *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf.*

[28] *See* Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, U.S. EPA, EPA–454/B–07–002, April 2007, which is found at: *http://www.epa.gov/scram001/guidance/guide/final-03-p.m.-rh-guidance.pdf.*

[29] *See* Technical Support Document for Demonstration of the Transport Rule as a BART Alternative, Docket EPA–HQ–OAR–2011–0729.

[30] The results for Pine Mountain and Mazatzal were the same because they are both represented by the same IMPROVE monitoring site (Ike's Backbone, IKBA).

[31] Changes in visibility were rounded to the nearest 0.1 deciviews. Therefore, any changes that were less than 0.05 were rounded down and treated as zero. Any changes that were 0.05 or greater were rounded up and treated as potential degradation.

baseline scenario to the ''Nationwide BART'' scenario. The analysis of the national region under the ''Nationwide BART'' control scenario projected a degradation of 0.23 deciviews on the 20 percent worst days at Pine Mountain Wilderness and Mazatzal Wilderness (the same as the ''Transport Rule + BART-elsewhere'' result just noted).

The fact that unexpected degradations at some western Class I areas were predicted for the ''Nationwide BART'' scenario as well as the ''Transport Rule + BART-elsewhere'' scenario led us to investigate the CAMx modeling output in more detail.[32] Based on that investigation, we consider the visibility projections for the western portion of the national modeling domain that indicate potential degradation in four western Class I areas under the ''Transport Rule + BART-elsewhere'' scenario compared to the ''Base Case'' scenario to be anomalous results that do not indicate the true effects that the ''Transport Rule + BART-elsewhere'' scenario (or the ''Nationwide BART'' scenario) will have on visibility in these areas.

In the CAMx output for 36 km grid cells in the vicinity of these four Class I areas, we observed that modeled concentrations of nitrate were very low on the 20 percent worst days (and 20 percent best days at Bryce Canyon) in both the ''Transport Rule + BART-elsewhere'' case and the ''Nationwide BART'' case. The modeled nitrate concentrations in these cases ranged from 0.001 to 0.004 micrograms per cubic meter ($\mu g/m^3$), averaged across the 20 percent worst or best days in 2005. Notably, the modeled concentrations were generally a small fraction of monitored ambient nitrate concentrations at the IMPROVE sites for the four Class I areas. In the cases where degradation was calculated, a very small increase in modeled nitrate was observed on several of the worst or best modeled days. This lead to a relatively large modeled percent increase in nitrate. As an example, on the worst days at Pine Mountain and Mazatzal, the modeled nitrate concentration increased from 0.001 $\mu g/m^3$ in the 2014 base case to 0.002 $\mu g/m^3$ in the ''Transport Rule + BART-elsewhere'' case.

Further examination of the days when these nitrate increases occur reveals a somewhat random pattern of very small increases and decreases that appear unrelated to EGU emissions changes. While IPM predicts modestly higher NO_X emissions in some nearby states under the ''Transport Rule + BART-elsewhere'' scenario, the checkerboard pattern of nitrate differences in Arizona and southern Utah show no logical connection to these modestly higher emissions. This nitrate modeling issue appears similar to a previously noted nitrate chemistry stability issue when modeled concentrations are very small and relative humidity is very low.[33] Thus, we conclude that these positive and negative differences between very low nitrate concentrations are a modeling artifact attributable to the nitrate physics in CAMx for the conditions that apply in this geographic area on these days, and are not reasonable predictors of the true relative effects on visibility of the emission control scenarios.

To illustrate how sensitive the predictions of degradation are to highly variable results on particular days, if the one day of the 20 percent worst or best days with the largest increase in modeled nitrate concentration at each site is removed from consideration for that site, the apparent degradations no longer occur. We also note that although the increases in modeled nitrate concentrations are very small (ranging between 0.01 and 0.04 $\mu g/m^3$ for the one day at each site just mentioned), the ''relative response factor'' method we used to combine CAMx output (representing future conditions) with IMPROVE monitoring data (representing historical conditions) greatly magnified these small increases in nitrate concentrations. The small increases in modeled nitrate are converted to relatively large percent increases in nitrate and then multiplied by actual ambient nitrate concentrations in the base period that are far higher than the concentrations predicted by CAMx. Thus, very small differences in concentrations of nitrate in the CAMx output that would have had no effect on calculated deciview values if used directly, nevertheless result in apparent degradations on the order of 0.1 to 0.26 deciviews after being combined with IMPROVE data. The EPA is investigating possible modifications to the software used to post-process CAMx output. These possible revisions are aimed at avoiding potentially misleading results in situations such as the one observed near these western Class I areas. We seek comment on an alternate methodology described in Appendix B of the TSD that attempts to address the effects of very low nitrate concentrations on visibility results.

After considering the results of the first prong of the visibility test and examining the CAMx output in more detail as described above, we are confident that no degradation in the four western Class I areas will result from implementation of the Transport Rule trading programs in the eastern U.S. Consequently, we are proposing that the ''Transport Rule + BART-elsewhere'' control scenario passes the first prong of the visibility test considering affected Class I areas located in both the Transport Rule region (first approach) and the national region (second approach). Details on the individual Class I area calculations can be found in the air quality modeling TSD.

The second prong of the test assesses whether the ''Transport Rule + BART-elsewhere'' scenario results in greater average visibility improvement at affected Class I areas compared to the ''Nationwide BART'' scenario. To determine if ''Transport Rule + BART-elsewhere'' achieved greater average visibility improvement, we compared the visibility impacts of ''Transport Rule + BART-elsewhere'' at the Class I areas to visibility impacts predicted at these same areas after implementation of ''Nationwide BART''. In the Transport Rule region (first approach) and the national region (second approach), the average visibility improvement of the ''Transport Rule + BART-elsewhere'' alternative was greater than ''Nationwide BART'' on both the 20 percent best and 20 percent worst days. Thus, the ''Transport Rule + BART-elsewhere'' alternative measure passed the second prong of the test, regardless of which way affected Class I areas are identified. A summary of the results of the second prong of the test for the Transport Rule and national regions under each control scenario is presented in Table 3.

[32] Appendix B of the TSD in the docket for this action provides more information on this aspect of the CAMx modeling results.

[33] Appendix B of the TSD in the docket for this action provides more information on this issue.

TABLE 3—AVERAGE VISIBILITY IMPROVEMENT IN 2014 V. 2014 BASE CASE

[Deciviews]

	"Transport Rule + BART-elsewhere"	"Nationwide BART"
60 Class I Areas in the Eastern Transport Rule Modeling Domain:		
20 percent Worst Days	1.6	1.0
20 percent Best Days	0.3	0.2
140 Class I Areas in the Western and Eastern Transport Rule Modeling Domains:		
20 percent Worst Days	0.7	0.5
20 percent Best Days	0.1	0.1

F. Proposed Amendment to the Regional Haze Rule

Based on our finding that the ''Transport Rule + BART-elsewhere'' control scenario passes the two-pronged test, we are proposing to determine that the Transport Rule trading programs will provide greater progress towards regional haze goals than source-specific BART. This proposed determination applies only to EGUs in the Transport Rule trading programs and only for the pollutants covered by the programs in each state. Accordingly, we propose to revise 40 CFR 51.308(e)(3)(ii)(4) by essentially replacing the name of CAIR with the name of the Transport Rule.

We are also proposing that a state that chooses to meet the emission reduction requirements of the Transport Rule by submitting a complete SIP revision substantively identical to the provisions of the EPA trading program that is approved as meeting the requirements of section 52.38 and/or section 52.39 also need not require BART-eligible EGUs in the state to install, operate, and maintain BART for the pollutants covered by such a trading program in the state.

We are preserving the language in the regional haze regulations at 40 CFR 51.308(e)(4) that allows states to include in their SIPs geographic enhancements to the alternative program to accommodate a situation where BART is required based on reasonable attribution of visibility impairment at a Class I area.

A number of the states for which we are proposing a FIP had previously failed to either submit a visibility SIP or had failed to submit a SIP that could be fully approved under the visibility regulations issued in 1980. *See* 45 FR 80084 (December 2, 1980). The proposed regulatory text is drafted to take account of this and is not intended to change the findings that have been made in the past with respect to the relevant states' compliance with the requirements of visibility regulations found at 40 CFR 51.302–51.307.

V. Proposed Limited Disapproval of Certain States' Regional Haze SIPs

In this action, we are proposing a limited disapproval of the regional haze SIPs that have been submitted by Alabama, Florida, Georgia, Indiana, Iowa, Louisiana, Michigan, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina and Texas. These states, fully consistent with the EPA's regulations at the time, relied on CAIR requirements to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.

We are not proposing to disapprove the reasonable progress targets for 2018 that are an element of the long-term strategies for these states. We made clear in the RHR that the reasonable progress goals are not mandatory standards in the sense of there being consequences if they are not met, because there are inherent uncertainties in projecting future emissions and resulting visibility conditions. *See* 64 FR 35733. However, to assess whether current implementation strategies will be sufficient to meet the reasonable progress goals, the RHR requires a midcourse review by each state and, if necessary, a correction of the state's regional haze plan. *See* 40 CFR 52.308(g). We anticipate that since the Transport Rule will result in greater emission reductions overall than CAIR, that the need for such corrections will be unlikely. Based on the information currently before us, we believe that the substitution of the Transport Rule for CAIR does not weaken any affected state's long-term strategy, but we will assess the midcourse review of each state's SIP to ensure that this is so. We intend to act on the reasonable progress goals and long-term strategy (including the Transport Rule) and other requirements of the RHR (BART determinations for non-EGU sources, monitoring, consultation with federal land managers, *etc.*) for each state in an individual notice separately from the final rule for this action. Those individual notices will constitute the final action (approval or disapproval) on those other elements of the SIP.

The EPA has already proposed limited disapproval of regional haze SIPs that relied on CAIR that were submitted by Kentucky, Tennessee, Virginia and West Virginia. The remedies for the limited disapprovals previously proposed and those that are proposed in this action are FIPs as described in section VI.

VI. Proposed FIPs

In this action, we are proposing partial regional haze FIPs for states for which we already have or are now proposing limited disapprovals because of the termination of CAIR. These limited FIPs would satisfy the BART requirement and be a part of satisfying the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals. The FIPs apply only to EGUs in the affected states and only to pollutants covered by the Transport Rule programs in those states. For the reasons discussed in section V., the proposed FIPs do not alter states' reasonable progress goals or replace these goals.

The proposed FIPs replace reliance on CAIR requirements with reliance on the Transport Rule as an alternative to BART for SO_2 and NO_X emissions from EGUs in the following states' regional haze SIPs: Alabama, Georgia, Indiana, Iowa, Kentucky, Michigan, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and West Virginia. The proposed FIPs replace reliance on CAIR requirements with reliance on the Transport Rule as an alternative to BART for NO_X emissions from EGUs in the following states' regional haze SIPs: Florida, Louisiana and Mississippi.

Given the requirements of the CAA to promulgate a FIP after disapproving a SIP in whole or in part (CAA section 110(c)(1)), we consider it appropriate at this time to propose to issue FIPs to address the noted deficiencies in these states' regional haze SIPs related to the termination of CAIR and the

replacement of CAIR with the Transport Rule. A state may choose to submit a SIP or remain subject to this FIP. The proposed regional haze FIPs rely on the trading programs set out in the FIPs promulgated by the EPA in August 2011 in the Transport Rule to limit the interstate transport of NO_X and SO_2.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because some may view it as raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not include or require any information collection.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. Rather, this proposed rule would allow states to avoid regulating EGUs in new ways based on the current requirements of the Transport Rule and as such does not impose any new requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1531–1538) for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action merely interprets the statutory requirements that apply to states in preparing their SIPs and thus apply also to FIPs.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action does not impose any new mandates on state or local governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA is specifically soliciting comments on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The rule does not have a substantial direct effect on one or more Indian tribes, since there are no BART-eligible EGU sources on tribal lands in the Transport Rule region. In addition, the CAA does not provide for the inclusion of any tribal areas as mandatory Class I federal areas; thus, tribal areas are not subject to the requirements of the RHR. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the strategies in this rule will further improve air quality and will further improve children's health.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy because it does not establish requirements that directly affect the general public and the public and private sectors. Rather, this proposed rule would allow states to avoid regulating EGUs in new ways based on the current requirements of the Transport Rule, and thus may avoid adverse effects that conceivably might result from such additional regulation of EGUs by states.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d), (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be

inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (EO) (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

When considering the possible environmental justice impacts of this proposed rule, it is important to distinguish the set of scenarios on which the better-than-BART analysis described in this notice is based from the set of possible future situations that could come to pass based on the outcome of this rulemaking. The Transport Rule is in place and will remain in place regardless of the outcome of this rulemaking. If we finalize the proposed rule, a regional haze SIP or FIP for an affected state will be able to satisfy the BART requirement for EGUs (for NO_X only or for SO_2 and NO_X, depending on which Transport Rule programs apply in that state) merely by formally incorporating the Transport Rule into the long-term strategy of the SIP.[34] If we do not adopt any rule establishing the Transport Rule as an alternative to BART, the EGUs in each affected state will still be required to participate in the cap-and-trade programs established by the Transport Rule. In this case, the SIP or FIP would also have to apply source-specific BART to all BART-eligible sources except any that are found not to be subject to BART due to minimal impacts on visibility or any that the state concludes should not be further controlled based on its consideration of existing controls, cost of additional controls, remaining lifetime of the unit, other non-air impacts and visibility impacts from controls. It is important to recognize that because of the nature of cap-and-trade programs, total state-wide emissions will not be very different, if at all, if the EPA were not to make a final determination that participation in the Transport Rule trading programs satisfied the BART requirements. Any EGUs participating in the Transport Rule trading programs that would be required to comply with source-specific BART would generate tradable emission allowances that would find buyers among the other EGUs in the state. Thus, we expect that the outcome of the Transport Rule may change how a fixed amount of total emissions from EGUs is divided among EGUs in a given affected state. Because of the certainty of EGUs collectively meeting the Transport Rule emission caps, that fixed amount of emissions will generally be substantially less than historical total EGU emissions in a given state.

We have concluded that it is not practicable to perform an analysis which would attempt to predict exactly which EGUs would have higher and lower emissions under the Transport Rule trading programs and source-specific BART. We have, however, identified the locations of BART-eligible sources in Transport Rule-affected states to determine if there are high percentages of minority or low-income populations living near such sources. These are the sources that conceivably could have higher emissions if we finalize the proposed rule than if we do not. An analysis of demographic data shows that the average percentage of African Americans living within a 3-mile radius of BART-eligible sources in Transport Rule-affected states is somewhat higher (18 percent) than the corresponding national average (12 percent). All other socio-demographic parameters evaluated are within two percent of the national average percentages, or below the national average percentages. The results of the demographic analysis are presented in the memorandum titled, ''Demographic Proximity Analysis for BART-Eligible Electric Generating Units,'' July 2011, a copy of which is available in the docket (EPA–HQ–OAR–2011–0729). Strictly speaking, if we were not to finalize this rule and the states (or we, through FIPs) were to impose source-specific BART on these sources, other sources might increase their emissions under the cap-and-trade programs. Since we do not know which other sources might do so, we could not perform a similar demographic analysis on such other sources.

We do know that under the Transport Rule, ozone and $PM_{2.5}$ air quality and health risks will be greatly reduced compared either to current conditions or to future conditions if there were no Transport Rule. In the Transport Rule, the EPA estimated the distribution of $PM_{2.5}$ mortality risks according to race, income, and educational attainment before and after implementation of the Transport Rule. In that analysis, we found that the Transport Rule market-based regional approach to reducing emissions of SO_2 and NO_X from EGUs provided the greatest $PM_{2.5}$-related health benefits among populations: (1) Most susceptible to air pollution impacts, regardless of race; (2) with lower levels of educational attainment; and (3) living in counties with among the highest number of individuals living below the poverty line. The analysis also indicates that the Transport Rule, in conjunction with the implementation of existing or proposed rules, will reduce the disparity in risk between the highest-risk counties and the other 95 percent of counties for all races and educational levels. This analysis is presented in more detail in the Regulatory Impact Analysis for the Transport Rule which is available in the Transport Rule docket EPA–HQ–OAR–2009–0491 and from the main EPA Web page for the Transport Rule *www.epa.gov/airtransport.*

The results of the Transport Rule analysis suggest that regional reductions in $PM_{2.5}$ levels can produce significant human health benefits—particularly among populations most susceptible and vulnerable to $PM_{2.5}$ impacts. $PM_{2.5}$ air quality improvements that would be expected under implementation of source-specific BART may differ from the Transport Rule in terms of the emission reductions required at any given source, especially since states have the discretion to determine which BART-eligible sources to control and the level of control that is feasible. However, the results of the Transport Rule assessment suggest that the regional Transport Rule approach provides widespread health benefits especially among populations at greatest risk.

[34] Such action by a state would not preclude it from also including in the SIP source-specific emission limits for EGUs of its choosing.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 23, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, parts 51 and 52 of chapter I of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

2. Section 51.308 is amended by revising paragraph (e)(4) to read as follows:

§ 51.308 Regional haze program requirements.

* * * * *

(e) * * *

(4) A State subject to a trading program established in accordance with § 52.38 or § 52.39 under a Transport Rule Federal Implementation Plan need not require BART-eligible fossil fuel-fired electric steam generating plants in the State to install, operate, and maintain BART for the pollutant covered by such trading program in the State. A State that chooses to meet the emission reduction requirements of the Transport Rule by submitting a SIP revision that establishes a trading program and is approved as meeting the requirements of § 52.38 or § 52.39 also need not require BART-eligible fossil fuel-fired electric steam generating plants in the State to install, operate, and maintain BART for the pollutant covered by such trading program in the State. A State may adopt provisions, consistent with the requirements applicable to the State for a trading program established in accordance with § 52.38 or § 52.39 under the Transport Rule Federal Implementation Plan or established under a SIP revision that is approved as meeting the requirements of § 52.38 or § 52.39, for a geographic enhancement to the program to address the requirement under § 51.302(c) related to BART for reasonably attributable impairment from the pollutant covered by such trading program in that State.

* * * * *

PART 52—[AMENDED]

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

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

Subpart B—Alabama

4. Section 52.61 is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 52.61 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.302 and 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

* * * * *

(c) *Best Available Retrofit Technology for* NO_X. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.54 for the sources subject to those requirements.

(d) *Best Available Retrofit Technology for* SO_2. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.55 for the sources subject to those requirements.

Subpart K—Florida

5. Section 52.534 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 52.534 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.305, 51.307, and 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

* * * * *

(c) *Best Available Retrofit Technology for* NO_X. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.540 for the sources subject to those requirements.

Subpart L—Georgia

6. Section 52.580 is added to read as follows:

§ 52.580 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for* NO_X. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.584 with respect to emissions of NO_X for the sources subject to those requirements.

(c) *Best Available Retrofit Technology for* SO_2. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.585 for the sources subject to those requirements.

Subpart P—Indiana

7. Section 52.791 is added to read as follows:

§ 52.791 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for* NO_X. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.789 for the sources subject to those requirements.

(c) *Best Available Retrofit Technology for* SO_2. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.790 for the sources subject to those requirements.

Subpart Q—Iowa

8. Section 52.842 is added to read as follows:

§ 52.842 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and(e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for* NO_X. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.840 for the sources subject to those requirements.

(c) *Best Available Retrofit Technology for* SO_2. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.841 for the sources subject to those requirements.

Subpart S—Kentucky

9. Section 52.936 is amended by removing and reserving paragraphs (a) and (b) and adding paragraphs (c) and (d) to read as follows:

§ 52.936 Visibility protection.

* * * * *

(c) *Best Available Retrofit Technology for NO_X*. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.940 for the sources subject to those requirements.

(d) *Best Available Retrofit Technology for SO_2*. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.941 for the sources subject to those requirements.

Subpart T—Louisiana

10. Section 52.985 is added to read as follows:

§ 52.985 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for NO_X*. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.984 for the sources subject to those requirements.

Subpart X—Michigan

11. Section 52.1183 is amended by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

§ 52.1183 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.302, 51.305, 51.307, and 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

* * * * *

(d) *Best Available Retrofit Technology for NO_X*. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.1186 for the sources subject to those requirements.

(e) *Best Available Retrofit Technology for SO_2*. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.1187 for the sources subject to those requirements.

Subpart Z—Mississippi

12. Section 52.1279 is added to read as follows:

§ 52.1279 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for NO_X*. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.1284 for the sources subject to those requirements.

Subpart AA—Missouri

13. Section 52.1339 is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 52.1339 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.302 and 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

* * * * *

(c) *Best Available Retrofit Technology for NO_X*. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.1236 for the sources subject to those requirements.

(d) *Best Available Retrofit Technology for SO_2*. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.1327 for the sources subject to those requirements.

Subpart II—North Carolina

14. Section 52.1776 is added to read as follows:

§ 52.1776 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for NO_X*. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.1784 for the sources subject to those requirements.

(c) *Best Available Retrofit Technology for SO_2*. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.1785 for the sources subject to those requirements.

Subpart KK—Ohio

15. Section 52.1886 is added to read as follows:

§ 52.1886 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for NO_X*. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.1882 for the sources subject to those requirements.

(c) *Best Available Retrofit Technology for SO_2*. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.1883 for the sources subject to those requirements.

Subpart NN—Pennsylvania

16. Section 52.2042 is added to read as follows:

§ 52.2042 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for NO_X*. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.2040 for the sources subject to those requirements.

(c) *Best Available Retrofit Technology for SO_2*. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.2041 for the sources subject to those requirements.

Subpart PP—South Carolina

17. Section 52.2132 is amended by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

§ 52.2132 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.302, 51.305, and 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

* * * * *

(d) *Best Available Retrofit Technology for NO_X*. The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.2140 for the sources subject to those requirements.

(e) *Best Available Retrofit Technology for SO_2*. The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.2141 for the sources subject to those requirements.

Subpart RR—Tennessee

18. Section 52.2234 is added to read as follows:

§ 52.2234 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

(b) *Best Available Retrofit Technology for NO_X.* The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.2240 for the sources subject to those requirements.

(c) *Best Available Retrofit Technology for SO_2.* The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.2241 for the sources subject to those requirements.

Subpart SS—Texas

19. Section 52.2304 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

§ 52.2304 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.305, and 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

* * * * *

(c) *Best Available Retrofit Technology for NO_X.* The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.2283 for the sources subject to those requirements.

(d) *Best Available Retrofit Technology for SO_2.* The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.2284 for the sources subject to those requirements.

Subpart VV—Virginia

20. Section 52.2452 is amended by revising paragraph (a) and adding new paragraphs (d) and (e) to read as follows:

§ 52.2452 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.302, 51.305, and 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

* * * * *

(d) *Best Available Retrofit Technology for NO_X.* The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.2440 for the sources subject to those requirements.

(e) *Best Available Retrofit Technology for SO_2.* The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.2441 for the sources subject to those requirements.

Subpart XX—West Virginia

21. Section 52.2533 is amended by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

§ 52.2533 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.302, 51.305, 51.307, and 51.308(d)(3) and (e) for protection of visibility in mandatory Class I Federal areas.

* * * * *

(d) *Best Available Retrofit Technology for NO_X.* The requirements of 40 CFR 51.308(e) with respect to emissions of NO_X are satisfied by § 52.2540 for the sources subject to those requirements.

(e) *Best Available Retrofit Technology for SO_2.* The requirements of 40 CFR 51.308(e) with respect to emissions of SO_2 are satisfied by § 52.2541 for the sources subject to those requirements.

[FR Doc. 2011–33586 Filed 12–29–11; 8:45 am]

BILLING CODE 6560—50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0943; FRL–9614–6]

RIN 2060–AQ55

Amendments to Delegation of Authority Provisions in the Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking action to propose amendments to the New Source Review (NSR) Prevention of Significant Deterioration (PSD) program that would correct certain outdated language that currently limits EPA's ability to delegate the Federal PSD program to interested Indian tribes. This action proposes changes that would provide consistency with the current Federal PSD regulatory requirements by allowing the EPA to delegate the PSD program to interested tribes for their attainment areas. The regulations already authorize administrative delegation, and EPA has in the past delegated administration of the PSD program to states and local governments for their attainment areas. The EPA is proposing to delete a restriction on tribes' ability to take delegation of the PSD program and to include tribes, along with state and locals, in another section to make it clear that tribes may voluntarily take direct delegation of the NSR program in areas that are currently attaining the national ambient air quality standards (NAAQS). The rule would not impose any new requirements. The EPA is also proposing to correct a minor typographical error.

DATES: Comments must be received on or before February 28, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0943, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2010–0943 in the subject line of the message.
- *Fax:* Send comments to (202) 566–9744, attention Docket ID No. EPA–HQ–OAR–2010–0943.
- *Mail:* Amendments to Delegation of Authority Provisions in the PSD program Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2010–0943.
- *Hand Delivery:* The EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2010–0943. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0943. 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 the EPA will not know your identity or contact information unless you provide it in the body of your

comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 Amendments to Delegation of Authority Provisions in the PSD Program Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 564–1742.

FOR FURTHER INFORMATION CONTACT: Regina Chappell, Outreach and Information Division, Office of Air Quality Planning and Standards, Mail Code C–304–03, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–3650; fax number: (919) 541–0942; email: *chappell.regina@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments to the EPA?
1. Submitting CBI
2. Tips for Preparing Your Comments
C. Where can I get a copy of this document?
II. Background Information for Proposed Rule
A. What is the New Source Review Program?
B. What is the statutory authority and regulatory approach for this proposed action?
C. Why is this action needed?
III. Summary of Proposed Amendments
IV. Summary of Impacts of Proposed Amendments
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Generally, this rule only applies to tribal governments. It removes a restriction relating to delegation of the Federal NSR PSD program and allows, but does not require, interested tribes to request such delegation for sources in their attainment areas. It does not make changes to the underlying Federal PSD program requirements and thus should not have significant impact on new or modified sources.

B. What should I consider as I prepare my comments to the EPA?

1. Submitting CBI. Do not submit this information to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2010–0943.

2. Tips for Preparing Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this action will also be available on the Worldwide Web (WWW). Following signature, a copy of this final action will be posted in the regulations and standards section of the NSR home page located at *http://www.epa.gov/nsr/*, on the Tribal air home page at *http://www.epa.gov/oar/tribal* and on the Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information for Proposed Amendments

A. What is the New Source Review Program

The major NSR program contained in parts C and D of title I of the Clean Air Act is a preconstruction review and permitting program applicable to new major sources and major modifications at such sources. In areas meeting the

NAAQS (''attainment'' areas) or for which there is insufficient information to determine whether they meet the NAAQS (''unclassifiable'' areas), the NSR requirements under part C of title I of the Act apply. We call this portion of the major NSR program the ''Prevention of Significant Deterioration'' or PSD program. In areas not meeting the NAAQS and in ozone transport regions (OTR), the major NSR program is implemented under the requirements of part D of title I of the Act. We call this program the ''nonattainment'' major NSR program. We have promulgated rules in 40 CFR 52.21 to implement PSD in portions of the country that do not have approved state or tribal PSD programs. This proposed action makes corrections to the PSD program in 40 CFR 52.21.

B. What is the statutory authority and regulatory approach for this proposed action?

The authority for this proposed action is Clean Air Act Section 301(a). EPA notes that Clean Air Act Section 301(d) (which postdates the original regulation that established 52.21(u)) and its implementing regulations under the Tribal Authority Rule (TAR) at 40 CFR 49.6 and 49.7 allow tribes to seek approval for such programs covering their reservations or other areas within their jurisdiction. These provisions also establish the criteria tribes must meet and the types of information that must be included in tribal applications to obtain eligibility to administer tribal programs, including Tribal Implementation Plans and tribal NSR programs. The TAR allows tribes to seek approval for such programs covering their reservations or other areas within their jurisdiction.

However, although section 301(d) of the Act and the TAR authorize the EPA to review and approve tribal programs, neither the Act nor the regulations require EPA approval of tribal programs as the sole mechanism available for tribal agencies to take on permitting responsibilities. Some tribes may choose not to develop tribal NSR programs for submission to the EPA for approval under the TAR, but may still wish to assist the EPA in implementing all or some portion of the Federal PSD program for their area of Indian country. Accordingly, we are exercising our discretion to propose corrections for 40 CFR 52.21, which will remove a restriction that had prevented EPA from delegating administration of the Federal PSD program to interested tribal agencies for their attainment areas. By administering the Federal program through a delegation, tribal agencies may remain appropriately involved in implementation of an important air quality program and may develop their own capacity to manage such programs in the future should they choose to do so. Removing this restriction is consistent with EPA's existing and well-established procedures for delegating administration of Federal CAA programs, including existing provisions at 40 CFR 52.21 (u)—which already provides for administrative delegation to state and local agencies, but which currently prevents delegation to interested tribes—40 CFR 71.4(j) and 71.10 (Federal operating permits), 40 CFR 49.122 (Federal air rules for Indian reservations in the Pacific Northwest), and 40 CFR 49.161 and 49.173 (NSR rules for Indian country).

C. Why is this action needed?

This action will enable EPA to delegate the Federal PSD program (40 CFR 52.21(u)) to interested Indian tribes. This action is consistent with existing PSD regulatory requirements, which already provide for delegation of administration of the program, and makes that opportunity available to tribes by allowing EPA to delegate administration of the PSD program to interested tribes.

III. Summary of Proposed Amendments

We are proposing to amend the NSR PSD program provisions at 40 CFR 52.21, paragraph (u) Delegation of Authority. In paragraph (u)(1), we are correcting an erroneous cross reference and deleting a cross reference that is no longer needed. In paragraph (u)(2)(i), the current provisions state that the delegate agency shall consult with the appropriate state and local air pollution control agency. We are proposing to include tribes along with state and local air pollution control agencies in this provision to provide equivalent involvement for tribal air pollution control agencies. The paragraph (u)(3) provision for reviewing a source or modification located on an Indian Reservation states that the review authority shall not be redelegated other than to an EPA Regional Office except where the state has assumed jurisdiction over such land would no longer be in effect upon EPA amending subsection (u). We are proposing to delete paragraph (u)(3) to remove this restriction which had prevented EPA from delegating the PSD program to interested tribes, and to redesignate current paragraph (u)(4) as new paragraph (u)(3). These amendments will provide appropriate opportunities for interested tribes to seek delegation of the Federal PSD program over relevant sources and modifications in their areas.

IV. Summary of Impacts of Proposed Amendments

This action will allow, but not require, interested tribes to take direct delegation of the Federal PSD program. It does not make changes to the underlying Federal requirement (meaning the requirement that the EPA must implement the program where delegation does not occur) and thus should not have a significant impact on new or modifying sources.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Orders 12866 and 13563 (76 FR 3281, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action only allows tribes to implement an existing program. This action does not change the underlying Federal requirements; it will allow interested tribes to accept delegation. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR 52.21 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and has assigned OMB control number 2060–0003. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small

governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Small entities will not incur any adverse impacts as a result of this rule because this action does not create any new requirements or burdens. No costs are associated with these amendments to part 52. This proposed rule will not impose any requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action will allow tribes to voluntarily take delegation of the PSD requirements but does not require them to do so.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The EPA has implementing authority for 40 CFR part 52 for Indian country. This action allows interested tribes to take delegation of the Federal program if they choose; it does not modify the responsibility of the EPA to implement the program where no delegation occurs. Thus, EO 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this action will have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This proposed rule does not impose any requirements on tribes so it does not impose substantial direct costs. However, it does support tribal self-governance by enabling tribes to implement the Federal PSD program as the EPA's delegate, if they choose.

The EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Tribal consultation was offered in a consultation letter to all federally recognized tribes on November 10, 2011. We will provide consultation to those tribes who request consultation. We have also participated in various tribal meetings attended by tribal environmental professionals, *i.e.,* National Tribal Air Association (NTAA), National Tribal Forum (NTF). We have received no adverse comments when this proposal was presented at those various meetings. The EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA Interprets Executive Order 13045 (62 FR 19885, April 23, 1977) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specification, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule imposes no new requirements but does allow interested tribes to accept delegation of the existing Federal program.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Indians, Indians—law, and Indians—tribal government.

Dated: December 22, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

2. Amend § 52.21 by revising paragraphs (u)(1) and (u)(2)(i) and by removing paragraph (u)(3) and redesignating paragraph (u)(4) as paragraph (u)(3) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(u) *Delegation of authority.* (1) The Administrator shall have the authority to delegate his responsibility for conducting source review pursuant to this section, in accordance with paragraph (u)(2) of this section.

(2) * * *

(i) Where the delegate agency is not an air pollution control agency, it shall consult with the appropriate state, tribe, and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate state, tribe, and local agency primarily responsible for managing land use prior to making any determination under this section.

* * * * *

[FR Doc. 2011–33592 Filed 12–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0082; FRL–9331–1]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before January 30, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The 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 regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and email address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to

certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 0E7789.* (EPA–HQ–OPP–2011–0138). Bayer CropScience, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709, requests to establish an import tolerance in 40 CFR part 180 for residues of the fungicide trifloxystrobin (benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl] ethylidene]amino]oxy]methyl]-methyl ester) and the free form of its acid metabolite CGA–321113 ((*E,E*)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid), in or on imported coffee, bean, green at 0.02 parts per million (ppm). A practical analytical methodology for detecting and measuring levels of trifloxystrobin in or on raw agricultural commodities has been submitted to the Agency. The method is based on crop specific procedures and determination by gas chromatography with nitrogen-phosphorus detection. A newer analytical method is available employing liquid chromatography/tandem mass spectrometry (LC/MS/MS) with an electrospray interface, operated in a positive ion mode. Contact: Rose Mary Kearns, (703) 305–5611, email address: kearns.rosemary@epa.gov.

2. *PP 1F7928.* (EPA–HQ–OPP–2011–0962). Dow AgroSciences, LLC., 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish tolerances in 40 CFR part 180 for combined residues of fluroxypyr 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid] in or on crop group 15 (cereal grains) including: Barley, buckwheat, millet, oats, rye, teosinte, triticale, and wheat at 0.5 ppm; corn, popcorn, and sorghum grain at 0.02 ppm; rice and wild rice at 1.5 ppm; rice, bran at 3.0 ppm; crop group 16 including forage, fodder and straw of cereal grains at 12 ppm; hay of cereal grains at 20 ppm; and stover of cereal grains at 4 ppm. Adequate enforcement method for the combined residues of total fluroxypyr is available to enforce the tolerance expression in or on food. The analytical method uses high performance liquid chromatography with tandem mass spectrometry (HPLC/MS/MS) with limits of quantitation (LOQ) of 0.01 ppm. Contact: Bethany Benbow, (703) 347–8072, email address: benbow.bethany@epa.gov.

New Tolerance Exemption

PP 1E7932. (EPA–HQ–OPP–2011–0975). Clariant Corp., 625 E. Catawba Ave., Mt. Holly, NC 28120, requests to establish an exemption from the requirement of a tolerance for residues of 2–Propenoic acid, 2-methyl-, 2-ethylhexyl ester, telomere with 1-dodecanethiol, ethenylbenzene and 2-methyloxirane polymer with oxirane monoether with 1,2-propanediol mono(2-methyl-2-propenoate), hydrogen 2-sulfobutanedioate, sodium salt, 2,2′-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated (CAS

No. 1283712–50–4) under 40 CFR 180.960 when used as a pesticide inert ingredient in pesticide formulations as a dispersing agent. The petitioner believes no analytical method is needed because 2–Propenoic acid, 2-methyl-, 2-ethylhexyl ester, telomere with 1-dodecanethiol, ethenylbenzene and 2-methyloxirane polymer with oxirane monoether with 1,2-propanediol mono(2-methyl-2-propenoate), hydrogen 2-sulfobutanedioate, sodium salt, 2,2′-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated is exempt from the requirement of a tolerance based upon the definition of a low-risk polymer under 40 CFR 723.250. Therefore, an analytical method to determine residues on treated crops is not relevant. Contact: Alganesh Debesai, (703) 308–8353, email address: debesai.alganesh@epa.gov.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–33440 Filed 12–29–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 14

[CG Docket No. 10–213; WT Docket No. 96–198; CG Docket No. 10–145; FCC 11–151]

Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on the implementation of certain provisions in sections 716, 717, and 718 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), the most significant piece of accessibility legislation since the passage of the Americans with Disabilities Act in 1990. Specifically, this document seeks comment on whether to adopt a permanent exemption for small entities that provide advanced communications services (ACS). The document also seeks comment on implementing section 718 of the Act which requires Internet browsers built into mobile phones to be accessible to and usable by persons who are blind or have a visual impairment, unless doing so is unachievable. This inquiry includes the recordkeeping and enforcement requirements related to section 718. People with disabilities have often faced technical challenges associated with the use of Internet browsers, video conferencing services, and the accessibility of information content. The CVAA attempts to bring existing communications laws protecting people with disabilities in line with 21st Century technologies while providing flexibility to the industry by allowing for new and innovative ways to meet the needs of people with disabilities. These actions will promote rapid deployment of and universal access to broadband services for all Americans across the country, which will in turn stimulate economic growth and provide opportunity.

DATES: Submit comments on or before February 13, 2012, and reply comments on or before March 14, 2012. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, should be submitted on or before February 28, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by FCC 11–151, or by CG Docket Nos. 10–213 and 10–145, and WT Docket No. 96–198, by any of the following methods:

- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Consumer and Governmental Affairs Bureau, at (202) 418–2075 or *rosaline.crawford@fcc.gov;* Brian Regan, Wireless Telecommunications Bureau, at (202) 418–2849 or *brian.regan@fcc.gov;* or Janet Sievert, Enforcement Bureau, at (202) 418–1362 or *janet.sievert@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), document FCC 11–151, adopted October 7, 2011, and released October 7, 2011, in CG Docket Nos. 10–213 and 10–145, and WT Docket No. 96–198. Simultaneously with the *FNPRM,* the Commission issued a *Report and Order* in CG Docket Nos. 10–213 and 10–145, and WT Docket No. 96–198 (''Accessibility Report and Order''). The full text of FCC 11–151 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. FCC 11–151 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its web site, *www.bcpiweb.com,* or by calling 1–(800) 378–3160. FCC-11-151 can also be downloaded in Word or Portable Document Format (PDF) at: *http://hraunfoss.fcc.gov/edocs_public/attachment/FCC-11-151A1doc.*

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies. All filings should reference the docket numbers of this proceeding, CG Docket No's. 10–213 and 10–145, and WT Docket No. 96–198.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and CG Docket No.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be

sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes or boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC-11-151A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), or (202) 418–0432 (TTY).

Document FCC 11–151 contains proposed information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams, Federal Communications Commission via email at *PRA@fcc.gov* and *Cathy.Williams@fcc.gov,* and to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167, or via email to *Nicholas_A._Fraser@omb.eop.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

Initial Paperwork Reduction Act of 1995 Analysis

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Public and agency comments are due February 28, 2012. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Accessible Telecommunications and Advanced Communications Services and Equipment FNPRM.

Form No.: N/A.

Type of Review: New collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit Institutions.

Number of Respondents and Responses: 10,642 respondents and 37,917 responses.

Estimated Time per Response: .50 to 40 hours.

Frequency of Response: Annual, one time, and on occasion reporting requirements; Recordkeeping requirement; Third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Act, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619.

Total Annual Burden: 272,168 hours.

Total Annual Costs: $236,814.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries,'' in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

In addition, upon the service of an informal or formal complaint, a service provider or equipment manufacturer must produce to the Commission, upon request, records covered by 47 CFR 14.31 of the Commission's rules and may assert a statutory request for confidentiality for these records. All other information submitted to the Commission pursuant to subpart D of part 14 of the Commission's rules or to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Note: The Commission will prepare a revision to the SORN and PIA to cover the PII collected related to this information collection, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Needs and Uses: In document FCC 11–151, the Commission released an *FNPRM* seeking comment on the implementation of sections 716, 717, and 718 of the Communications Act (Act), as amended, which were added to the Act by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (CVAA). *See* Public Law 111–260, § 104. Section 716 of the Act requires providers of advanced communications services and manufacturers of equipment used for advanced communications services to make their services and equipment accessible to individuals with

disabilities, unless doing so is not achievable. *See* 47 U.S.C. 617. Section 717 of the Act establishes new recordkeeping requirements and enforcement procedures for service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act. *See* 47 U.S.C. 617. Section 255 requires telecommunications and interconnected voice over Internet protocol (VoIP) services and equipment to be accessible, if readily achievable. Section 718 of the Act requires web browsers included on mobile phones to be accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. *See* 47 U.S.C. 619.

Specifically, the Commission seeks comment on the adoption of a permanent exemption for small entities, the meaning of ''interoperable'' video conferencing services, the accessibility of information content, the adoption of performance objectives and safe harbors, and related issues. In addition, the Commission proposes rules to implement section 718 of the Act.

For purposes of the *FNPRM* information collection analysis, the Commission assumes that the *FNPRM* proceeding will result in the adoption of a permanent small entity exemption for accessibility obligations under section 716 of the Act that is identical to the temporary small entity exemption adopted in the *Accessibility Report and Order,* 47 CFR 14.4 of the Commission's rules, that will expire on October 8, 2013. The adoption of such a small entity exemption rule may impact the following possible related information collection requirements:

(a) Petitions for waivers from the accessibility obligations of section 716 of the Act and, in effect, waivers from the recordkeeping requirements and enforcement procedures of section 717 of the Act that may be filed by advanced communications service providers and equipment manufacturers. Waiver requests may be submitted for individual or class offerings of services or equipment which are designed for multiple purposes, but are designed primarily for purposes other than using advanced communications services. All such waiver petitions will be put on public notice for comments and oppositions.

(b) The requirement for service providers and equipment manufacturers that are subject to sections 255, 716, or 718 of the Act to maintain records of the following: (1) Their efforts to consult with people with disabilities; (2) descriptions of the accessibility features of their products and services; and (3) information about the compatibility of their products with peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access.

(c) The requirement for an officer of service providers and equipment manufacturers that are subject to sections 255, 716, or 718 of the Act to certify annually to the Commission that records are kept in accordance with the recordkeeping requirements. The certification must also identify the name and contact details of the person or persons within the company that are authorized to resolve accessibility complaints, and the agent designated for service of process. The certification must be updated when necessary to keep the contact information current.

(d) The filing of formal and informal complaints alleging violations of sections 255, 716, or 718 of the Act. As a prerequisite to filing an informal complaint, complainants must first request dispute assistance from the Consumer and Governmental Affairs Bureau's Disability Rights Office.

Summary

I. Introduction and Overview

1. In this *FNPRM,* we seek comment on whether to adopt a permanent exemption for small entities and, if so, whether it should be based on the temporary exemption or some other criteria. We seek comment on the impact of a permanent exemption on providers of ACS and manufacturers of ACS equipment, including the compliance costs for small entities absent a permanent exemption. We also seek comment on the impact of a permanent exemption on consumers, including on the availability of accessible ACS and ACS equipment and on the accessibility of new ACS innovations or ACS equipment innovations. We propose to continually monitor the impact of any small entity exemption, including whether it promotes innovation or whether it has unanticipated negative consequences on the accessibility of ACS.

2. We propose to clarify that Internet browsers are software generally subject to the requirements of section 716, with the exception of the discrete category of Internet browsers built into mobile phones used by individuals who are blind or have a visual impairment, which Congress singled out for particular treatment in section 718. We seek to further develop the record on the technical challenges associated with ensuring that Internet browsers built into mobile phones and those browsers incorporated into computers, laptops, tablets, and devices other than mobile phones are accessible to and usable by persons with disabilities.

3. With regard to section 718, which is not effective until 2013, we seek comment on the best way(s) to implement section 718 so as to afford affected manufacturers and service providers the opportunity to provide input at the outset, as well as to make the necessary arrangements to achieve compliance at such time as the provisions of section 718 become effective.

4. To ensure that we capture all the equipment Congress intended to fall within the scope of section 716, we seek comment on alternative proposed definitions of ''interoperable'' as used in the term ''interoperable video conferencing.'' Additionally, we ask whether we should require that video mail service be accessible to individuals with disabilities when provided along with a video conferencing service. We seek to further develop the record regarding specific activities that impair or impede the accessibility of information content. We also seek comment on whether performance objectives should include certain testable criteria. In addition, we seek comment on whether certain safe harbor technical standards will allow the various components in the ACS architecture to work together more efficiently, thereby facilitating accessibility. We also seek comment on the definition of ''electronically mediated services,'' the extent to which electronically mediated services are covered under section 716, and how they can be used to transform ACS into an accessible form.

A. Small Entity Exemption

5. As we explained in the *Accessibility Report and Order,* section 716(h)(2) of the Act authorizes the Commission to exempt small entities from the requirements of section 716, and as an effect, the concomitant obligations of section 717. The exemption relieves from section 716 small entities that may lack the legal, technical, or financial ability to incorporate accessibility features, conduct an achievability analysis, or comply with the section 717 recordkeeping and certification requirements. In the *Accessibility Report and Order,* we found the record insufficient to adopt a permanent exemption or to adopt the criteria to be used to determine which small entities to exempt. Instead, we exercised our authority to temporarily exempt all manufacturers of ACS equipment and providers of ACS that are small business

concerns under applicable SBA rules and size standards. The temporary exemption will expire on the earlier of: (1) the effective date of small entity exemption rules adopted pursuant to the *FNPRM;* or (2) October 8, 2013.

6. We first seek comment on whether to permanently exempt from the obligations of section 716, manufacturers of ACS equipment and providers of ACS that qualify as small business concerns under the SBA's rules and size standards and, if so whether to utilize the size standards for the primary industry in which they are engaged under the SBA's rules. The SBA criteria were established for the purpose of determining eligibility for SBA small business loans. Are these same criteria appropriate for the purpose of relieving covered entities from the obligations associated with achievability analyses, recordkeeping, and certifications? If these size criteria are not appropriate for a permanent exemption, what are the appropriate size criteria? Are there other criteria that should form the basis of a permanent exemption?

7. As explained in the *Accessibility Report and Order,* small business concerns under the SBA's rules must meet the SBA size standard for six-digit NAICS codes for the industry in which the concern is primarily engaged. To determine an entity's primary industry, the SBA ''considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.'' We seek comment on the applicability of this rule for the permanent small entity exemption.

8. We seek comment on the applicability of the SBA definition of ''business concern.'' Under SBA's rules, a business concern is an ''entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' We also seek comment on the applicability of other SBA rules for determining whether a business qualifies as a small business concern, including rules for determining annual receipts or employees and affiliation between businesses.

9. We also seek comment on alternative size standards that the Commission has adopted in other contexts. In establishing eligibility for spectrum bidding credits, the Commission has adopted alternative size standards for ''very small'' and ''small'' businesses. The Commission has defined ''very small'' businesses for these purposes as entities that, along with affiliates, have average gross revenues over the three preceding years of either $3 million or less, or $15 million or less, depending on the service. The Commission has defined ''small'' businesses in this context as entities that, along with affiliates, have average gross revenues over the three preceding years of either $15 million or less, or $40 million or less, depending on the service. The Commission has also adopted detailed rules for determining affiliation between an entity claiming to be a small business and other entities. Finally, in at least one instance, the Commission defined a small business in the spectrum auction context as an entity that, along with its affiliates, has $6 million or less in net worth and no more than $2 million in annual profits (after federal income tax and excluding carry over losses) each year for the previous two years. We seek comment on whether these alternatives—in whole, in part, or in combination—should form the basis for a permanent small entity exemption from the requirements of section 716.

10. The Commission has also used different size standards to define small cable companies and small cable systems, and the Act includes a definition of small cable system operators. The Commission has defined small cable companies as a cable company serving 400,000 or fewer subscribers nationwide, and small cable systems as a cable system serving 15,000 or fewer subscribers. The Act defines small cable system operators as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' We seek comment on whether these alternatives—in whole, in part, or in combination—should form the basis for a permanent small entity exemption from the requirements of section 716.

11. In addition, we seek comment on any other criteria that might form all or part of a permanent small entity exemption. For example, the SBA primarily uses two measures to determine business size—the maximum number of employees or maximum annual receipts of a business concern—but it has also applied other measures that represent the magnitude of operations of a business within an industry, including ''total assets'' held by an entity and the ''net worth'' and ''net income'' for an entity. Does an exemption based on some criterion other than employee count or revenues better meet Congressional intent? Commenters are encouraged to explain fully any alternative—including the alternative of adopting no exemption for small entities—and to specifically support any alternative criteria proffered, including by demonstrating the anticipated impact on consumers and small entities.

12. We also seek comment on whether to limit the exemption to only the equipment or service that is designed while an entity meets the requirements of any small business exemption we may adopt. If an entity offers for sale a new version, update or other iteration of the equipment or service, we seek comment on whether the update automatically should be covered by the exemption or whether the exemption should turn on whether the entity was still capable of meeting the exemption during the design phase of the new version, iteration, or update.

13. We seek comment on whether to make a permanent small entity exemption self-executing. If self-executing, entities would be able to raise the exemption during an enforcement proceeding but would otherwise not be required to formally seek the exemption before the Commission. In this scenario, the entity seeking the exemption would be required to determine on its own whether it qualifies as a small business concern.

14. We seek comment on the impact of a permanent exemption on providers of ACS, manufacturers of ACS equipment, and consumers. What percentage of, or which non-interconnected VoIP providers, wireline or wireless service providers, electronic messaging providers, and ACS equipment manufacturers would qualify as small business concerns under each size standard? Conversely, what percentage of or which providers of ACS or manufacturers of equipment used for ACS are not small business concerns under each size standard? For each ACS and ACS equipment market segment, what percentage of the market is served by entities that are not exempt using each size standard?

15. We seek comment on the compliance costs that ACS providers and ACS equipment manufacturers would incur absent a permanent exemption. What would the costs be for compliance with section 716 and section 717 across different providers of ACS and ACS equipment manufacturers if we decline to adopt any permanent

exemption or decline to make the temporary exemption permanent? In particular, what are the costs of conducting an achievability analysis, recordkeeping, and providing certifications?

16. We seek comment generally on the impact of a small business exemption on consumers. Are there ACS or ACS equipment that may significantly benefit people with disabilities that are provided or manufactured by entities that might be exempt? If so, what are the services or equipment or the types of services or equipment, and how would the exemption impact people with disabilities? Would a permanent exemption disproportionately impact people with disabilities in rural areas versus urban or suburban areas? How would a permanent exemption impact people with disabilities living on tribal lands? To what extent would a permanent exemption impact the ability of people with disabilities to access new ACS innovations or ACS equipment innovations? Will a permanent exemption have a greater impact on the accessibility of some segments of ACS or ACS equipment than others?

17. We intend to monitor the impact of any exemption, including whether it is promoting innovation as Congress intended or whether it is having unanticipated negative consequences on accessibility of ACS. While we propose not to time limit any exemption, we retain the ability to modify or repeal the exemption if doing so would serve the public interest and is consistent with Congressional intent. We seek comment on these proposals.

B. Section 718 Implementation

18. Under section 718, a mobile phone manufacturer that includes a browser, or a mobile phone service provider that arranges for a browser to be included on a mobile phone, must ensure that the browser functions are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. Congress provided that the effective date for these requirements is three years after the enactment of the CVAA, *i.e.,* October 8, 2013.

19. In enacting section 718, we believe that Congress carved out an exception to section 716 and delayed the effective date to address a special class of browsers for a specific subset of the disabilities community because of the unique challenges of achieving non-visually accessible solutions in a mobile phone and the relative youth of accessible development for mobile platforms. This technical complexity arises because three accessibility technologies, often developed by different parties, must be synchronized effectively together for a browser to be accessible to a blind user of a mobile phone: (1) An accessibility API of the operating system; (2) the implementation of that API by the browser; and (3) its implementation by a screen reader. Because non-visual accessibility is generally the most technically challenging form of accessibility to accomplish, an accessibility API is needed to render the underlying meaning of key elements of a graphical user interface in an alternate, non-visual form, such as synthetic speech or refreshable Braille. For example, while Microsoft has developed Microsoft Active Accessibility (MSAA), the dominant accessibility API on Windows desktop computers, it has not yet defined and deployed an accessibility API for the current Windows phone platform that can be utilized by browser and screen reader developers for that platform. Even after an API becomes available, a significant process of coordination, testing, and refinement is needed to ensure that the browser/server and screen reader/client components can interact in a comprehensive and robust manner.

20. Additional lead-time must also be built-in as this kind of technical development and coordination is needed on each mobile platform. Present technological trends have resulted in relatively short generations of mobile platforms, each benefiting from increasing miniaturization of hardware components and increased bandwidth for transmitting data to and from the cloud. Experimentation and innovation with new ways of maximizing the productivity of mobile platforms, given these technological trends, has made accessibility coordination difficult. Finally, additional challenges are presented by the technical limitations posed by mobile platforms (lower memory capacity, low-bandwidth constraints, smaller screens) coupled with the fact that web content often has to be specially formatted to run on mobile platforms.

21. In the context of discussing the development of accessible mobile phone options for persons who are blind, deaf-blind, or have low vision, the industry has acknowledged the technological shortcomings in the ability of both hardware and software to incorporate accessibility features in mobile phones. Specifically, TIA has indicated that ''[not] all mobile devices can support the additional fundamental components needed to provide a full screen reader feature; there may be limitations in the software platform or limitations in the accompanying hardware, *e.g.,* processing power, memory limitations.'' TIA also indicated that more advanced accessibility features are not easily integrated and require the development of specific software codes for each feature on each device. Sprint, however, asserts that over time, mobile phones will eventually evolve like personal computers have, from ''out-of-the-box'' systems to today's dynamic, highly customizable systems, as mobile device performance metrics such as processing speed, power, and memory capacity improve. In short, as mobile device technologies continue to evolve over time, corresponding improvements in hardware and software will improve accessibility in the future.

22. We seek comment on our proposed clarification that Congress added section 718 as an exception to the general coverage of Internet browsers as software subject to the requirements of section 716 for Internet browsers built in or installed on mobile phones used by individuals who are blind or have a visual impairment because of the unique challenges associated with achieving mobile access for this particular community. We also seek comment on the best way(s) to implement section 718, so as to afford affected manufacturers and service providers the opportunity to provide input at the outset, as well as to make the necessary arrangements to achieve compliance by the time the provisions go into effect.

23. We seek further comment on Code Factory's recommendation that manufacturers and operating system developers develop an accessibility API to foster the incorporation of screen readers into mobile platforms across different phones, which would render the web browser and other mobile phone functions accessible to individuals who are blind or visually impaired. Would an accessibility API simplify the process for developing accessible screen readers for mobile phones and if so, should there be a separate API for each operating system that supports a browser? Is there a standard-setting body to develop such APIs or would such a process have to be driven by the manufacturers of mobile operating system software? What are the technical challenges, for both software developers and manufacturers, involved in developing an accessibility API?

24. What are the specific technical challenges involved in developing screen reader software applications for each mobile platform (*e.g.,* iPhone,

Android, Windows Mobile)? What security questions are raised by the use of screen readers? Are there specific security risks posed to operating systems by the presence of screen readers? What types of technical support/customer service will mobile phone operators need to provide to ensure initial and continued accessibility in browsers that are built into mobile phones? Are there steps the Commission could take to facilitate effective, efficient, and achievable accessibility solutions?

25. We seek to better understand these technical complexities and how we can encourage effective collaboration among the service providers, and the manufacturers of end user devices, the operating system, the browser, screen readers and other stakeholders. We particularly welcome input on how the Commission can facilitate the development of solutions to the technical challenges associated with ensuring access to Internet browsers in mobile phones.

26. With respect to equipment and services covered by section 716, the *Accessibility Report and Order* gradually phases in obligations of covered entities with full compliance required on October 8, 2013 in order to encourage covered entities to implement accessibility features early in product development cycles, to take into account the complexity of these regulations, and to temper our regulations' effect on previously unregulated entities. We found this approach to be consistent with Commission precedent where we have utilized phase-in periods in similarly complex rulemakings. As we have stated above, we believe that Congress drafted section 718 as a separate provision from section 716 to emphasize the importance of ensuring access to mobile browsers for people who are blind or visually impaired because of the unique technical challenges associated with ensuring effective interaction between browsers and screen readers operating over a mobile platform. Given these complex technical issues, we seek comment on what steps we should take to ensure that the mobile phone industry will be prepared to implement accessibility features when section 718 becomes effective on October 8, 2013.

C. Interoperable Video Conferencing Services

1. Meaning of Interoperable

27. In the *Accessibility NPRM,* the Commission asked how to define ''interoperable'' in a manner that is faithful to both the statutory language and the broader purposes of the CVAA, to ensure that ''such services may, by themselves, be accessibility solutions'' and ''that individuals with disabilities are able to access and control these services'' as Congress intended. Many commenters appear to consider ''inter-platform, inter-network, and inter-provider'' as requisite characteristics of interoperability. ITI suggests that ''interoperability between platforms is not currently achievable,'' but that Congress recognized that some forms of accessibility will take time and that ''[t]his is an example of such a situation.'' We are concerned that this proposed definition would exclude virtually all existing video conferencing services and equipment from the accessibility requirements of section 716, which we believe would be contrary to Congressional intent.

28. We believe that interoperability is a characteristic of usability for many individuals who are deaf or hard of hearing and for whom video conferencing services are, by themselves, accessibility solutions. We also agree with Consumer Groups that ''[w]ithout interoperability, communication networks [are] segmented and require consumers to obtain access to multiple, closed networks using particularized equipment.'' For example, video relay service (''VRS'') equipment users must obtain and use other video conferencing services and equipment to engage in real-time video communication with non-VRS-equipment users. In addition to possibly defining ''interoperable'' as ''inter-platform, inter-network, and inter-provider,'' ITI also suggests that the term ''interoperable'' could be defined as ''interoperable with [VRS] or among different video conferencing services.'' As an alternative, the IT and Telecom RERCs suggest that a system that publishes its standard and allows other manufacturers or service providers to build products or services to work with it should be considered interoperable.

29. Accordingly, we seek comment on the following alternative definitions of ''interoperable'' in the context of video conferencing services and equipment used for those services: (1) ''Interoperable'' means able to function inter-platform, inter-network, and inter-provider; (2) ''interoperable'' means having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards; or (3) ''interoperable'' means able to connect users among different video conferencing services, including VRS.

30. We seek comment on each of the above proposed definitions of ''interoperable.'' Should only one of the proposed definitions be adopted, and should we reject the other two definitions, or should we adopt multiple definitions and find that video conferencing services are interoperable as long as any one of the three definitions is satisfied? In other words, should we consider the three proposed definitions as three alternative tests for interoperability? In regard to the first alternative—''inter-platform, inter-network, and inter-provider''—we seek comment on the extent to which video conferencing services or equipment must be different or distinct to qualify under this definition. In regard to the second alternative, when does a standard determine interoperability? Is publication by a standards-setting body enough, even if only one manufacturer or service provider follows that standard? If a manufacturer or service provider publishes a standard and invites others to utilize it, is that enough to establish interoperability? If not, is interoperability established as soon as a second manufacturer or service provider utilizes the standard? If not, what is enough to establish interoperability? If two or more manufacturers or service providers agree to a standard without publication, is interoperability established? If not, is interoperability established if they invite others to receive a private copy of the standards, but do not publish the standards for public consumption? If video conferencing services can be used to communicate with public safety answering points, does that establish interoperability? If not, what else must be done to establish interoperability? Does the ability to connect to VRS make a video conferencing service ''interoperable'' or ''accessible'' or both? If users of different video conferencing services, including VRS, can communicate with each other, does that establish interoperability, even if there are no set standards? If communications among different services is not enough, what then is enough to establish interoperability?

31. Interest in and consumer demand for cross-platform, network, and provider video conferencing services and equipment continues to rise. We do not believe that interoperability among different platforms will ''hamper service providers' attempts to distinguish themselves in the marketplace and thus hinder innovation.'' While we consider this matter more fully in this *FNPRM,*

we urge industry ''to develop standards for interoperability between video conferencing services as it has done for text messaging, picture and video exchange among carriers operating on different technologies and equipment.'' We also urge industry, consumers, and other stakeholders to identify performance objectives that may be necessary to ensure that ''such services may, by themselves, be accessibility solutions'' and ''that individuals with disabilities are able to access and control these services'' as Congress intended. In other words, what does ''accessible to and usable by individuals with disabilities'' mean in the context of interoperable video conferencing services and equipment? Are accessibility performance and other objectives different for ''interoperable'' video conferencing services? For example, does accessibility for individuals who are deaf or hard of hearing include being enabled to connect with an interoperable video conferencing service call through a relay service other than VRS? How can we ensure that video conferencing services and equipment are accessible to people with other disabilities, such as people who are blind or have low vision, or people with mobility, dexterity, cognitive, or intellectual disabilities? Notwithstanding existing obligations under the Act, we propose that industry considers accessibility alongside the technical requirements and standards that may be needed to achieve interoperability so that as interoperable video conferencing services and equipment come into existence, they are also accessible. Interoperable video conferencing services and equipment, when offered by providers and manufacturers, must be accessible to and usable by individuals with disabilities, as required by section 716, and such providers and manufacturers are subject to the recordkeeping and annual certification requirements of section 717 starting on the effective date of these rules.

2. Coverage of Video Mail

32. In the *Accessibility NPRM,* the Commission sought comment on whether services that otherwise meet the definition of interoperable video conferencing services but that also provide non-real-time or near real-time functions (such as ''video mail'') are covered and subject to the requirements of section 716. If such functions are not covered, the Commission asked whether it should, similar to what it did in the section 255 context, assert its ancillary jurisdiction to cover video mail.

33. We agree with commenters that non-real-time or near-real-time features or functions of a video conferencing service, such as video mail, do not meet the definition of ''real-time'' video communications. Nonetheless, we do not have a sufficient record as to whether we should exercise our ancillary jurisdiction to require that a video mail service be accessible to individuals with disabilities when provided along with a video conferencing service as the Commission did in the context of section 255 in regard to voice mail, and we now seek comment on this issue. The record is also insufficient to decide whether our ancillary jurisdiction extends to require other features or functions provided along with a video conferencing service, such as recording and playing back video communications on demand, to be accessible, and we seek comment on this issue as well. Do we have other sources of direct authority, besides section 716, to require that video mail and other features, such as recording and playing back video communications, are accessible to individuals with disabilities? Would the failure to ensure accessibility of video mail and the related equipment that performs these functions undermine the accessibility and usability of interoperable video conferencing services? Similarly, would the failure to ensure accessibility of recording and playing back video communications on demand and the related equipment that performs these functions undermine the accessibility and usability of interoperable video conferencing services?

D. Accessibility of Information Content

34. Section 716(e)(1)(B) of the Act requires the Commission to promulgate regulations providing that advanced communications services and the equipment and networks used with these services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks. In the *Accessibility Report and Order,* we adopt this broad rule, incorporating the text of section 716(e)(1)(B), as proposed in the *Accessibility NPRM.* Here, we seek comment on the IT and Telecom RERCs' suggestion that we interpret the phrase ''may not impair or impede the accessibility of information content'' to include the concepts set forth below. IT and Telecom RERC has submitted a proposal regarding how we should interpret and apply our accessibility of information content guidelines, including the following recommendations that covered entities:

- Shall not install equipment or features that can't or don't support accessibility information;
- Shall not configure network equipment such that it would block or discard accessibility information;
- Shall display any accessibility related information that is present in an industry recognized standard format;
- Shall not block users from substituting accessible versions of content; and
- Shall not prevent the incorporation or passing along of accessibility related information.

E. Electronically Mediated Services

35. In the *Accessibility Report and Order,* we declined to expand our definition of peripheral devices to mean ''devices employed in connection with equipment covered by this part, including software and electronically mediated services, to translate, enhance, or otherwise transform advanced communications services into a form accessible to people with disabilities'' as the IT and Telecom RERCs propose). Because the record is insufficient, we seek further comment on the IT and Telecom RERCs' proposal and on the definition of ''electronically mediated services.'' We also seek comment on the extent to which electronically mediated services are covered under section 716 and how they can be used to transform ACS into an accessible form.

F. Performance Objectives

36. Section 716(e)(1)(A) of the Act provides that in prescribing regulations for this section, the Commission shall ''include performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities.'' In the *Accessibility NPRM,* the Commission sought comment on how to make its performance standards testable, concrete, and enforceable. In the *Accessibility Report and Order,* we incorporated into the performance objectives the definitions of accessible, compatibility, and usable, in §§ 6.3 and 7.3 of the Commission's rules. In their Reply Comments, however, the IT and Telecom RERCs argued that, instead of relying on our part 6 requirements, the Commission's performance objectives should include testable criteria. The IT and Telecom RERCs proposed specific ''Aspirational Goal and Testable Functional Performance Criteria'' in

their Reply Comments. We seek comment on those criteria.

G. Safe Harbors

37. As explained in the *Accessibility Report and Order,* we decline at this time to adopt technical standards as safe harbors. However, we recognize the importance of the various components in the ACS architecture working together to achieve accessibility and seek comment on whether certain safe harbor technical standards can further this goal.

38. Specifically, we seek comment on whether, as ITI proposes, ACS manufacturers can ensure compliance with the Act ''by programmatically exposing the ACS user interface using one or more established APIs and specifications which support the applicable provisions in ISO/IEC 13066–1:2011.'' Other standards may also form the basis of a safe harbor for compliance with section 716, including the ''W3C/WAI Web Content Accessibility Guidelines, Version 2.0 and section 508 of the Rehabilitation Act of 1973, as amended.'' We seek comment on the use of these standards, and any others, as safe harbors for compliance with section 716.

39. For the purpose of keeping safe harbors up-to-date with technology and ensuring ongoing compliance with the Act, we seek comment on whether ''it should be the responsibility of the appropriate manufacturer or standards body to inform the Commission when new, relevant APIs and specifications are made available to the market that meet the * * * standard.'' If we decide to adopt a safe harbor based on recognized industry standards, we seek comment on how the industry, consumers, and the Commission can verify compliance with the standard. Should entities be required to self-certify compliance with a safe harbor? Is there a standard for which consumers can easily test compliance with an accessible tool? What are the compliance costs for ACS manufacturers and service providers of the Commission adopting safe harbor technical standards based on recognized industry standards? Will adopting safe harbor technical standards based on recognized industry standards reduce compliance costs for ACS manufacturers and service providers?

40. We recognize tension may exist between the relatively slow standards setting process and the rapid pace of technological innovation. How should the Commission account for the possibility that the continued development of a standard on which a safe harbor is based may be outpaced by technology? Should we for purposes of determining compliance with a safe harbor apply only safe harbors that were recognized industry standards at the time of the design phase for the equipment or service in question? Is there another time period in the development of the equipment or service that is more appropriate?

H. Section 718 Recordkeeping and Enforcement

41. *Background.* In the *Accessibility NPRM,* the Commission invited comment on recordkeeping requirements for section 718 covered entities. The Commission noted that recordkeeping requirements for section 718 entities would be considered further in light of comments on general section 718 implementation. The Commission also sought comment on informal complaint, formal complaint, and other general requirements for complaints alleging violations of section 718 and the Commission's implementing rules.

42. *Discussion.* In the *Accessibility Report and Order,* we adopt the same recordkeeping and complaint procedures for section 718 covered entities that we adopt for section 716 covered entities. Specifically, we adopt recordkeeping requirements for section 718 covered entities that go into effect one year after the effective date of the rules adopted in the *Accessibility Report and Order.* We also adopt informal complaint and formal complaint procedures as well as other general requirements for complaints filed against section 718 covered entities for violations of section 718 and the Commission's implementing rules. These complaint procedures go into effect for section 718 covered entities on October 8, 2013, three years after the CVAA was enacted.

43. In this *FNPRM,* we seek comment on the implementation of section 718 specifically. In this section, we invite comment on whether the section 718 recordkeeping requirements, which we adopt in the *Accessibility Report and Order,* should be retained or altered in light of the record developed in response to this *FNPRM* on section 718. We ask that parties suggesting changes to the rules provide an assessment of the relative costs and benefits associated with (1) the rule they wish to see changed and (2) the alternative that they propose.

II. Procedural Matters

Ex Parte Rules—Permit-But-Disclose Proceeding

44. Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Analysis

45. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on a substantial number of small entities that might result from adoption of the rules proposed in the *Further Notice of Proposed Rulemaking (''FNPRM'').* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the applicable deadlines for initial comments, or reply comments, as specified in the *FNPRM.*

The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *FNPRM* and this IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

46. The *Accessibility Report and Order* implements Congress' mandate that people with disabilities have access to advanced communications services (''ACS'') and ACS equipment. Specifically, the rules adopted in the *Accessibility Report and Order* implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (''CVAA'').

47. The *Accessibility Report and Order* implements the requirements of section 716 of the Act, which requires providers of ACS and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Act, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716, and 718.

48. The *Accessibility Report and Order* finds the record insufficient to adopt a permanent exemption or to adopt the criteria to be used to determine which small entities to exempt. The *Accessibility Report and Order* therefore temporarily exempts all manufacturers of ACS equipment and all providers of ACS from the obligations of section 716 if they qualify as small business concerns under the SBA rules and size standards for the industry in which they are primarily engaged. The *Accessibility Report and Order* indicated that such an exemption was necessary to avoid the possibility of unreasonably burdening ''small and entrepreneurial innovators and the significant value that they add to the economy.'' This self-executing exemption would be applied until the development of a record to determine whether small entities should be permanently exempted and, if so, what criteria should be used to define small entities.

49. The *Accessibility Report and Order* indicated that SBA has established maximum size standards used to determine whether a business concern qualifies as a small business concern in its primary industry. The SBA has generally adopted size standards based on the maximum number of employees or maximum annual receipts of a business concern. The SBA categorizes industries for its size standards using the North American Industry Classification System (''NAICS''), a ''system for classifying establishments by type of economic activity.'' The *Accessibility Report and Order* identified some NAICS codes for possible primary industry classifications of ACS equipment manufacturers and ACS providers and the relevant SBA size standards associated with the codes. The definitions for each NAICS industry classification can be found by entering the six digit NAICS code in the ''2007 NAICS Search'' function available at the NAICS homepage, *http://www.census.gov/eos/www/naics/index.html.* The U.S. Office of Management and Budget has revised NAICS for 2012, however, the codes and industry categories listed herein are unchanged. OMB anticipates releasing a 2012 NAICS United States Manual or supplement in January 2012. *See* 13 CFR 121.201 for a full listing of SBA size standards by six-digit NAICS industry code. The standards listed in this column establish the maximum size an entity in the given NAICS industry may be to qualify as a small business concern.

NAICS classification	NAICS code	SBA size standard
Services		
Wired Telecommunications Carriers	517110	1,500 or fewer employees.
Wireless Telecommunications Carriers (except satellites)	517210	1,500 or fewer employees.
Telecommunications Resellers	517911	1,500 or fewer employees.
All Other Telecommunications	517919	$25 million or less in annual receipts.
Software Publishers	511210	$25 million or less in annual receipts.
Internet Publishing and Broadcasting and Web Search Portals	519130	500 or fewer employees.
Data Processing, Hosting, and Related Services	518210	$25 million or less in annual receipts.
Equipment		
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	334220	750 or fewer employees.
Electronic Computer Manufacturing	334111	1,000 or fewer employees.
Telephone Apparatus Manufacturing	334210	1,000 or fewer employees.
Other Communications Equipment Manufacturing	334290	750 or fewer employees.
Software Publishers	511210	$25 million or less in annual receipts.
Internet Publishing and Broadcasting and Web Search Portals	519130	500 or fewer employees.

50. The *Accessibility Report and Order* indicated that this temporary exemption is self-executing. Under this approach, covered entities must determine whether they qualify for the exemption based upon their ability to meet the SBA's rules and the size standard for the relevant NAICS industry category for the industry in which they are primarily engaged. Entities that manufacture ACS equipment or provide ACS may raise this temporary exemption as a defense in an enforcement proceeding. Entities claiming the exemption must be able to demonstrate that they met the exemption criteria during the estimated start of the design phase of the lifecycle of the product or service that is the subject of the complaint. The *Accessibility Report and Order* stated that if an entity no longer meets the exemption criteria, it must comply with section 716 and section 717 for all subsequent products or services or substantial upgrades of products or services that are in the development phase of the product or service lifecycle, or any earlier stages of development, at the time they no longer meet the criteria. The temporary exemption will begin on the effective date of the rules adopted in the *Accessibility Report and*

Order and will expire the earlier of the effective date of small entity exemption rules adopted pursuant to the *FNPRM* or October 8, 2013. The *Accessibility Report and Order* states that the temporary exemption enables us to provide relief to those entities that may possibly lack legal, financial, or technical capability to comply with the Act until we further develop the record to determine whether small entities should be subject to a permanent exemption and, if so, the criteria to be used for defining which small entities should be subject to such permanent exemption.

51. In the *FNPRM* we seek comment on whether to make permanent the temporary exemption for manufacturers of ACS equipment and providers of ACS, adopt one or part of alternative size standards the Commission adopted in other contexts, or to adopt any permanent exemption for such entities, subject to repeal or modification by the Commission as necessary to meet Congress's intent. The *FNPRM* also seeks comment on the impact of an exemption on providers of ACS, manufacturers of ACS equipment, and consumers.

52. Specifically, the *FNPRM* seeks comment on whether to permanently exempt from the obligations of section 716, manufacturers of ACS equipment and providers of ACS that qualify as small business concerns under the SBA's rules and size standards and, if so, whether to utilize the size standards for the primary industry in which they are engaged under the SBA's rules as set forth in the *Accessibility Report and Order* as explained above. The *FNPRM* notes that SBA criteria were established for the purpose of determining eligibility for SBA small business loans and asks whether these same criteria are appropriate for the purpose of relieving covered entities from the obligations associated with achievability analyses, recordkeeping, and certifications.

53. The *FNPRM* also seeks comment on alternative size standards that the Commission has adopted in other contexts. The Commission has adopted alternative size standards for very small and small businesses for eligibility for spectrum bidding credits. These alternative sizes include average gross revenue over the preceding three years of $3 million, $15 million, or $40 million, depending on the wireless service. The Commission has also used a different size standard in the spectrum context, specifically for entities that, along with affiliates, have $6 million or less in net worth and no more than $2 million in annual profits (after federal income tax and excluding carry over losses) each year for the previous two years. The Commission has also used different size standards to define small cable companies and small cable systems, and the Act includes a definition of small cable system operators. The Commission has defined small cable companies as a cable company serving 400,000 or fewer subscribers nationwide, and small cable systems as a cable system serving 15,000 or fewer subscribers. The Act defines small cable system operators as ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The *FNPRM* seeks comment on whether any of these alternatives—in whole, in part, or in combination—should form the basis for a permanent small entity exemption from the requirements of section 716.

54. The *FNPRM* also asks if these size criteria are not appropriate for a permanent exemption, what the appropriate size criteria would be, and whether there are other criteria that should form the basis of a permanent exemption?

55. The *FNPRM* seeks comment on the impact of a permanent exemption on providers of ACS, manufacturers of ACS equipment, and consumers. Specifically, the *FNPRM* seeks comment on the qualitative and quantitative impact of a permanent exemption based on the temporary exemption, on any of the alternatives discussed, or on some other possible size standard will impact industry sectors engaged in ACS. For example, what percentage of, or which non-interconnected VoIP providers, wireline or wireless service providers, electronic messaging providers, and ACS equipment manufacturers would qualify as small business concerns under each size standard? Conversely, what percentage of or which providers of ACS or manufacturers of equipment used for ACS are not small business concerns under each size standard? For each ACS and ACS equipment market segment, what percentage of the market is served by entities that are not exempt using each size standard?

56. The *FNPRM* also seeks comment on the compliance costs that ACS providers and ACS equipment manufacturers would incur absent a permanent exemption. What would the costs be for compliance with section 716 and section 717 across different providers of ACS and ACS equipment manufacturers if we decline to adopt any permanent exemption or decline to make the temporary exemption permanent? In particular, what are the costs of conducting an achievability analysis, recordkeeping, and providing certifications?

57. We note that, in addition to the small entity exemption provision, the CVAA sets forth achievability factors that may also mitigate adverse impacts and reduce burdens on small entities. Under the achievability factors, an otherwise covered entity can demonstrate that accessibility is unachievable and therefore avoid compliance. The first and second factors are particularly relevant to small entities and the special circumstances they face. The first factor considers the nature and cost of the steps needed to meet the requirements with respect to the specific equipment or service in question, and the second considers the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question.

58. The *FNPRM* seeks further comment on several issues raised in the implementation of sections 716 and 717 of the Act, as well as to seek initial comment on implementing section 718 of the Act. Specifically, the *FNPRM* seeks comment on three proposed alternative definitions for the term ''interoperable'' in the context of video conferencing services and equipment used for those services: (1) ''Interoperable'' means able to function inter-platform, inter-network, and inter-provider; (2) ''interoperable'' means having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards; or (3) ''interoperable'' means able to connect users among different video conferencing services, including VRS. The *FNPRM* also seeks comment on whether we should exercise our ancillary jurisdiction to require that a video mail service be accessible to individuals with disabilities when provided along with a video conferencing service as we did in the context of section 255 in regard to voice mail. The *FNPRM* seeks comment on several proposals to (1) extend our accessibility of information content guidelines to cover additional concepts; (2) expand our definition of peripheral devices to include electronically mediated services; (3) expand our Part 6 requirements to include testable criteria. We also seek to develop a record on a proposal to define technical standards for safe harbors using the W3C/WAI Web guidelines or ISO/IEC

13066–1:2011. Finally, we seek comment on our proposal to implement section 718 of the CVAA consistent with the recordkeeping requirements adopted in the *Accessibility Report and Order.*

59. We seek comment on the preceding topics because even though at present we do not have enough information to propose a specific rule, we believe that during the effective period of the temporary small business exemption, information about these topics will in all likelihood become crucial and indeed determinative of how the implementation of the exemption will be carried out in concrete terms. For example, within the exemption period, technological innovations and advances may make interoperability more available in providing improved access to the deaf/blind community in service areas where interoperability is not yet feasible for technological reasons. Also, technological advances in coverage of video mail or in the availability of safe harbors may become more available and more efficiently operational after the exemption period than they are at present, and thus, during the temporary exemption, these various areas of increased availability and increased effective impact may affect the provision of ACS to the deaf and/or blind community. Hence, because these topics may become pivotal and crucial after the exemption period, we choose to seek comment on these topics at this time because based on our assessment of the admittedly scant record to date, we conclude that such comment may effectively guide the Commission toward a more comprehensive and efficient implementation of the temporary exemption. We also seek comment on implementing section 718, which requires a mobile phone manufacturer that includes a browser, or a mobile phone service provider that arranges for a browser to be included on a mobile phone, to ensure that the browser functions are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. Under section 718, mobile phone manufacturers or service providers may achieve compliance by relying on third party applications, peripheral devices, software, hardware, or customer premises equipment. Congress provided that the effective date for these requirements is three years after the enactment of the CVAA, *i.e.,* October 8, 2013.

B. Legal Basis

60. The legal basis for any action that may be taken pursuant to the *FNPRM* is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, 718 of the Communications Act of 1934, as Amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, 619.

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

61. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that face possible significant economic impact by the adoption of proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

62. To assist the Commission in analyzing the total number of small entities potentially affected by the proposals in the *FNPRM,* we ask commenters to estimate the number of small entities that may be affected. To assist in assessing the nature and number of small entities that face possible significant economic impact by the proposals in the *FNPRM,* we seek comment on the industry categories below and our estimates of the entities in each category that can, under relevant SBA standards or standards previously approved by the SBA for small businesses, be classified as small. Where a commenter proposes an exemption from the requirements of section 716 and in effect section 717, we also seek estimates from that commenter on the number of small entities in each category that would be exempted from compliance with section 716 and in effect section 717 under the proposed exemption, the percentage of market share for the service or product that would be exempted, and the economic impact, if any, on those entities that are not covered by the proposed exemption. While the *FNPRM* and this IRFA seek comment on whether and how the Commission should permanently exempt small entities from the requirements of section 716 and in effect section 717 for the purposes of building a record on that issue, we will assume, for the narrow purpose of including a thorough regulatory impact analysis in this IRFA, that no such exemptions will be provided.

63. Many of the issues raised in the *FNPRM* relate to clarifying obligations on entities already covered by the *Accessibility Report and Order,* which may affect a broad range of service providers and equipment manufacturers. The *FNPRM* seeks comment on making permanent a temporary exemption for small entities that qualify as small business concerns under the SBA's rules and small business size standards, or some other criteria. Therefore, it is possible that all entities that would be required to comply with section 716 and section 717, but are small business concerns or qualify as small entities under some other criteria, will be exempt from the provisions of the proposed rules implementing section 716 and section 717. The CVAA, however, does not provide the flexibility for the Commission to adopt an exemption for small entities from compliance with section 718. Therefore, we estimate below the impact on small entities absent a permanent exemption from section 716 and section 717, and small entities that may have to comply with section 718. Specifically, we analyze the number of small businesses engaged in manufacturing that may be affected by the *FNPRM,* absent a permanent small entity exemption, including manufacturers of equipment used to provide interconnected and non-interconnected VoIP, electronic messaging, and interoperable video conferencing services. We then analyze the number of small businesses engaged as service providers that may be affected by the *Accessibility Report and Order,* absent a permanent small entity exemption, including providers of interconnected and non-interconnected VoIP, electronic messaging services, interoperable video conferencing services, wireless services, wireline services, and other relevant services.

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

population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

1. Equipment Manufacturers

a. Manufacturers of Equipment To Provide VoIP

65. Entities manufacturing equipment used to provide interconnected VoIP, non-interconnected VoIP, or both are generally found in one of two Census Bureau categories, ''Electronic Computer Manufacturing'' or ''Telephone Apparatus Manufacturing.'' We include here an analysis of the possible significant economic impact of our proposed rules on manufacturers of equipment used to provide both interconnected and non-interconnected VoIP because it is not possible to separate available data on these two manufacturing categories for VoIP equipment. Our estimates below likely greatly overstate the number of small entities that manufacture equipment used to provide ACS, including interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as possible.

66. *Electronic Computer Manufacturing.* The Census Bureau defines this category to include ''establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid. * * * The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product.''

67. In this category, the SBA deems and electronic computer manufacturing business to be small if it has 1,000 employees or less. For this category of manufacturers, Census data for 2007 show that there were 421 establishments that operated that year. Of those 421, 384 had 100 or fewer employees and 37 had 100 or more employees. On this basis, we estimate that the majority of manufacturers of equipment used to provide electronic messaging services in this category are small.

68. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category to comprise ''establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.''

69. In this category, the SBA deems a telephone apparatus manufacturing business to be small if it has 1,000 or fewer employees. For this category of manufacturers, Census data for 2007 shows there were 398 such establishments in operation. Of those 398 establishments, 393 (approximately 99%) had 1,000 or fewer employees and, thus, would be deemed small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the manufacturers of equipment used to provide VoIP in this category are small.

b. Manufacturers of Equipment To Provide Electronic Messaging

70. Entities that manufacture equipment (other than software) used to provide electronic messaging services are generally found in one of three Census Bureau categories: ''Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,'' ''Electronic Computer Manufacturing,'' or ''Telephone Apparatus Manufacturing.''

71. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 919 establishments in this category that operated for part or all of the entire year. Of this total, 771 had less than 100 employees and 148 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

72. *Electronic Computer Manufacturing.* The Census Bureau defines this category to include ''establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid. * * * The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product.''

73. In this category the SBA deems an electronic computer manufacturing business to be small if it has 1,000 or fewer employees. For this category of manufacturers, Census data for 2007 show that there were 421 such establishments that operated that year. Of those 421 establishments, 384 had 1,000 or fewer employees. On this basis, we estimate that the majority of the manufacturers of equipment used to provide electronic messaging services in this category are small.

74. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category to comprise ''establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.''

75. In this category the SBA deems a telephone apparatus manufacturing business to be small if it has 1,000 or fewer employees. For this category of manufacturers, Census data for 2007 shows that there were 398 such establishments that operated that year. Of those 398 establishments, 393 (approximately 99%) had 1,000 or fewer employees and, thus, would be deemed small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the manufacturers of equipment used to provide electronic messaging services in this category are small.

c. Manufacturers of Equipment Used To Provide Interoperable Video Conferencing Services

76. Entities that manufacture equipment used to provide interoperable and other video conferencing services are generally found in the Census Bureau category: ''Other Communications Equipment Manufacturing.'' The Census Bureau defines this category to include: ''establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).''

77. *Other Communications Equipment Manufacturing.* In this category, the SBA deems a business manufacturing other communications equipment to be small if it has 750 or fewer employees. For this category of manufacturers, Census data for 2007 show that there were 452 establishments that operated that year. Of the 452 establishments 406 had fewer than 100 employees and 46 had more than 100 employees. Accordingly, the Commission estimates that a substantial majority of the manufacturers of equipment used to provide interoperable and other video-conferencing services are small.

2. Service Providers

a. Providers of VoIP

78. Entities that provide interconnected or non-interconnected VoIP or both are generally found in one of two Census Bureau categories, ''Wired Telecommunications Carriers'' or ''All Other Telecommunications.''

79. *Wired Telecommunications Carriers.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''

80. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category. Of these 3,188 firms, only 44 had 1,000 or more employees. While we could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category, are small.

81. *All Other Telecommunications.* Under the 2007 U.S. Census definition of firms included in the category ''All Other Telecommunications (NAICS Code 517919)''comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied telecommunications connections are also included in this industry.''

82. In this category, the SBA deems a provider of ''all other telecommunications'' services to be small if it has $25 million or less in average annual receipts. For this category of service providers, Census data for 2007 shows that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately 98%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category are small.

b. Providers of Electronic Messaging Services

83. Entities that provide electronic messaging services are generally found in one of the following Census Bureau categories, ''Wireless Telecommunications Carriers (except Satellites),'' ''Wired Telecommunications,'' or ''Internet Publishing and Broadcasting and Web Search Portals.''

84. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (''SMR'') Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

85. *Wired Telecommunications Carriers.* For the 2007 US Census definition of firms included in the category, ''Wired Telecommunications Carriers (NAICS Code 517110),'' see paragraph 35 above.

86. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category. Of these 3,188 firms, only 44 (approximately 1%) had 1,000 or more employees. While we could not find precise Census data on the number of firms in the group with 1,500 or fewer employees, it is clear that at least the 3,188 firms with fewer than 1,000 employees would be in that group. Thus, at least 3,144 of these 3,188 firms (approximately 99%) had 1,500 or fewer employees. On this basis, the Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small.

87. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category to include ''establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and

maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.''

88. In this category, the SBA deems an Internet publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has 500 or fewer employees. For this category of manufacturers, Census data for 2007 shows that there were 2,705 such firms that operated that year. Of those 2,705 firms, 2,682 (approximately 99%) had 500 or fewer employees and, thus, would be deemed small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small.

89. *Data Processing, Hosting, and Related Services.* The Census Bureau defines this category to include ''establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services.''

90. In this category, the SBA deems a data processing, hosting, or related services provider to be small if it has $25 million or less in annual receipts. For this category of providers, Census data for 2007 shows that there were 14,193 such establishments that operated that year. Of those 14,193 firms, 12,985 had less than $10 million in annual receipts, and 1,208 had greater than $10 million. Although no data is available to confirm the number of establishments with greater than $25 million in receipts, the available data confirms the majority of establishments in this category were small. On this basis, the Commission estimates that approximately 96% of the providers of electronic messaging services in this category are small.

c. Providers of Interoperable Video Conferencing Services

91. Entities that provide interoperable video conferencing services are found in the Census Bureau Category ''All Other Telecommunications.''

92. *All Other Telecommunications.* For the 2007 U.S. Census definition of firms included in the category, ''All Other Telecommunications (NAICS Code 517919),'' see paragraph 37 above.

93. In this category, the SBA deems a provider of ''all other telecommunications'' services to be small if it has $25 million or less in average annual receipts. Census data for 2007 show that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately 98%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers of interoperable video conferencing services are small.

3. Additional Industry Categories

a. Certain Wireless Carriers and Service Providers

94. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Wireless Telecommunications Carriers (except satellite).'' Under that SBA category, a business is small if it has 1,500 or fewer employees. The census category of ''Cellular and Other Wireless Telecommunications'' is no longer used and has been superseded by the larger category ''Wireless Telecommunications Carriers (except satellite).'' The Census Bureau defines this larger category to include ''establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.''

95. Census data for 2007 shows 1,383 firms in this category. Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees. While there is no precise Census data on the number of firms the group with 1,500 or fewer employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) 1,500 or fewer employees. On this basis, Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small.

96. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for SMR geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 licenses. One bidder claiming small business status won five licenses.

97. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed ''small business'' status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

98. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz

geographic area SMR services pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

99. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as a small business. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but has proposed to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

100. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area (''MEA'') licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

101. *Upper 700 MHz Band Licenses. In the 700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

102. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

103. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of A, B and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

104. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007 show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

105. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding $40 million as a ''small business,'' and an entity with average annual gross revenues for the three preceding years not exceeding $15 million as a ''very small business.'' SBA has approved these small business size

standards for the aforementioned bands. Correspondingly, the Commission adopted a bidding credit of 15 percent for ''small businesses'' and a bidding credit of 25 percent for ''very small businesses.'' This bidding credit structure was found to have been consistent with the Commission's schedule of bidding credits, which may be found at § 1.2110(f)(2) of the Commission's rules. The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under section 309(j) of the Act to promote opportunities for and disseminate licenses to a wide variety of applicants. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

b. Certain Equipment Manufacturers and Stores

106. *Part 15 Handset Manufacturers.* Manufacturers of unlicensed wireless handsets may also become subject to requirements in this proceeding for their handsets used to provide VoIP applications. The Commission has not developed a definition of small entities applicable to unlicensed communications handset manufacturers. Therefore, we will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

107. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees.'' Thus, under this size standard, the majority of firms can be considered small.

108. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: ''This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.'' The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: All such firms having $9 million or less in annual receipts. According to Census Bureau data for 2007, there were 24,912 firms in this category that operated for the entire year. Of this total, 22,701 firms had annual sales of under $5 million; 570 had annual sales and 533 firms had sales of $5 million or more but less than $10 million, and 1,641 had annual sales of over 10 million. Thus, the majority of firms in this category can be considered small.

c. Wireline Carriers and Service Providers

109. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the NPRM. Thus under this category, the majority of these incumbent local exchange service providers can be considered small.

110. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more

than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

111. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

112. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

113. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

114. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed rules.

115. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007 shows that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be considered small entities. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

116. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

117. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the

number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data for September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

d. Wireless Carriers and Service Providers

118. Below, for those services where licenses are subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of a given auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

119. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and SMR Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

120. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

121. *Common Carrier Paging.* The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The 2007 census also contains data for the specific category of ''Paging'' ''that is classified under the seven-number NAICS code 5172101. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action.

122. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and SMR Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

123. *Broadband Personal Communications Service.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for

the D, E, and F Blocks. On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

124. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

125. *Narrowband Personal Communications Services.* To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction of Narrowband PCS licenses was conducted in 2001. In that auction, five bidders won 317 Metropolitan Trading Areas and nationwide licenses. Three of the winning bidders claimed status as a small or very small entity and won 311 licenses.

126. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

127. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on and closed in 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses. In 2007, the Commission conducted a fourth auction of the 220 MHz licenses. Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years (''small business'') received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $3 million for the preceding three years received a 35 percent discount on its winning bid (''very small business''). Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007. In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

128. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards small business bidding credits in auctions for SMR geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

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

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

131. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

132. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). For purposes of its analysis of the Rural Radiotelephone Service, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms in the Rural Radiotelephone Service can be considered small.

133. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (''VHF'') marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

134. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (''LMDS''), the Digital Electronic Message Service (''DEMS''), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

135. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

136. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

137. *Wireless Cable Systems. Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint

Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS''). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

138. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' For these services, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use the classifications ''firms'' does not track the number of ''licenses''.

139. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

140. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 174 entities winning licenses for 594 Metropolitan Statistical Area (''MSA'') licenses. Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

141. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in

the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

142. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

143. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

144. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

145. The second category, *i.e.,* ''All Other Telecommunications'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or VoIP services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 shows that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

e. Cable and OVS Operators

146. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers may not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

147. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

148. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

149. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

150. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The OVS framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service

providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

f. Internet Service Providers, Web Portals and Other Information Services

151. *Internet Service Providers, Web Portals and Other Information Services.* In 2007, the SBA recognized two new small business economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services.

152. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include VoIP, in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled ''broadband.'' The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. These are labeled non-broadband.

153. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees. For the second category, the data show that 1,682 firms operated for the entire year. Of those, 1,675 had annual receipts below $25 million per year, and an additional two had receipts of between $25 million and $ 49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

154. *Internet Publishing and Broadcasting and Web Search Portals.* This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as email, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users. The SBA deems businesses in this industry with 500 or fewer employees small. According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with to 999 employees. Consequently, we estimate the majority of these firms are small entities that may be affected by our proposed actions.

155. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services. The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 6,726 had annual receipts of under $25 million, and 155 had receipts between $25 million and $49,999,999 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by our proposed actions.

156. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

157. We summarize below the recordkeeping and certification obligations of the *Accessibility Report and Order.* Additional information on each of these requirements can be found in the *Accessibility Report and Order.* These requirements will apply to all entities that must comply with section 716 and section 718.

158. Recordkeeping. The *Accessibility Report and Order* requires, beginning one year after the effective date of the *Accessibility Report and Order,* that each manufacturer of equipment used to provide ACS and each provider of such services subject to sections 255, 716, and 718 not otherwise exempt under the *Accessibility Report and Order,* maintain certain records. These records document the efforts taken by a manufacturer or service provider to implement sections 255, 716, and 718. The *Accessibility Report and Order* adopts the recordkeeping requirements of the CVAA, which specifically include: (1) Information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve

access. Additionally, while manufacturers and providers are not required to keep records of their consideration of the four achievability factors, they must be prepared to carry their burden of proof, which requires greater than conclusory or unsupported claims. Similarly, entities that rely on third party solutions to achieve accessibility must be prepared to produce relevant documentation.

159. These recordkeeping requirements are necessary to facilitate enforcement of the rules adopted in the *Accessibility Report and Order* and proposed in the *FNPRM.* The *Accessibility Report and Order* builds flexibility into the recordkeeping obligations by allowing covered entities to keep records in any format, recognizing the unique recordkeeping methods of individual entities. Because complaints regarding accessibility of a product or service may not occur for years after the release of the product or service, the *Accessibility Report and Order* requires covered entities to keep records for two years from the date the product ceases to be manufactured or a service is offered to the public. The *FNPRM* seeks comment on whether any of the recordkeeping and certification requirements should be modified for entities covered under section 718.

160. *Annual Certification Obligations.* The CVAA and the *Accessibility Report and Order* require an officer of providers of ACS and ACS equipment submit to the Commission an annual certificate that records are kept in accordance with the above recordkeeping requirements, unless such manufacturer or provider is exempt from compliance with section 716 under applicable rules. The certification must be supported with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the entity with personal knowledge of the representations provided in the company's certification, verifying the truth and accuracy of the information. The certification must be filed with the Consumer and Governmental Affairs Bureau on or before April 1 each year for records pertaining to the previous calendar year. The *FNPRM* seeks comment on whether any of the recordkeeping and certification requirements should be modified for entities covered under section 718.

161. *Costs of Compliance.* There is an upward limit on the cost of compliance. Under the CVAA and the *Accessibility Report and Order* accessibility is required for entities under section 716 and section 718 unless it is not achievable. Under two of the four achievability factors from the Act and adopted in the *Accessibility Report and Order,* which also apply to any rules adopted pursuant to this *FNPRM* implementing section 718, covered entities may demonstrate that accessibility is not achievable based on the nature and cost of steps needed or the technical and economic impact on the entity's operation. Entities that are not otherwise exempt or excluded under the *Accessibility Report and Order,* or subsequent to this *FNPRM,* must nonetheless be able to demonstrate that they conducted an achievability analysis, which necessarily requires the retention of some records.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

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

163. We note that the *FNPRM* continues and preserves the steps taken in the *Accessibility Report and Order* to minimize adverse economic impact on small entities. The *FNPRM* will continue to promote flexibility for all entities in several ways. The *FNPRM* does not alter the ability of an entity with obligations under section 716 to seek a waiver for products or services that are not designed primarily for ACS, and does not impact the conclusion in the *Accessibility Report and Order* that customized equipment is excluded. Further, small entities may continue to comply with both section 716 and section 718 by demonstrating that accessibility is not achievable, or may rely on third party software, applications, equipment, hardware, or customer premises equipment to meet their obligations under section 716 and section 718, if achievable. As stated below, the *FNPRM* also leaves unchanged the requirements adopted in the *Accessibility Report and Order* that allow covered entities to keep records in any format they wish as this flexibility affords small entities the greatest flexibility to choose and maintain the recordkeeping system that best suits their resources and their needs.

164. The *FNPRM* also seeks comment on making permanent the temporary exemption from the section 716 and section 717 obligations for all small entities that was adopted in the *Accessibility Report and Order.* Specifically, the *Accessibility Report and Order* minimized the economic impact on small entities by temporarily exempting entities that manufacture ACS equipment or provide ACS that, along with any affiliates, meet the criteria for a small business concern for their primary industry under SBA's rules and size standards. Correspondingly, the *FNPRM* now seeks to develop a record that would allow the Commission to determine whether to permanently minimize the impact on small entities that are subject to the requirements of sections 716.

165. The *FNPRM* also seeks comment on alternative approaches to the standards used to provide the temporary small business exemption even as it seeks to develop a record on whether to make the existing exemption a permanent one. In essence, the *FNPRM* looks to the temporary exemption as a proposal for a permanent exemption and seeks to develop record support for continuing to minimize the economic and regulatory impact on small entities. In considering alternatives to the approach proposed for a permanent exemption, the *FNPRM* seeks comment on how it can refine the proposed approach.

166. With respect to recordkeeping and certification requirements, and as described above, the *FNPRM* leaves unchanged the requirements adopted in the *Accessibility Report and Order* that allow covered entities to keep records in any format they wish. In the *Accessibility Report and Order,* we found that this approach took into account the variances in covered entities (*e.g.,* size, experience with the Commission), recordkeeping methods, and products and services covered by the CVAA. Moreover, we found that it also provided the greatest flexibility to small businesses and minimized the economic impact that the statutorily mandated requirements impose on small businesses. Correspondingly, we considered and rejected the alternative of imposing a specific format or one-size-fits-all system for recordkeeping that could potentially impose greater burdens on small businesses. Furthermore, the certification requirement is possibly less burdensome on small businesses than large, as it merely requires certification from an officer that the necessary

records were kept over the previous year; this is presumably a less resource intensive certification for smaller entities. The *FNPRM* seeks comment on whether any of the recordkeeping requirements should be modified for entities covered by section 718.

F. Federal Rules That May Duplicate, Overlap, or Conflict With Proposed Rules

167. Section 255(e) of the Act, as amended, directs the United States Access Board (''Access Board'') to develop equipment accessibility guidelines ''in conjunction with'' the Commission, and periodically to review and update those guidelines. We view the Access Board's current guidelines as well as its draft guidelines as starting points for our interpretation and implementation of sections 716 and 717 of the Act, as well as section 255, but because they do not currently cover ACS or equipment used to provide or access ACS, we must necessarily adapt these guidelines in our comprehensive implementation scheme. As such, our rules do not overlap, duplicate, or conflict with either Access Board Final Rules, or (if later adopted) the Access Board Draft Guidelines. Where obligations under section 255 and section 716 overlap, for instance for accessibility requirements for interconnected VoIP, we clarify in the *Accessibility Report and Order* which rules govern the entities' obligations.

III. Ordering Clauses

168. It is ordered that, pursuant to the authority of sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619, this *Further Notice of Proposed Rulemaking* is hereby adopted.

169. It is further ordered that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on this *Further Notice of Proposed Rulemaking* on or before 45 days after publication of the *Further Notice of Proposed Rulemaking* in the **Federal Register** and reply comments on or before 75 days after publication in the **Federal Register**.

170. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 14

Advanced communications services equipment, Individuals with disabilities, Manufacturers of equipment used for advanced communications services, Providers of advanced communications services, Recordkeeping and enforcement requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 part 14, as added elsewhere in this issue of the **Federal Register**, effective January 30, 2012 as follows:

PART 14—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

1. The authority citation for part 14 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 208, 255, 617, 618.

2. Add subpart E to part 14 to read as follows.

Subpart E—Internet Browsers Built Into Telephones Used With Public Mobile Services

§ 14.60 Internet Browsers built into Mobile Phones.

(a) *Accessibility.* If a manufacturer of a telephone used with public mobile services (as such term is defined in section 710(b)(4)(B) of the Act) includes an Internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable, except that this subpart shall not impose any requirement on such manufacturer or provider—

(1) To make accessible or usable any Internet browser other than a browser that such manufacturer or provider includes or arranges to include in the telephone; or

(2) To make Internet content, applications, or services accessible or usable (other than enabling individuals with disabilities to use an included browser to access such content, applications, or services).

(b) *Industry Flexibility.* A manufacturer or provider may satisfy the requirements of this subpart with respect to such telephone or services by—

(1) Ensuring that the telephone or services that such manufacture or provider offers is accessible to and usable by individuals with disabilities without the use of third party applications, peripheral devices, software, hardware, or customer premises equipment; or

(2) Using third party applications, peripheral devices, software, hardware, or customer premises equipment that is available to the consumer at nominal cost and that individuals with disabilities can access.

[FR Doc. 2011–31160 Filed 12–29–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812345–1789–01]

RIN 0648–AY73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Annual Catch Limit Amendment for the South Atlantic

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

ACTION: Amended proposed rule; request for comments.

SUMMARY: NMFS hereby amends a proposed rule published on December 1, 2011, to implement the Comprehensive Annual Catch Limit Amendment (Comprehensive ACL Amendment) to the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), the Golden Crab Fishery of the South Atlantic Region, the Dolphin and Wahoo Fishery off the Atlantic States, and the Pelagic *Sargassum* Habitat of the South Atlantic Region as prepared and submitted by the South Atlantic Fishery Management Council (Council). In November 2011, the Council's Scientific and Statistical Committee (SSC) met and determined the allowable biological catch (ABC) for wreckfish should be reduced to prevent overfishing from occurring. The proposed rule that was published on December 1, 2011 contained a variety of actions unrelated to the wreckfish ABC and those actions did not need to be delayed by further Council decisions with respect to the revised wreckfish

ABC. During its December 5–9, 2011 meeting, the Council concurred with the SSC's determination for a revised wreckfish ABC and to develop an amended proposed rule for the Comprehensive ACL Amendment to notify the public of this change to the wreckfish ABC. Based on the new recommended ABC, this rule proposes to reduce the commercial and recreational annual catch limits (ACLs) for wreckfish. The intent of this rule is to specify sector ACLs for wreckfish while maintaining a catch level consistent with achieving optimum yield for the resource.

DATES: Written comments must be received on or before January 17, 2012.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2011–0087'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA-NMFS-2011-0087'' in the keyword search and click on ''search''. To view posted comments during the comment period, enter ''NOAA-NMFS-2011-0087'' in the keyword search and click on ''search''. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments through means not specified in this rule will not be accepted.

Electronic copies of the Comprehensive ACL Amendment, which includes a final environmental impact statement, a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov/sf/pdfs/Comp%20ACL%20Am%20101411%20FINAL.pdf.* Electronic copies of the additional analyses prepared for this proposed rule may be obtained from the same Web site.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, NMFS, telephone: (727) 824–5305; email: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: Wreckfish are managed under the Snapper-Grouper FMP. The Snapper-Grouper FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

A notice of availability for the Comprehensive ACL Amendment was published on October 20, 2011 (76 FR 65153), with a comment period ending December 19, 2011. A proposed rule for the Comprehensive ACL Amendment was published on December 1, 2011 (76 FR 74757), with a comment period ending December 19, 2011. That proposed rule included measures to: Specify ACLs and accountability measures for species in the FMPs for Snapper-Grouper, Dolphin and Wahoo, Golden Crab, and *Sargassum;* revise the snapper-grouper fishery management unit; establish a daily vessel limit for the recreational possession of wreckfish; create a closed season for the wreckfish recreational sector; prohibit recreational bag limit sales of dolphin from for-hire vessels; and set a minimum size limit for dolphin off most of the South Atlantic states.

The Council's SSC met November 8–10, 2011, and evaluated the ABC for wreckfish. NMFS Southeast Regional Office staff gave a presentation at that meeting regarding a depletion-corrected average catch analysis of the wreckfish population. Based on that analysis, the SSC determined the ABC of 250,000 lb (113,398 kg), round weight, was too large and could lead to overfishing. The SSC recommended a smaller ABC of 235,000 lb (106,594 kg), round weight. The Council agreed to this lower ABC at its December 5–9, 2011 meeting, and because the Comprehensive ACL Amendment proposes an ACL for wreckfish equal to the ABC for wreckfish, the Council voted to revise the sector ACLs for wreckfish through a second proposed rule to implement the Comprehensive ACL Amendment. The allocation percentages proposed in the Comprehensive ACL Amendment are 95 percent for the commercial sector and 5 percent for the recreational sector. Based on these allocation percentages, the commercial ACL proposed in this rule is 223,250 lb (101,264 kg), round weight, and the recreational ACL is 11,750 lb (5,330 kg), round weight. The commercial ACL would be equivalent to the commercial quota. The codified text contained in this amended proposed rule only includes the further revisions to the wreckfish sector ACLs. The codified text for all other measures in the Comprehensive ACL Amendment is contained in the proposed rule published on December 1, 2011 (76 FR 74757) and is not repeated here.

The most recent recommendation developed by the Council's SSC at their November 2011 meeting retains the use of an ABC Control Rule proposed in the Comprehensive ACL Amendment to determine the wreckfish ABC. The proposed ABC Control Rule contains four levels to characterize the methodologies available to compute the ABC. Each level computes the ABC differently depending on the available information such as landings and life history information. At their August 2010 meeting, the SSC concluded that a control rule based on catch-only data (Level 4) should be used for wreckfish. The SSC also recommended, at their August 2010 meeting, the development of a Depletion-Based Stock Reduction Analysis (Level 2) or Depletion-Corrected Average Catch (DCAC) analysis (Level 3) in the next year to compare with the current catch-only recommendation for wreckfish. A DCAC analysis was completed and the SSC reviewed that analysis and adopted the methodology at their November 2011 meeting to develop a new ABC recommendation for wreckfish, in accordance with the proposed ABC Control Rule contained in the Comprehensive ACL Amendment.

Additionally, at its December meeting, the Council voted to approve Amendment 20A to the Snapper-Grouper FMP (Amendment 20A). Amendment 20A includes actions to revise certain aspects of the individual transferable quota (ITQ) system for the wreckfish sector of the snapper-grouper fishery. Specifically, Amendment 20A proposes to define and revert inactive wreckfish shares, redistribute reverted shares to remaining shareholders, establish a cap on the number of shares a single entity may own, and establish an appeals process for redistribution of reverted shares. The regulatory flexibility act analysis (RFAA) contained in that amendment examines the effects the proposed actions in Amendment 20A would have on wreckfish shareholders within the snapper-grouper fishery, in combination

with the effects of the proposed actions in this amended proposed rule to implement the Comprehensive ACL Amendment.

NMFS requests comments regarding these additional revisions to the codified text. These management measures, as well as the management measures contained in the proposed rule published on December 1, 2011, would be addressed in one final rule to implement the Comprehensive ACL Amendment, if it is approved. No other revisions or changes to the proposed rule to implement the Comprehensive ACL Amendment published on December 1, 2011, are included here. All discussion of the management measures contained in the Comprehensive ACL Amendment are provided in the proposed rule that published on December 1, 2011 (76 FR 74757), and in the Comprehensive ACL Amendment, and are not repeated here.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this amended proposed rule is consistent with the amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule to amend the Comprehensive ACL Amendment, if adopted, would not have a significant economic impact on a substantial number of small entities (76 FR 74757). The factual basis for this determination is as follows.

The RFAA for the Comprehensive ACL Amendment analyzed all of the measures contained therein and in the rule that published on December 1, 2011. Therefore, the results of that analysis are not repeated here. A copy of the full analysis is available from NMFS (see **ADDRESSES**).

The purpose of the amendment is to specify an ABC Control Rule, ACLs, and AMs where needed to comply with Magnuson-Stevens Act requirements. The objective of the amendment is to specify measures expected to prevent overfishing and achieve optimum yield while minimizing, to the extent practicable, adverse social and economic effects.

The Magnuson-Stevens Act provides the statutory basis for this rule. This rule would amend the proposed rule to implement the Comprehensive ACL Amendment by reducing the proposed commercial ACL for wreckfish from 237,500 lb (107,728 kg) to 223,250 lb (101,264 kg), round weight, and the proposed recreational ACL for wreckfish from 12,500 lb (5,670 kg) to 11,750 lb (5,330 kg), round weight, the rationale for which is provided in the preamble and is not repeated here.

This rule is expected to directly affect shareholders that possess quota shares and are active in the commercial wreckfish sector of the snapper-grouper fishery. This rule is also expected to directly affect for-hire vessels that possess for-hire snapper-grouper permits in the South Atlantic. The SBA has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide.

The snapper-grouper fishery in the South Atlantic is a limited access fishery with a cap on the total number of snapper-grouper permits available. In 2010, 598 vessels possessed snapper-grouper unlimited permits and 136 vessels possessed limited snapper-grouper permits. Thus, a total of 734 vessels possessed limited access permits to harvest snapper-grouper species. Unlimited permit holders may harvest snapper-grouper in unlimited quantities per trip, subject to quotas and ACLs, while limited permit holders may only harvest up to 225 lb (102.1 kg) of snapper-grouper per trip.

The commercial wreckfish sector of the snapper-grouper fishery is managed under an ITQ system. As of November 17, 2011, there were 20 shareholders in the commercial wreckfish ITQ system. The current minimum quota share held by a shareholder is 0.06 percent, the maximum quota share is 20.63 percent, and the average quota share is approximately 5 percent. With respect to the distribution of shares, 13 shareholders own less than 5 percent, 4 shareholders own between 5 percent and 10 percent, 2 shareholders own between 10 percent and 15 percent, and 1 shareholder owns more than 20 percent of the quota shares.

Based on landings data from the 5 most recent fishing years (i.e., 2006/2007 to 2010/2011), 13 of the 20 shareholders had no commercial wreckfish landings during this time and thus are considered inactive. Further, 11 of these 13 inactive shareholders were not commercially active in any fisheries, and thus earned no gross revenue or profit from commercial fishing activities, between 2006 and 2010. The other two inactive shareholders commercially harvested species other than wreckfish during this time. The extent to which these two shareholders were involved in other commercial harvesting activities differs greatly, as one was only minimally involved and the other significantly involved in such activities. Specific information regarding their landings and gross revenue is confidential and thus cannot be provided, while information regarding their profits is currently not available.

Seven of the 20 shareholders had at least 1 lb (0.45 kg) of commercial wreckfish landings during the five most recent fishing years and thus are considered active. More specifically, these active shareholders' annual wreckfish landings and gross revenue were 32,804 lb (14,880 kg) and $82,085 on average during this time, respectively. On average, these active shareholders also earned $90,582 in annual gross revenue from other species during this time. Thus, annual gross revenue from commercial fishing was $172,668 per active shareholder on average during the 5 most recent fishing years. Information regarding these active shareholders' profits is not currently available. The maximum gross revenue earned by a single active shareholder is confidential information and cannot be reported. However, this figure is less than the SBA threshold for a small business.

Between 2005 and 2009, approximately 2,018 vessels possessed for-hire snapper-grouper permits. For-hire permits do not distinguish charterboats from headboats and thus the specific number of charterboats with for-hire snapper-grouper permits cannot be estimated. Because wreckfish could not be legally retained by vessels operating under hire during this time, they had no wreckfish landings associated with for-hire harvest. Producer surplus represents profit in the for-hire sector. Producer surplus estimates for snapper-grouper vessels are not currently available. However, because for-hire vessels could not legally retain wreckfish, by definition, producer surplus due to the harvest of wreckfish is zero.

A study on the for-hire sector in the Southeast Region presented two sets of average gross revenue estimates for the charter and headboat sectors in the South Atlantic. The first set of estimates was as follows: $51,000 for charterboats

on the Atlantic coast of Florida; $60,135 for charterboats in North Carolina; $26,304 for charterboats in South Carolina; $56,551 for charterboats in Georgia; $140,714 for headboats in Florida; and $123,000 for headboats in the other South Atlantic states. The second set of estimates was as follows: $69,268 for charterboats and $299,551 for headboats across all South Atlantic states. Because the second set of estimates were considerably higher than the first set, a new approach was employed that generated the following estimates of average gross revenue: $73,365 for charterboats in North Carolina, $32,091 for charterboats in South Carolina; $68,992 for charterboats in Georgia; and $261,990 for headboats across all South Atlantic states. Data for Florida were unavailable in the second set of estimates.

Based on the figures above, all active shareholders expected to be directly affected by this rule are determined, for the purpose of this analysis, to be small business entities. Similarly, and regardless of which estimates are used, based on these figures, all for-hire fishing vessels expected to be directly affected by this rule are determined, for the purpose of this analysis, to be small business entities.

For the action to reduce the proposed commercial ACL for wreckfish, the commercial sector's ACL and quota would be reduced from 237,500 lb (107,728 kg) to 223,250 lb (101,264 kg), or by 14,250 lb (6,464 kg), which represents a 6 percent reduction. Thus, in turn, each shareholder's annual allocation of wreckfish would also be reduced by 6 percent. However, due to proposed actions in Amendment 20A to the Snapper-Grouper FMP, the quota shares currently held by the 13 inactive shareholders would be expected to be reverted and redistributed to the 7 active shareholders. As such, the reduction in the commercial sector's ACL and quota would not be expected to directly affect these 13 inactive shareholders and, thus, they are not considered further in this analysis.

With respect to the 7 active shareholders, the expected distribution of shares resulting from the proposed actions in Amendment 20A is as follows: 3.55 percent, 9.05 percent, 11.24 percent, 11.62 percent, 18.38 percent, 23 percent, and 23.16 percent, respectively. Under the original proposed commercial ACL of 237,500 lb (107,728 kg), the average annual allocation of wreckfish per active shareholder is 33,929 lb (15,390 kg). Under the 223,250 lb (101,264 kg) commercial ACL proposed in this rule, the annual allocation per active shareholder would be reduced to 31,893 lb (14,466 kg), or by 2,036 lb (924 kg), reflecting the 6 percent reduction. Thus, the expected loss in annual gross revenue due to the reduction in the commercial ACL is estimated to be $6,027 on average per active shareholder. This decrease in the active shareholders' gross revenue from wreckfish landings represents a decrease of approximately 3.5 percent in gross revenue from all of their commercial fishing activities on average. Expected reductions in gross revenue overestimate the expected reduction in profits because costs are not taken into account. Thus, this action would be expected to decrease the profits of the seven active shareholders, though likely not significantly, relative to the profits they would earn if the commercial ACL were not reduced.

For the action to reduce the proposed recreational ACL for wreckfish, the recreational sector's ACL would be reduced from 12,500 lb (5,670 kg) to 11,750 lb (5,330 kg), or by 750 lb (340 kg). Although the percent reduction in the recreational ACL is also 6 percent, a reduction of 750 lb (340 kg) is trivial overall and, given that there are 2,018 vessels with for-hire snapper-grouper permits, on a per vessel basis would be approximately 3 lb (1.4 kg). None of these vessels have earned any producer surplus from recreational landings of wreckfish in the past. Further, it is highly likely that only a relatively small number of for-hire vessels may have earned a small amount of producer surplus under the originally proposed recreational ACL, and the proposed reduction would not alter that result. Thus, the reduction in the recreational ACL is not expected to significantly reduce producer surplus for for-hire vessels.

As a result of the information above, a reduction in profits for a substantial number of small entities is not expected. Because this rule, if implemented, is not expected to have a significant direct adverse economic effect on the profits of a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 27, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622, as proposed to be amended at 76 FR 74757, December 1, 2011, is proposed to be further amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.42, the first sentence of paragraph (f) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(f) *Wreckfish.* The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 223,250 lb (101,264 kg), round weight. * * *

* * * * *

3. In § 622.49, paragraph (b)(18)(ii) is revised to read as follows:

§ 622.49 Annual Catch Limits (ACLs) and Accountability Measures (AMs).

(b) * * *

(18) * * *

(ii) *Recreational sector.* If recreational landings for wreckfish, as estimated by the SRD, exceed the recreational ACL of 11,750 lb (5,330 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

* * * * *

[FR Doc. 2011–33601 Filed 12–29–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 251

Friday, December 30, 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 COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

DATES: *Effective Date:* December 30, 2011.

FOR FURTHER INFORMATION CONTACT: Brenda Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Fresh Garlic from the People's Republic of China for one exporter.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (i.e., investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not-collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary

circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2012.

	Period to be reviewed
Antidumping Duty Proceedings	
BRAZIL:	
Polyethylene Terephthalate (PET) Film, A–351–841	11/1/10–10/31/11
Terphane, Inc.	
Terphane, Ltda	
GERMANY:	
Lightweight Thermal Paper, A–428–840	11/1/10–10/31/11
Koehler America, Inc.	
Papierfabrik August Koehler AG	
Mitsubishi HiTec Paper Europe GmbH	
Mitsubishi HiTec Paper Flensburg GmbH	
Mitsubishi HiTec Paper Bielefeld GmbH	
Mitsubishi International Corp.	
MEXICO:	
Certain Circular Welded Non-Alloy Steel Pipe A–201–805	11/1/10–10/31/11
Conduit S.A. de C.V.	
Galvak, S.A. de C.V.	
Hylsa, S.A. de C.V.	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Industrias Monterrey S.A. de C.V.	
Mueller Comercial de Mexico, S. de R.L. de C.V.	
Pytco, S.A. de C.V.	
Southland Pipe Nipples Co., Inc.	
Lamina y Placa Comercial, S.A. de C.V.	
Ternium Mexico, S.A. de C.V.	
Tuberia Nacional, S.A. de C.V.	
Seamless Refined Copper Pipe and Tube, A–201–838	11/22/10–10/31/11
IUSA, S.A. de C.V. (IUSA)	
GD Affiliates S. de R.L. de C.V.	
Hong Kong GD Trading Co., Ltd.	
Nacional de Cobre, S.A. de C.V. (Nacobre)	
REPUBLIC OF KOREA:	
Certain Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/10–10/31/11
SeAH Steel Corporation	
Hyundai HYSCO	
Husteel Co., Ltd.	
Nexteel Co., Ltd.	
Dongbu Steel Co., Ltd.	
Kumkang Industrial Co., Ltd.	
Korea Iron & Steel Co., Ltd.	
A–JU Besteel Co., Ltd.	
Union Steel Co., Ltd.	
Diamond Sawblades and Parts Thereof, A–580–855	11/1/10–10/31/11
Shinhan Diamond Industrial Co., Ltd. and its affiliate, Technoplus Co., Ltd.	
Ehwa Diamond Industrial Co., Ltd.	
Hyosung Diamond Industrial Co., Ltd.	
TAIWAN:	
Certain Hot-Rolled Carbon Steel Flat Products, A–583–835	11/1/10–10/31/11
Chain Chon Industrial Co., Ltd.	
Kao Hsing Chang Iron & Steel Corp.	
Kao Hsiung Chang Iron & Steel Corp.	
Shang Chen Steel Co., Ltd.	
Yieh Phui Enterprise Co. Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Cut-to-Length Carbon Steel Plate,[3] A–570–849	11/1/10/–10/31/11
Anshan Iron & Steel Group	
Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp.	
China Metallurgical Import and Export Liaoning Company	
Hunan Valin Xiangtan Iron & Steel Co., Ltd.	
Certain Hot-Rolled Carbon Steel Flat Products,[4] A–570–865	11/1/10–10/31/11
Angang Group International	
Baosteel Group Corporation	
Baoshan Iron & Steel Co., Ltd.	
Bengang Steel Plates Co., Ltd.	
Benxi Iron and Steel Group Co., Ltd.	
Daye Special Steel Co., Ltd.	
Dongbei Special Steel Group	
Dongguang Bo Yunte Metal Co., Ltd.	
Dongyang Global Strip Steel Co., Ltd.	
Haverer Group Ltd.	
Hebei Iron and Steel Int'l	
Hunan Valin Xiangtan Iron & Steel	
Jinan Iron & Steel Co., Ltd.	
Shanghai Baosteel International Economic & Trading Co., Ltd.	
Shenzhen Zhaoheng Specialty Steel Co.	
Union Steel China	
Xinyu Iron & Steel Co., Ltd.	
Zhejiang Shenghua Steel Co., Ltd.	
Diamond Sawblades and Parts Thereof,[5] A–570–900	11/1/10–10/31/11
Advanced Technology & Materials Co., Ltd.	
AT&M International Trading Co., Ltd.	
Beijing Gang Yan Diamond Products Co.	
Bosun Tools Co., Ltd.	
Bosun Tools Group Co., Ltd.	
Bosun Tools Inc. USA	
Central Iron and Steel Research Institute Group	
China Iron and Steel Research Institute Group	
Chengdu Huifeng Diamond Tools Co., Ltd.	
Cliff International Ltd.	
Danyang Aurui Hardware Products Co., Ltd.	
Danyang Dida Diamond Tools Manufacturing Co., Ltd.	
Danyang Hantronic Import & Export Co., Ltd.	

	Period to be reviewed
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.	
Danyang NYCL Tools Manufacturing Co., Ltd.	
Danyang Tsunda Diamond Tools Co., Ltd.	
Danyang Weiwang Tools Manufacturing Co., Ltd.	
Danyang Youhe Tool Manufacturer Co., Ltd.	
Danyang Youmei Tools Co., Ltd.	
Electrolux Construction Products (Xiamen) Co. Ltd.	
Fujian Quanzhou Wanlong Stone Co., Ltd.	
Gang Yan Diamond Products. Inc.	
Guilin Tebon Superhard Material Co., Ltd.	
Hangzhou Deer King Industrial & Trading Co., Ltd.	
Hebei Husqvarna Jikai Diamond Tools Co., Ltd.	
Hebei Jikai Industrial Group Co., Ltd.	
Hua Da Superabrasive Tools Technology Co., Ltd.	
Huachang Diamond Tools Manufacturing Co., Ltd.	
Husqvarna Construction Products North America, Inc.	
Huzhou Gu's Import & Export Co., Ltd.	
Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd.	
Jiangsu Fengyu Tools Co., Ltd.	
Jiangyin Likn Industry Co., Ltd.	
Jiangsu Inter-China Group Corporation	
Jiangsu Youhe Tool Manufacturer Co., Ltd.	
Protech Diamond Tools	
Pujiang Talent Diamond Tools Co., Ltd.	
Qingdao Shinhan Diamond Industrial Co., Ltd.	
Quanzhou Shuangyang Diamond Tools Co., Ltd.	
Quanzhou Zhongzhi Diamond Tool Co. Ltd.	
Rizhao Hein Saw Co., Ltd.	
Saint-Gobain Abrasives Inc.	
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	
Shanghai Deda Industry & Trading Co., Ltd.	
Shanghai Robtol Tool Manufacturing Co., Ltd.	
Shijiazhuang Global New Century Tools Co., Ltd.	
Sichuan Huili Tools Co.	
Task Tools & Abrasives	
Weihai Xiangguang Mechanical Industrial Co., Ltd.	
Wuhan Wanbang Laser Diamond Tools Co.	
Wuxi Lianhua Superhard Material Tools Co., Ltd.	
Xiamen ZL Diamond Tools Co., Ltd.	
Yichang HXF Circular Saw Industrial Co., Ltd.	
Zhejiang Tea Import & Export Co., Ltd.	
Zhejiang Wanda Import and Export Co.	
Zhejiang Wanda Tools Group Corp.	
Zhejiang Wanli Super-hard Materials Co., Ltd.	
Zhejiang Wanli Tools Group Co., Ltd.	
Wanli Tools Group	
Zhenjiang Inter-China Import & Export Co., Ltd.	
Fresh Garlic,[6] A–570–831	11/1/10–10/31/11
American Pioneer Shipping	
Anhui Dongqian Foods Ltd	
Anqiu Friend Food Co., Ltd.	
Anqiu Haoshun Trade Co., Ltd.	
APM Global Logistics (Shanghai) Co., Ltd.	
APS Qingdao	
Chengwu County Yuanxiang Industry & Commerce Co., Ltd.	
Chiping Shengkang Foodstuff Co., Ltd.	
CMEC Engineering Machinery Import & Export Co,. Ltd.	
Dongying Shunyifa Chemical Co., Ltd.	
Dynalink Systems Logistics (Qingdao) Inc.	
Eimskip Logistics Inc.	
Feicheng Acid Chemicals Co., Ltd.	
Foshan Fuyi Food Co, Ltd.	
Frog World Co., Ltd.	
Golden Bridge International, Inc.	
Hangzhou Guanyu Foods Co., Ltd.	
Hebei Golden Bird Trading Co., Ltd.	
Henan Weite Industrial Co., Ltd.	
Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)	
Hongqiao International Logistics Co.	
Intecs Logistics Service Co., Ltd.	
IT Logistics Qingdao Branch	
Jinan Farmlady Trading Co., Ltd.	
Jinan Solar Summit International Co., Ltd.	

	Period to be reviewed
Jinan Yipin Corporation Ltd.	
Jining De-Rain Trading Co., Ltd.	
Jining Highton Trading Co., Ltd.	
Jining Jiulong International Trading Co., Ltd.	
Jining Tiankuang Trade Co., Ltd.	
Jining Trans-High Trading Co., Ltd.	
Jining Yifa Garlic Produce Co., Ltd.	
Jining Yongjia Trade Co., Ltd.	
Jinxiang Chengda Import & Export Co., Ltd.	
Jinxiang County Huaguang Food Import & Export Co., Ltd.	
Jinxiang Dacheng Food Co., Ltd.	
Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).	
Jinxiang Fengsheng Import & Export Co., Ltd.	
Jinxiang Hejia Co., Ltd.	
Jinxiang Jinma Fruits Vegetables Products Co., Ltd.	
Jinxiang Meihua Garlic Produce Co., Ltd.	
Jinxiang Shanyang Freezing Storage Co., Ltd.	
Jinxiang Shenglong Trade Co., Ltd.	
Jinxiang Tianheng Trade Co., Ltd.	
Jinxiang Tianma Freezing Storage Co., Ltd.	
Jinxiang Yuanxin Import & Export Co., Ltd.	
Juye Homestead Fruits and Vegetables Co., Ltd.	
Kingwin Industrial Co., Ltd.	
Laiwu Fukai Foodstuff Co., Ltd.	
Laizhou Xubin Fruits and Vegetables	
Linshu Dading Private Agricultural Products Co., Ltd.	
Linyi City Hedong District Jiuli Foodstuff Co.	
Linyi City Kangfa Foodstuff Drinkable Co., Ltd.	
Linyi Katayama Foodstuffs Co., Ltd.	
Linyi Tianqin Foodstuff Co., Ltd.	
Ningjin Ruifeng Foodstuff Co., Ltd.	
Qingdao Apex Shipping Co., Ltd.	
Qingdao BNP Co., Ltd.	
Qingdao Cherry Leather Garment Co., Ltd.	
Qingdao Chongzhi International Transportation Co., Ltd.	
Qingdao Lianghe International Trade Co., Ltd.	
Qingdao Saturn International Trade Co., Ltd.	
Qingdao Sea-Line International Trading Co., Ltd.	
Qingdao Sino-World International Trading Co., Ltd.	
Qingdao Tiantaixing Foods Co., Ltd.	
Qingdao Winner Foods Co., Ltd.	
Qingdao Xintianfeng Foods Co., Ltd.	
Qingdao Yuankang International	
Qufu Dongbao Import & Export Trade Co., Ltd.	
Rizhao Huasai Foodstuff Co., Ltd.	
Samyoung America (Shanghai) Inc.	
Shandong Chengshun Farm Produce Trading Co., Ltd.	
Shandong Chenhe Intl Trading Co., Ltd.	
Shandong China Bridge Imports	
Shandong Dongsheng Eastsun Foods Co., Ltd.	
Shandong Garlic Company	
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.	
Shandong Longtai Fruits and Vegetables Co., Ltd.	
Shandong Sanxing Food Co., Ltd.	
Shandong Wonderland Organic Food Co., Ltd.	
Shandong Xingda Foodstuffs Group Co., Ltd.	
Shandong Yipin Agro (Group) Co., Ltd.	
Shanghai Ever Rich Trade Company	
Shanghai Goldenbridge International Co., Ltd.	
Shanghai Great Harvest International Co., Ltd.	
Shanghai LJ International Trading Co., Ltd.	
Shanghai Medicines & Health Products Import/Export Co., Ltd.	
Shanghai Yijia International Transportation Co., Ltd.	
Shenzhen Bainong Co., Ltd.	
Shenzhen Fanhui Import & Export Co., Ltd.	
Shenzhen Greening Trading Co., Ltd.	
Shenzhen Xinboda Industrial Co., Ltd.	
Sunny Import & Export Limited	
T&S International, LLC.	
Taian Eastsun Foods Co., Ltd.	
Taian Fook Huat Tong Kee Pte. Ltd.	
Taian Solar Summit Food Co., Ltd.	
Taiyan Ziyang Food Co., Ltd.	

	Period to be reviewed
Tianjin Siceshi Co., Ltd.	
U.S. United Logistics (Ningbo) Inv.	
V.T. Impex (Shandong) Limited	
Weifang Chenglong Import & Export Co., Ltd.	
Weifang Hongqiao International Logistic Co., Ltd.	
Weifang Jinbao Agricultural Equipment Co., Ltd.	
Weifang Naike Foodstuffs Co., Ltd.	
Weifang Shennong Foodstuff Co., Ltd.	
Weihai Textile Group Import & Export Co., Ltd.	
WSSF Corporation (Weifang)	
Xiamen Huamin Import Export Company	
Xiamen Keep Top Imp. and Exp. Co., Ltd.	
Xinjiang Top Agricultural Products Co., Ltd.	
XuZhou Simple Garlic Industry Co., Ltd.	
XuZhou Heiners Agricultural Co., Ltd.	
Yantai Jinyan Trading Co., Ltd.	
You Shi Li International Trading Co., Ltd.	
Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd.	
Zhengzhou Dadi Garlic Industry Co., Ltd.	
Zhengzhou Harmoni Spice Co., Ltd.	
Zhengzhou Huachao Industrial Co., Ltd.	
Zhengzhou Yuanli Trading Co., Ltd.	
Lightweight Thermal Paper,[7] A–570–920	11/1/10–10/31/11
Guangdong Guanhao High-Tech Co., Ltd.	
Shanghai Hanhong Paper Co., Ltd., a.k.a. Hanhong International Limited	
Polyethylene Terephthalate (PET) Film,[8] A–570–924	11/1/10–10/31/11
DuPont Hongji Films Foshan Co., Ltd.	
DuPont Teijin Films China Limited	
Dupont Teijin Hongji Films Ningbo Co., Ltd.	
Fuwei Films (Shandong) Co., Ltd.	
Shaoxing Xiangyu Green Packing Co., Ltd.	
Tianjin Wanhua Co., Ltd.	
Sichuan Dongfang Insulating Material Co., Ltd.	
Pure Magnesium In Granular Form,[9] A–570–864	11/1/10–10/31/11
China Minmetals Non-ferrous Metals Co., Ltd.	
Seamless Carbon and Alloy Steel Standard, Line,[10] and Pressure Pipe, A–570–956	11/10/10–10/31/11
Anhui Tianda Oil Pipe	
Baoshan Iron & Steel Co., Ltd.	
Beijing Sai Lin Ke Hardware Co., Ltd.	
Hengyang Steel Tube Group Int'l Trading Inc.	
Hengyang Valin MPM Tube Co., Ltd.	
Hengyang Valin Steel Tube Co., Ltd.	
Hunan Valin Iron & Steel Group Co., Ltd.	
Hunan Valin Steel Co., Ltd.	
Hunan Valin Xiangtan Iron & Steel Co., Ltd.	
Jiangsu Changbao Steel Tube Co., Ltd.	
Jiangsu Chengde Steel Tube Share Company	
Jiangsu Xigang Group Co., Ltd.	
Jiangyin City Changjiang Steel Pipe Co., Ltd.	
LDR Industries, Inc.	
Pangang Group Chengdu Iron & Steel Co.	
Shandong HuaBao Steel Pipe	
Shandong Luxing Steel Pipe	
Shanghai Tianyang Steel Tube	
Tianguan Yuantong Pipe Product Co., Ltd.	
Tianjin Pipe (Group) Corporation	
Tianjin Pipe International Economic & Trading Corp.	
Tianjin Pipe Iron Manufacturing Co., Ltd.	
TPCO Charging Development Co., Ltd.	
Wuxi Resources Steel Making Co., Ltd.	
Wuxi Seamless Special Pipe Co., Ltd.	
Wuxi Sifang Steel Tube Co., Ltd.	
Wuxi Zhenda Special Steel Tube Manufacturing	
Xigang Seamless Steel Tube	
Xuzhou Global Pipe and Fitting Mfg.	
Yangzhou Chengde Steel Tube Co., Ltd.	
Yangzhou Lontrin Steel Tube Co., Ltd.	
Yantai Lubao Steel Tube	
Seamless Refined Copper Pipe and Tube,[11] A–570–964	11/22/10–10/31/11
Golden Dragon Holding (Hong Kong) International Co., Ltd.	
Golden Dragon Precise Copper Tube Group, Inc.	
Hong Kong GD Trading Co., Ltd.	
Hong Kong Hailiang Metal Trading Limited	

	Period to be reviewed
Luvata Alltop (Zhongshan) Ltd.	
Luvata Tube (Zhongshan) Ltd.	
Ningbo Jintian Copper Tube Co., Ltd.	
Shanghai Hailiang Copper Co., Ltd.	
Sinochem Ningbo Import & Export Co., Ltd.	
Sinochem Ningbo Ltd.	
Zhejiang Hailiang Co., Ltd.	
Zhejiang Jiahe Pipes Inc.	
Zhejiang Naile Copper Co., Ltd.	
UNITED ARAB EMIRATES:	
Polyethylene Terephthalate (PET) Film, A–520–803	11/1/10–10/31/11
Flex Middle East FZE	
JBF RAK LLC	
Countervailing Duty Proceedings	
THE PEOPLE'S REPUBLIC OF CHINA:	
Lightweight Thermal Paper, C–570–921	1/1/10–12/31/10
Guangdong Guanhao High-Tech Co., Ltd.	
Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, C–570–957	11/10/10–12/31/10
Anhui Tianda Oil Pipe	
Baoshan Iron & Steel Co., Ltd.	
Beijing Sai Lin Ke Hardware Co., Ltd.	
Hengyang Steel Tube Group Int'l Trading Inc.	
Hengyang Valin MPM Tube Co., Ltd.	
Hengyang Valin Steel Tube Co., Ltd.	
Hunan Valin Iron & Steel Group Co., Ltd.	
Hunan Valin Steel Co., Ltd.	
Hunan Valin Xiangtan Iron & Steel Co., Ltd.	
Jiangsu Changbao Steel Tube Co., Ltd.	
Jiangsu Chengde Steel Tube Share Company	
Jiangsu Xigang Group Co., Ltd.	
Jiangyin City Changjiang Steel Pipe Co., Ltd.	
LDR Industries, Inc.	
Pangang Group Chengdu Iron & Steel Co.	
Shandong Luxing Steel Pipe	
Shandong HuaBao Steel Pipe	
Shanghai Tianyang Steel Tube	
Tianguan Yuantong Pipe Product Co., Ltd.	
Tianjin Pipe (Group) Corporation	
Tianjin Pipe International Economic & Trading Corp.	
Tianjin Pipe Iron Manufacturing Co., Ltd.	
TPCO Charging Development Co., Ltd.	
Wuxi Resources Steel Making Co., Ltd.	
Wuxi Seamless Special Pipe Co., Ltd.	
Wuxi Sifang Steel Tube Co., Ltd.	
Wuxi Zhenda Special Steel Tube Manufacturing	
Xigang Seamless Steel Tube	
Xuzhou Global Pipe and Fitting Mfg.	
Yangzhou Chengde Steel Tube Co., Ltd.	
Yangzhou Lontrin Steel Tube Co., Ltd.	
Yantai Lubao Steel Tube	

Suspension Agreements

None.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China (''PRC'') who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Hot-Rolled Carbon Steel Flat Products from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above named companies does not qualify for a separate rate, all other exporters of Diamond Sawblades and Parts Thereof from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above named companies does not qualify for a separate rate, all other exporters of Fresh Garlic from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above named companies does not qualify for a separate rate, all other exporters of Lightweight Thermal Paper from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If one of the above named companies does not qualify for a separate rate, all other exporters of Polyethylene Terephthalate (PET) Film from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[9] If one of the above named companies does not qualify for a separate rate, all other exporters of Pure Magnesium In Granular Form from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[10] If one of the above named companies does not qualify for a separate rate, all other exporters of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[11] If one of the above named companies does not qualify for a separate rate, all other exporters of Seamless Refined Copper Pipe and Tube from the PRC who have not qualified for a separate rate are

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: December 23, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–33594 Filed 12–29–11; 8:45 am]

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deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

DATES: *Effective Date:* December 30, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Tran, 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) 482–1503.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2009 the Department of Commerce (the Department) published in the **Federal Register** the countervailing duty order on citric acid and certain citrate salts from the People's Republic of China (PRC). *See Countervailing Duty Orders and Amendments of Final Affirmative Countervailing Duty Determinations: Citric Acid and Certain Citrate Salts,* 74 FR 25705 (May 29, 2009). On May 2, 2011, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 24460 (May 2, 2011). In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review on June 28, 2011, for the January 1, 2010, through December 31, 2010, period of review (POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 37781 (June 28, 2011). The preliminary results for this review are currently due no later than January 31, 2012.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. If it is not practicable to issue the preliminary results within 245 days, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 365 days.

Because the Department will require additional time to review and analyze questionnaire responses from the Government of the People's Republic of China and the respondent, RZBC Co., Ltd., and its affiliates, and may issue supplemental questionnaires, it is not practicable to complete the preliminary results within the original deadline (*i.e.,* January 31, 2012). Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days to not later than May 30, 2012, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: December 21, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–33596 Filed 12–29–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA885

Notice of Availability of a Draft Environmental Impact Statement for Effects of Oil and Gas Activities in the Arctic Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a Draft Environmental Impact Statement; request for comments.

SUMMARY: NMFS announces the availability of the ''Draft Environmental Impact Statement (DEIS) for the Effects of Oil and Gas Activities in the Arctic Ocean.'' Publication of this notice begins the official public comment period for this DEIS. The purpose of the DEIS is to evaluate, in compliance with the National Environmental Policy Act (NEPA), the potential direct, indirect, and cumulative impacts of implementing the alternative approaches for authorizing the take of marine mammals incidental to oil and gas exploration activities in the Arctic Ocean pursuant to the Marine Mammal Protection Act (MMPA). The U.S. Department of the Interior's Bureau of Ocean Energy Management (BOEM) is a cooperating agency on this DEIS, and as such, this DEIS also evaluates the potential direct, indirect, and cumulative impacts of implementing the alternative approaches for authorizing geological and geophysical (G&G) surveys and ancillary activities under the Outer Continental Shelf Lands Act (OCSLA) in the Arctic Ocean. The North Slope Borough (NSB) is also a cooperating agency on this DEIS.

DATES: All comments and written statements must be received no later than Monday, February 13, 2012.

ADDRESSES: Written comments and statements on the DEIS must be postmarked by February 13, 2012. Comments on the DEIS may be submitted by:

- *Email: arcticeis.comments@noaa.gov.*
- *Mail:* Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* (301) 713–0376.
- *Public Hearings:* Oral and written comments will be accepted during the upcoming public hearings. See **SUPPLEMENTARY INFORMATION**, Public Hearings (below) for more information.

Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. Information on this project can also be found on the Protected Resources Web page at: *http://www.nmfs.noaa.gov/pr/permits/eis/arctic.htm.*

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Jolie Harrison, or Michael Payne, Office of Protected Resources, NMFS, at (301) 427–8401 or via email at *arcticeis.comments@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Sections 101 (a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of proposed authorization is provided to the public for review. The term ''take'' under the MMPA means ''to harass, hunt, capture, kill or collect, or attempt to harass, hunt, capture, kill or collect.'' Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

NMFS, as the lead federal agency, prepared this DEIS to evaluate a broad range of reasonably foreseeable levels of exploration activities and associated mitigation measures that may occur within the five-year period from the date of completion of the Final EIS and Record of Decision. BOEM and the NSB are serving as formal cooperating agencies; the Environmental Protection Agency (EPA) is serving as a consulting agency; and NMFS is coordinating with the Alaska Eskimo Whaling Commission (AEWC) pursuant to our co-management agreement under the MMPA.

NMFS has published this EIS to disclose the potential impacts associated with their issuance of ITAs for seismic surveys, ancillary activities, and exploratory drilling under section 101(a)(5) of the MMPA and BOEM's authorization of G&G permits and ancillary activities under the OCSLA.

Scoping

On February 8, 2010, NMFS provided public notice (75 FR 6175) that it would prepare an EIS to analyze the environmental impacts of issuing ITAs pursuant to the MMPA to the oil and gas industry for the taking of marine mammals incidental to offshore exploration activities (*e.g.,* seismic surveys and exploratory drilling) in Federal and state waters of the U.S. Chukchi and Beaufort Seas off Alaska. The 60-day public scoping period ended on April 9, 2010.

Scoping was the first step in this NEPA process (as required under 40 CFR 1501.7). Scoping provided an opportunity for the public and agencies to express their views and identify issues to be addressed in the DEIS.

As part of scoping, NMFS hosted public meetings to introduce the proposed action, describe the EIS process, and solicit input on the issues and alternatives to be evaluated. Public scoping meetings were held in February and March 2010 in the communities of Kotzebue, Point Hope, Point Lay, Wainwright, Barrow, Nuiqsut, and Kaktovik and in Anchorage, Alaska. During the scoping comment period, 73 public comments were received. A report summarizing these comments is available on the project Web site at: *http://www.nmfs.noaa.gov/pr/permits/eis/arctic.htm.*

Issues identified by the public during the scoping process include, but are not limited to, concerns regarding potential impacts to marine mammals and habitat, subsistence uses of marine mammals, and other wildlife, as well as concerns regarding the potential for an oil spill. Some commenters also expressed concerns about meeting national energy demands. Substantive comments received during the public scoping period have been addressed in the DEIS.

Alternatives

NMFS has evaluated five alternatives in the DEIS. NMFS has not identified a preferred alternative in the DEIS. In this DEIS, NMFS and BOEM present and assess a reasonable range of G&G, ancillary, and exploratory drilling activities expected to occur, as well as a reasonable range of mitigation measures, in order to accurately assess the potential consequences of issuing ITAs under the MMPA and permits under the OCSLA. The potential level of

activity described by each alternative is based on recent Federal and state lease planning and recent industry plans for both seismic surveys and exploratory drilling programs in the Beaufort and Chukchi Seas. Each alternative also includes an analysis of a suite of standard and additional mitigation measures that have been identified to help reduce impacts to marine mammals and to ensure no unmitigable adverse impact on the availability of marine mammals for subsistence uses. The suite of measures are considered and analyzed in all four of the action alternatives. The alternatives are summarized as follows:

Alternative 1: No Action Alternative: Under the No Action Alternative, NMFS would not issue any ITAs under the MMPA for seismic surveys or exploratory drilling in the Beaufort and Chukchi Seas, and BOEM would not issue G&G permits or authorize ancillary activities in the Beaufort and Chukchi Seas.

Alternative 2: Authorization for Level 1 Exploration Activity: Alternative 2 analyzes a certain amount of 2D/3D seismic, site clearance and high resolution shallow hazards, and on-ice seismic surveys and exploratory drilling programs to occur each year. Alternative 2 also evaluates a range of standard and additional mitigation measures that would be considered and incorporated into any issued authorization (on a case-by-case basis). Examples of standard and additional mitigation measures include measures to: reduce acoustic exposures (*e.g.,* exclusion zones, flight altitude restrictions, time/area closures); reduce non-acoustic exposures (*e.g.,* vessel speed restrictions, oil spill prevention plans, limited or zero discharge requirements); and ensure no unmitigable adverse impact to subsistence uses (*e.g.,* time/area closures, communication centers).

Alternative 3: Authorization for Level 2 Exploration Activity: Alternative 3 analyzes a level of 2D/3D seismic, site clearance and high resolution shallow hazards, and on-ice seismic surveys and exploratory drilling programs to occur each year that is higher than the level contemplated under Alternative 2. The same suite of standard and additional mitigation measures that would be considered and incorporated into any issued authorization (on a case-by-case basis) under Alternative 2 is considered under Alternative 3.

Alternative 4: Authorization for Level 2 Exploration Activity with Additional Required Time/Area Closures: Alternative 4 considers the same level of activity contemplated under Alternative 3 and also evaluates the same suite of standard and additional mitigation measures. However, certain time/area closures that would be considered on a case-by-case basis under the other alternatives would be required under Alternative 4. The time/area closures would be for specific areas important to biological productivity, life history functions for specific species of concern, and subsistence activities. Activities would not be permitted to occur in any of the time/area closures during the specific identified periods. Additionally, buffer zones around these time/area closures could potentially be included.

Alternative 5: Authorization for Level 2 Exploration Activity with Use of Alternative Technologies: Alternative 5 considers the same level of activity contemplated under Alternative 3 and also evaluates the same suite of standard and additional mitigation measures. However, Alternative 5 also includes specific additional mitigation measures that focus on the use of alternative technologies that have the potential to augment or replace traditional airgun-based seismic exploration activities in the future.

Public Involvement

Comments will be accepted at public hearings and during the public comment period, and must be submitted to NMFS by February 13, 2011 (see **FOR FURTHER INFORMATION CONTACT**). We request that you include in your comments: (1) Your name, address, and affiliation (if any); and (2) background documents to support your comments as appropriate.

Public scoping meetings will be held in late January and early February 2012, in the communities of Barrow, Kaktovik, Kivalina, Kotzebue, Nuiqsut, Point Hope, Point Lay, and Wainwright. However, the final dates and times have not yet been set. A supplement to this Notice of Availability will be published with the final meeting dates, times, and locations. Comments will be accepted at all public meetings, as well as during the public comment period and can be submitted via the methods described earlier in this document (see **ADDRESSES**).

Dated: December 20, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–33195 Filed 12–29–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Nomination of Existing Marine Protected Areas to the National System of Marine Protected Areas

AGENCY: NOAA, Department of Commerce (DOC).

ACTION: Public notice and opportunity for comment on the list of nominations received from federal, state, territorial and tribal marine protected area programs to join the National System of Marine Protected Areas.

SUMMARY: In July 2011, NOAA and the Department of the Interior (DOI) invited federal, state, commonwealth, and territorial marine protected area (MPA) programs with potentially eligible existing MPAs to nominate their sites to the National System of MPAs (national system). The national system and the nomination process are described in the *Framework for the National System of Marine Protected Areas of the United States* (Framework), developed in response to Executive Order 13158 on Marine Protected Areas. The final Framework was published on November 19, 2008, (73 FR 69608) and provides guidance for collaborative efforts among federal, state, commonwealth, territorial, tribal and local governments and stakeholders to develop an effective and well coordinated national system of MPAs that includes existing MPAs meeting national system criteria as well as new sites that may be established by managing agencies to fill key conservation gaps in important ocean areas.

DATES: Comments on the nominations to the national system are due February 13, 2012.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Lauren Wenzel, NOAA, at (301) 713–3100, ext. 136 or via email at *mpa.comments@noaa.gov.* A detailed electronic copy of the List of National System MPAs is available for download at *http://www.mpa.gov.*

SUPPLEMENTARY INFORMATION:

Background on National System

The national system is made up of member MPA sites, networks and systems established and managed by federal, state, commonwealth, territorial, tribal and/or local governments that collectively enhance conservation of the nation's natural and cultural marine heritage and represent its diverse ecosystems and resources. Although participating sites continue to

be managed independently, national system MPAs also work together at the regional and national levels to achieve common objectives for conserving the nation's important natural and cultural resources, with emphasis on achieving the priority conservation objectives of the Framework. MPAs include sites with a wide range of protection, from multiple use areas to no-take reserves where all extractive uses are prohibited. The term MPA refers only to the marine portion of a site (below the mean high tide mark) that may include both terrestrial and marine components.

The national system is a mechanism to foster greater collaboration among participating MPA sites and programs in order to enhance stewardship in the waters of the United States. The act of joining the national system does not create new MPAs, or create new restrictions for the existing MPAs that become members. In fact, a site must have existing protections of natural and/or cultural resources in place in order to be eligible to join the national system, as well as meet other criteria described in the Framework. Joining the national system does not establish new regulatory authority or change existing regulations in any way, require changes affecting the designation process or management of member MPAs, or bring state, territorial, tribal or local sites under federal authority.

Benefits of joining the national system, which are expected to increase over time as the system matures, include a facilitated means to work with other sites in the MPA's region, and nationally on issues of common conservation concern; fostering greater public and international recognition of U.S. MPAs and the resources they protect; priority in the receipt of available technical and other support for cross-cutting needs; and the opportunity to influence federal and regional ocean conservation and management initiatives (such as Coastal and Marine Spatial Planning, integrated ocean observing systems, systematic monitoring and evaluation, targeted outreach to key user groups, and helping to identify and address MPA research needs). In addition, the national system provides a forum for coordinated regional planning about place-based conservation priorities that does not otherwise exist.

Nomination Process

The Framework describes two major focal areas for building the national system—a nomination process to allow existing MPAs that meet the entry criteria to become part of the system and a collaborative regional gap analysis process to identify areas of significance for natural or cultural resources that may merit additional protection through existing federal, state, commonwealth, territorial, tribal or local MPA authorities. A call for nominations is issued annually, and may also be issued at the request of an MPA management agency. This round of nominations began on July 6, 2011 and the deadline for nominations was October 31, 2011.

There are three entry criteria for existing MPAs to join the national system, plus a fourth for cultural heritage. Sites that meet all pertinent criteria are eligible for the national system.

1. Meets the definition of an MPA as defined in the Framework.
2. Has a management plan (can be site-specific or part of a broader programmatic management plan; must have goals and objectives and call for monitoring or evaluation of those goals and objectives).
3. Contributes to at least one priority conservation objective as listed in the Framework (see below).
4. Cultural heritage MPAs must also conform to criteria for the National Register for Historic Places.

Additional sites not currently meeting the management plan criterion can be evaluated for eligibility to be nominated to the national system on a case-by-case basis based on their ability to fill gaps in the national system coverage of the priority conservation objectives and design principles described in the Framework.

The MPA Center used existing information in the MPA Inventory to determine which MPAs meet the first and second criteria. The inventory is online at *http://www.mpa.gov/dataanalysis/mpainventory/* and information about potentially eligible sites is posted online at *http://www.mpa.gov/pdf/national-system/nominationsummary_jul11.pdf.* As part of the nomination process, the managing entity for each potentially eligible site is asked to provide information on the third and fourth criteria. Following this public comment period, the National Marine Protected Areas Center will make a determination about the eligibility of nominated sites. All comments will be forwarded to the relevant MPA management agency, which will reaffirm or withdraw the nomination based on public comment received and any other factors deemed relevant.

List of MPAs Nominated to the National System MPAs

The following MPAs have been nominated by these management entities: American Samoa Department of Marine and Wildlife Resources; Massachusetts Board of Underwater Archaeological Resources; National Park Service; U.S. Fish and Wildlife Service; Puerto Rico Department of Natural and Environmental Resources; South Carolina Institute of Archaeology and Anthropology; Virgin Islands Department Of Planning and Natural Resources; and Washington Department of Natural Resources.

The complete List of National System MPAs, which now includes 297 members, is available at *www.mpa.gov.*

Federal Marine Protected Areas

Cumberland Island National Seashore (GA)
Ebey's Landing National Historical Reserve (WA)
Farallon National Wildlife Refuge (CA)
Fort Pulaski National Monument (GA)

American Samoa

Aoa Village Marine Protected Area
Sa'ilele Village Marine Protected Area
Amanave Village Marine Protected Area

Massachusetts

Albert Gallatin Exempt Site
Alice M. Colburn Exempt Site
Alice M. Lawrence Exempt Site
Ardandhu Exempt Site
Barge and Crane Exempt Site
California Exempt Site State
Charles S. Haight Exempt Site
Chester A. Poling Exempt Site
Chelsea Exempt Site
City of Salisbury Exempt Site
Corvan Exempt Site
Dixie Sword Exempt Site
Edward Rich Exempt Site
Henry Endicott Exempt Site
Herbert Exempt Site
Herman Winter Exempt Site
Hilda Garston Exempt Site
James S. Longstreet Exempt Site
John Dwight Exempt Site
Kershaw Exempt Site
Kiowa Exempt Site
Lackawana Exempt Site
Lunet Exempt Site
Mars Exempt Site
Pemberton Exempt Site
Pendleton Exempt Site
Pinthis Exempt Site
Port Hunter Exempt Site
Pottstown Exempt Site
Romance Exempt Site
Seaconnet Exempt Site
Trojan Exempt Site
U.S.S. Grouse Exempt Site
U.S.S. New Hampshire Exempt Site
U.S.S. Triana Exempt Site
U.S.S. Yankee Exempt Site
U.S.S. YSD Exempt Site
H.M.C.S. Saint Francis Exempt Site
French Van Gilder Exempt Site

Vineyard Sound Lightship Exempt Site

Puerto Rico

Arrecifes de la Cordillera Natural Reserve
Canal Luis Peña Natural Reserve
Isla de Desecheo Marine Reserve
Isla de Mona Natural Reserve
Tres Palmas de Rincón Marine Reserve

South Carolina

Cooper River Heritage Dive Trail
Ashley River Heritage Canoe Trail

U.S. Virgin Islands

St. Thomas East End Reserve

Washington

Smith and Minor Island Aquatic Reserve
Protection Island Aquatic Reserve
Nisqually Reach Aquatic Reserve

Dated: December 22, 2011.

Holly Bamford,

Deputy Assistant Administrator, National Ocean Service, National Oceanic Atmospheric Administration.

[FR Doc. 2011–33540 Filed 12–29–11; 8:45 am]

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2011–0064]

Electronic Delivery of Search Results From the United States Patent and Trademark Office to the European Patent Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) has recently begun electronic delivery of search results from U.S. patent applications to the European Patent Office (EPO) to assist U.S. applicants who later file in the EPO to comply with amended Rule 141(1) of the EPO's implementing regulations to the European Patent Convention (EPC). As a result, U.S. applicants subject to amended Rule 141(1) EPC will not need to separately file their U.S. search results with the EPO, thereby providing time and cost savings to these applicants.

FOR FURTHER INFORMATION CONTACT: Susy Tsang-Foster, Legal Advisor or Brian Hanlon, Director, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7711 or (571) 272–5047; or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Susy Tsang-Foster.

SUPPLEMENTARY INFORMATION: Amended Rule 141(1) EPC (Information on Prior Art), which went into effect on January 1, 2011, applies to all European patent applications filed on or after January 1, 2011. Amended Rule 141(1) EPC requires applicants to file with the EPO a copy of the search results from a previously filed patent application to which the European patent application claims priority. *See Notice from the European Patent Office dated 28 July 2010 concerning amended Rule 141 EPC and new Rule 70b EPC—utilisation scheme,* OJ EPO 2010, 410.

To assist U.S. applicants who later file in the EPO to comply with amended Rule 141(1) EPC, in October 2011, the USPTO began electronically providing the search results (Notice of References Cited, form PTO–892) from examined U.S. patent applications to the EPO. Due to the confidential nature of U.S. patent applications, however, search results from U.S. patent applications are being provided *only if* one of the following criteria is met: (1) The U.S. patent application is publicly available (*i.e.,* published or patented), or (2) an authorized party has submitted written consent to transmit the search results from the U.S. patent application to the EPO by completing Form PTO/SB/69 and the U.S. patent application has cleared national security review. As a result, an EPO applicant claiming priority to a U.S. patent application that meets one of the above criteria will not need to separately file a copy of the search results from the U.S. patent application with the EPO. *See Notice from the European Patent Office dated 9 December 2010 concerning exemption under Rule 141(2) EPC from filing a copy of the search results—utilisation scheme,* OJ EPO 2011, 64.

Form PTO/SB/69 titled ''Certification and Authorization to Permit Access to Search Results by the European Patent Office (EPO)'' will be available on the USPTO Web site at *http://www.uspto.gov/forms/index.jsp.* A properly completed Form PTO/SB/69 by an authorized party in accordance with 37 CFR 1.14(c) provides the USPTO with written consent to electronically deliver the search results from an unpublished U.S. patent application to the EPO. The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Form PTO/SB/69 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995. Authorized parties for a U.S. patent application are encouraged to submit Form PTO/SB/69 prior to the filing of a subsequent European patent application, in which priority is claimed to a U.S. patent application. The EPO has agreed to maintain the confidentiality of the unpublished search results received from the USPTO.

Once a U.S. patent application is published under 35 U.S.C. 122(b), it is open to the public, and in this instance, consent from an authorized party for the U.S. patent application is not necessary for the USPTO to deliver the search results to the EPO. The USPTO is authorized to electronically deliver search results to the EPO by 35 U.S.C. 2(b)(11), which permits it to conduct programs, studies, or exchanges of items or services regarding domestic and international intellectual property law and the effectiveness of intellectual property protection domestically and throughout the world, and by 35 U.S.C. 2(b)(6), which permits it to use services, records, facilities, or personnel of a foreign patent and trademark office or international organization to perform functions on its behalf.

This electronic delivery of search results will benefit patent applicants who file with the USPTO and subsequently with the EPO as they will be relieved of the effort and expense of filing a copy of the search results from a U.S. priority patent application with the EPO. Additionally, no fee is required for the electronic delivery of search results from the USPTO to the EPO.

Dated: December 20, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–33539 Filed 12–29–11; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 1/30/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 10/7/2011 (76 FR 62391–62393), 10/14/2011 (76 FR 63905–63906), and 10/28/2011(76 FR 66913–66914), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 USC Chapter 85 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC Chapter 85) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Gloves, Surgical

NSN: 6515–00–NIB–0627—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 5.5″.

NSN: 6515–00–NIB–0628—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 6″.

NSN: 6515–00–NIB–0629—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 6.5″.

NSN: 6515–00–NIB–0630—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 7″.

NSN: 6515–00–NIB–0631—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 7.5″.

NSN: 6515–00–NIB–0632—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 8″.

NSN: 6515–00–NIB–0633—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 8″.

NSN: 6515–00–NIB–0634—Gloves, Surgical, Powder-free, Biogel, PI Indicator, Underglove, Blue, Size 9″.

NSN: 6515–00–NIB–0635—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 5.5″.

NSN: 6515–00–NIB–0636—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 6″.

NSN: 6515–00–NIB–0637—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 6.5″.

NSN: 6515–00–NIB–0638—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 7″.

NSN: 6515–00–NIB–0639—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 7.5″.

NSN: 6515–00–NIB–0640—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 8″.

NSN: 6515–00–NIB–0641—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 8.5″.

NSN: 6515–00–NIB–0642—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch G, Straw colored, Size 9″.

NSN: 6515–00–NIB–0643—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 5.5″.

NSN: 6515–00–NIB–0644—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 6″.

NSN: 6515–00–NIB–0645—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 6.5″.

NSN: 6515–00–NIB–0646—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 7″.

NSN: 6515–00–NIB–0647—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 7.5″.

NSN: 6515–00–NIB–0648—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 8″.

NSN: 6515–00–NIB–0649—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 8.5″.

NSN: 6515–00–NIB–0650—Gloves, Surgical, Powder-free, Biogel, PI Ultratouch M, Straw colored, Size 9″.

NSN: 6515–00–NIB–0651—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 5.5″.

NSN: 6515–00–NIB–0652—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 6″.

NSN: 6515–00–NIB–0653—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 6.5″.

NSN: 6515–00–NIB–0654—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 7″.

NSN: 6515–00–NIB–0655—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 7.5″.

NSN: 6515–00–NIB–0656—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 8″.

NSN: 6515–00–NIB–0657—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 8.5″.

NSN: 6515–00–NIB–0658—Gloves, Surgical, Powder-free, Biogel, Neoderm, Brown, Size 9″.

NSN: 6515–00–NIB–0659—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 6″.

NSN: 6515–00–NIB–0660—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 6.5″.

NSN: 6515–00–NIB–0661—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 7″.

NSN: 6515–00–NIB–0662—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 7.5″.

NSN: 6515–00–NIB–0663—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 8″.

NSN: 6515–00–NIB–0664—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 8.5″.

NSN: 6515–00–NIB–0665—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Ortho, Green, Size 9″.

NSN: 6515–00–NIB–0666—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 5.5″.

NSN: 6515–00–NIB–0667—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 6″

NSN: 6515–00–NIB–0668—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 6.5″.

NSN: 6515–00–NIB–0669—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 7″.

NSN: 6515–00–NIB–0670—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 7.5″.

NSN: 6515–00–NIB–0671—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 8″.

NSN: 6515–00–NIB–0672—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 8.5″.

NSN: 6515–00–NIB–0673—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, Green, Size 9″.

NSN: 6515–00–NIB–0674—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 5.5″.

NSN: 6515–00–NIB–0675—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 6″.

NSN: 6515–00–NIB–0676—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 6.5″.

NSN: 6515–00–NIB–0677—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 7″.

NSN: 6515–00–NIB–0678—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 7.5″.

NSN: 6515–00–NIB–0679—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 8″.

NSN: 6515–00–NIB–0680—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 8.5″.
NSN: 6515–00–NIB–0681—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Hydrasoft, Green, Size 9″.
NSN: 6515–00–NIB–0682—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 5.5″.
NSN: 6515–00–NIB–0683—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 6″.
NSN: 6515–00–NIB–0684—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 6.5″.
NSN: 6515–00–NIB–0685—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 7″.
NSN: 6515–00–NIB–0686—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 7.5″.
NSN: 6515–00–NIB–0687—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 8″.
NSN: 6515–00–NIB–0688—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 8.5″.
NSN: 6515–00–NIB–0689—Gloves, Surgical, Powder-free, Derma Prene, Isotouch Micro, White, Size 9″.
NSN: 6515–00–NIB–0690—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 5.5″.
NSN: 6515–00–NIB–0691—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 6″.
NSN: 6515–00–NIB–0692—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 6.5″.
NSN: 6515–00–NIB–0693—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 7″.
NSN: 6515–00–NIB–0694—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 7.5″.
NSN: 6515–00–NIB–0695—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 8″.
NSN: 6515–00–NIB–0696—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 8.5″ .
NSN: 6515–00–NIB–0697—Gloves, Surgical, Powder-free, Derma Prene, Isotouch White, White, Size 9″.
NSN: 6515–00–NIB–0698—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 5.5″.
NSN: 6515–00–NIB–0699—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 6″.
NSN: 6515–00–NIB–0700—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 6.5″.
NSN: 6515–00–NIB–0701—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 7″.
NSN: 6515–00–NIB–0702—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 7.5″.
NSN: 6515–00–NIB–0703—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 8″.
NSN: 6515–00–NIB–0704—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 8.5″.
NSN: 6515–00–NIB–0705—Gloves, Surgical, Powder-free, Neolon 2G, Brown, Size 9″ .
NSN: 6515–00–NIB–0706—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 5.5″ .
NSN: 6515–00–NIB–0707—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 6″.
NSN: 6515–00–NIB–0708—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 6.5″.
NSN: 6515–00–NIB–0709—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 7″.
NSN: 6515–00–NIB–0710—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 7.5″.
NSN: 6515–00–NIB–0711—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 8″.
NSN: 6515–00–NIB–0712—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 8.5″ .
NSN: 6515–00–NIB–0713—Gloves, Surgical, Powder free, Sensicare SLT, cream-colored, Size 9″.
NSN: 6515–00–NIB–0773—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 5.5″.
NSN: 6515–00–NIB–0714—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 6″.
NSN: 6515–00–NIB–0715—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 6.5″.
NSN: 6515–00–NIB–0716—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 7″.
NSN: 6515–00–NIB–0717—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 7.5″.
NSN: 6515–00–NIB–0718—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 8.0″.
NSN: 6515–00–NIB–0719—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 8.5″ .
NSN: 6515–00–NIB–0720—Gloves, Surgical, Powder free, Sensicare Ortho, White, Size 9″.
NSN: 6515–00–NIB–0721—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 5.5″.
NSN: 6515–00–NIB–0722—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 6″.
NSN: 6515–00–NIB–0723—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 6.5″.
NSN: 6515–00–NIB–0724—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 7″ .
NSN: 6515–00–NIB–0725—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 7.5″.
NSN: 6515–00–NIB–0774—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 8″.
NSN: 6515–00–NIB–0726—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 8.5″.
NSN: 6515–00–NIB–0727—Gloves, Surgical, Powder-free, Esteem Micro, Light Blue, Size 9″.
NSN: 6515–00–NIB–0728—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 6.0″.
NSN: 6515–00–NIB–0729—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 6.5″.
NSN: 6515–00–NIB–0730—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 7″.
NSN: 6515–00–NIB–0731—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 7.5″.
NSN: 6515–00–NIB–0732—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 8″.
NSN: 6515–00–NIB–0733—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 8.5″.
NSN: 6515–00–NIB–0734—Gloves, Surgical, Powder-free, Esteem Ortho, Green, Size 9″.
NSN: 6515–00–NIB–0735—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 6″ .
NSN: 6515–00–NIB–0736—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 6.5″ .
NSN: 6515–00–NIB–0737—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 7″.
NSN: 6515–00–NIB–0738—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 7.5″.
NSN: 6515–00–NIB–0739—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 8″.
NSN: 6515–00–NIB–0740—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 8.5″.
NSN: 6515–00–NIB–0741—Gloves, Surgical, Powder-free, Biogel, Orthopro Indicator, Underglove, Green, Size 9″.
NSN: 6515–00–NIB–0742—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 6″.
NSN: 6515–00–NIB–0743—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 6.5″.
NSN: 6515–00–NIB–0744—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 7″.
NSN: 6515–00–NIB–0745—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 7.5″.
NSN: 6515–00–NIB–0746—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 8″.
NSN: 6515–00–NIB–0747—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 8.5″.
NSN: 6515–00–NIB–0748—Gloves, Surgical, Powder-free, Biogel, Orthopro, Overglove, Straw colored, Size 9″.
NSN: 6515–00–NIB–0749—Gloves, Surgical, Powder-free, Triumph LT, White, Size 5.5″.
NSN: 6515–00–NIB–0750—Gloves, Surgical, Powder-free, Triumph LT, White, Size 6″.
NSN: 6515–00–NIB–0751—Gloves, Surgical, Powder-free, Triumph LT, White, Size 6.5″.
NSN: 6515–00–NIB–0752—Gloves, Surgical, Powder-free, Triumph LT, White, Size 7″.
NSN: 6515–00–NIB–0753—Gloves, Surgical, Powder-free, Triumph LT, White, Size 7.5″.
NSN: 6515–00–NIB–0754—Gloves, Surgical, Powder-free, Triumph LT, White, Size

8″.
NSN: 6515–00–NIB–0755—Gloves, Surgical, Powder-free, Triumph LT, White, Size 8.5″.
NSN: 6515–00–NIB–0756—Gloves, Surgical, Powder-free, Triumph LT, White, Size 9″.
NSN: 6515–00–NIB–0757—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 5.5″.
NSN: 6515–00–NIB–0758—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 6″.
NSN: 6515–00–NIB–0759—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 6.5″.
NSN: 6515–00–NIB–0760—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 7″.
NSN: 6515–00–NIB–0761—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 7.5″.
NSN: 6515–00–NIB–0762—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 8″.
NSN: 6515–00–NIB–0763—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 8.5″.
NSN: 6515–00–NIB–0764—Gloves, Surgical, Powder-free, Eudermic, Brown, Size 9″.
NSN: 6515–00–NIB–0765—Gloves, Surgical, Powder-free, OR Classic, White, Size 5.5″.
NSN: 6515–00–NIB–0766—Gloves, Surgical, Powder-free, OR Classic, White, Size 6″.
NSN: 6515–00–NIB–0767—Gloves, Surgical, Powder-free, OR Classic, White, Size 6.5″.
NSN: 6515–00–NIB–0768—Gloves, Surgical, Powder-free, OR Classic, White, Size 7″.
NSN: 6515–00–NIB–0769—Gloves, Surgical, Powder-free, OR Classic, White, Size 7.5″.
NSN: 6515–00–NIB–0770—Gloves, Surgical, Powder-free, OR Classic, White, Size 8″.
NSN: 6515–00–NIB–0771—Gloves, Surgical, Powder-free, OR Classic, White, Size 8.5″.
NSN: 6515–00–NIB–0772—Gloves, Surgical, Powder-free, OR Classic, White, Size 9″.
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.
Contracting Activity: Department of Veterans Affairs National Acquisition Center, Hines, IL
Coverage: C–List for 100% of the requirement of the Department of Veterans Affairs as aggregated by the Department of Veterans Affairs National Acquisition Center, Hines, IL.
NSN: 5340–01–525–0574—Bracket, Angle, Medium Tactical Vehicles.
NSN: 5340–00–602–4977—Bracket, Mounting, Hercules M88A2 Recovery Vehicle.
NSN: 5340–00–627–5411—Bracket, Mounting, Stratofortress B–52 Aircraft.
NSN: 5340–01–519–7318—Bracket, Angle, Truck 1–1/4 Ton HMMWV Vehicle System.
NSN: 5340–01–112–9693—Bracket, Angle, Bradley Fighting Vehicle System.
NSN: 5340–01–167–1810—Bracket, Mounting, Personnel M113A1, M113A2, M–113A3 Armored Carrier.
NSN: 5340–01–084–1232—Bracket, Mounting, Cargo Truck.
NSN: 5340–01–078–7642—Bracket, Mounting, Abrams M–1 Tank.
NSN: 5340–01–288–5231—Bracket, Double Angle, Bradley Fighting Vehicle System.
NSN: 5340–01–163–4245—Bracket, Double Angle, Hercules M88A2 Recovery Vehicle.
NSN: 5340–01–500–4197—Bracket, Mounting, Mine Resistant Ambush Protected Fighting Vehicle.
NSN: 5340–01–162–7040—Bracket, Angle, Personnel M113A1, M113A2, M–113A3 Armored Carrier.
NSN: 5340–01–098–5119—Bracket, Mounting, Howitzer M–109.
NSN: 5340–01–525–0579—Bracket, Angle, Medium Tactical Vehicles.
NSN: 5340–01–347–9608—Bracket, Mounting, F–16 Aircraft.
NSN: 5340–01–521–0196—Bracket, Mounting, Non-Weapons System.
NSN: 5340–01–102–3483—Bracket, Angle, Abrams M–1 Tank.
NSN: 5340–01–386–2917—Bracket, Angle, Command AAVC–7A1 Amphibious Assault Vehicle.
NSN: 5340–01–230–0219—Bracket, Angle, Abrams M–1 Tank.
NSN: 5340–01–272–6634—Bracket, Mounting, Truck 1–1/4 Ton HMMWV Vehicle System.
NSN: 5340–01–329–8589—Bracket, Mounting, Bradley Fighting Vehicle System.
NSN: 5340–01–218–8346—Bracket, Angle, Aviation.
NSN: 5340–01–458–0473—Bracket, Mounting, M–16 Rifle 5.56MM.
NPA: Herkimer County Chapter, NYSARC, Herkimer, NY.
Contracting Activity: Defense Logistics Agency Troop Support, Hardware L&M, Philadelphia, PA.
Coverage: C–List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Hardware L&M, Philadelphia, PA.

Services

Service Type/Location: Custodial and Grounds Maintenance, Keyport Three Dimensional Range, Bldg. 475, NAVFAC NW., Zelatched Point, WA.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept Of The Navy, Navfac Northwest, Silverdale, WA.
Service Type/Location: Custodial, White Mountain National Forest, Saco Ranger Administrative Site, Routes 112, 33 Kancamagus Highway, Conway, NH.
NPA: Northern New England Employment Services, Portland, ME.
Contracting Activity: Department of Agriculture, Forest Service, Allegheny National Forest, Warren, PA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–33541 Filed 12–29–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes a service previously provided by such agency.

Comments Must Be Received On or Before: 1/30/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. If approved, the action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. Chapter 85) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Grounds Maintenance, National Weather Service, 5655 Hollywood Ave., Shreveport, LA.
NPA: Goodwill Industries of North Louisiana, Inc., Shreveport, LA.
Contracting Activity: Dept of Commerce, National Oceanic and Atmospheric Administration, Boulder, CO.

Service Type/Location: Janitorial, FAA Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., Oklahoma City, OK.
NPA: Dale Rogers Training Center, Inc., Oklahoma City, OK.
Contracting Activity: Dept of Transportation, Federal Aviation Administration, Oklahoma City, OK.

Service Type/Location: Custodial Service and Grounds Maintenance, Salmon Airbase, 8 Industrial Lane, U.S. Forest Service, Salmon, ID.
NPA: Development Workshop, Inc., Idaho Falls, ID.
Contracting Activity: US Forest Service, Caribou-Targhee National Forest, Idaho Falls, ID.

Service Type/Location: Custodial and Grounds Maintenance, US Border Station, 160 Garrison Street, Eagle Pass, TX, US Border Station, 500 Adams Street, Eagle Pass, TX, VACIS Border Station, 500 Adams Street, Eagle Pass, TX.
NPA: Endeavors Unlimited, Inc., San Antonio, TX.
Contracting Activity: General Services Administration, Public Buildings Service, ACQ MGT SVC BR, Fort Worth, TX.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to provide the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. Chapter 85) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, Naval & Marine Corps Reserve Center, 4087 West Harvard, Boise, ID.
NPA: Western Idaho Training Company, Caldwell, ID.
Contracting Activity: Dept of the Navy, Navy Region Northwest Reserve, Everett, WA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–33542 Filed 12–29–11; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0148]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The National Security Agency (NSA) is proposing to alter a system of records in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 30, 2012 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill, NSA/CSS Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20766–6248, or by phone at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security Service systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 21, 2011, to the House Committee on Government Reform, The Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: December 27, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 09

SYSTEM NAME:

NSA/CSS Personnel File (January 15, 2010, 75 FR 2514).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Civilian employees, personnel under contract, military assignees, dependents of NSA/CSS personnel assigned to field elements, individuals integrated into the Selective Employment Retiree (SER), Stand-by Active Reserve (SAR), custodial and commercial services personnel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''File contains name, Social Security Number (SSN), NSA/CSS employee identification number, date and place of birth, home address, home telephone number, personnel papers and forms including but not limited to applications, transcripts, correspondence, notices of personnel action, performance appraisals, internal staffing resume, professionalization documentation and correspondence, training forms, temporary duty, letters of reprimand, special assignment documentation, letters of commendation, promotion documentation, field assignment preference, requests for transfers, permanent change of station, passport,

transportation, official orders, awards, suggestions, pictures, complaints, separation, retirement, time utilization, scholarship/fellowship or other school appointments, military service, reserve status, military check in/out sheets, military orders, security appraisal, career battery and other test results, language capability, military personnel utilization survey, work experience, notes and memoranda on individual aspects of performance, productivity and suitability, information on individual eligibility to serve on various boards and committees, emergency loan records, other information relevant to personnel management, and housing information where required.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''National Security Agency Act of 1959, Public Law 86–36, (codified at 50 U.S.C. Section 402 note); 5 U.S.C. chapter 11, Office of Personnel Management (OPM) and certain implementing OPM regulations contained within 5 C.F.R. Part 293, Personnel Records; 10 U.S.C. chapter 1124, Cash Awards for disclosures, suggestions, inventions, and scientific achievements; 44 U.S.C. 3101, Records management by agency heads; general duties; and E.O. 9397 (SSN) as amended.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the offices housing these records, paper/hard-copy records are stored in locked containers with limited access, and access to electronic records is limited and controlled by password protection. Access to information is limited to those individuals authorized and responsible for personnel management or supervision. All personnel requiring access to the information receive annual Privacy Act training.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Primary System—Those forms, notices, reports and memoranda considered to be of permanent value or required by law or regulation to be preserved are retained for the period of employment or assignment and then forwarded to the gaining organization or retained indefinitely. If the action is separation or retirement, these items are forwarded to the Office of Personnel Management or retired to the Federal Records Center in St. Louis as appropriate. Those items considered to be relevant for a temporary period only are retained for that period and either transferred with the employee or assignee or destroyed when they are no longer relevant or at the time of separation or retirement. Computerized portion is purged and updated as appropriate. Records relating to adverse actions, grievances, excluding EEO complaints and performance-based actions, except SF–50s, will be retained for seven years. Personnel summary, training, testing and past activity segments are retained permanently. All other portions are deleted at end of tenure.

Decentralized System—Files are transferred to gaining organization or destroyed upon separation as appropriate. Computer listings of personnel assigned to an organization are destroyed upon receipt of updated listings.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''The Associate Director, Human Resources, National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN), mailing address, and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN), mailing address, and signature.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR Part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.''

* * * * *

GNSA 09

SYSTEM NAME:

NSA/CSS Personnel File .

SYSTEM LOCATION:

Primary Location: National Security Agency/Central Security Agency, Ft. George G. Meade, MD 20755–6000.

DECENTRALIZED SEGMENTS:

Each staff, line, contract and field element as authorized and appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, personnel under contract, military assignees, dependents of NSA/CSS personnel assigned to field elements, individuals integrated into the Selective Employment Retiree (SER), Stand-by Active Reserve (SAR), custodial and commercial services personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number (SSN), NSA/CSS employee identification number, date and place of birth, home address, home telephone number, personnel papers and forms including but not limited to applications, transcripts, correspondence, notices of personnel action, performance appraisals, internal staffing resume, professionalization documentation and correspondence, training forms, temporary duty, letters of reprimand, special assignment documentation, letters of commendation, promotion documentation, field assignment preference, requests for transfers, permanent change of station, passport, transportation, official orders, awards, suggestions, pictures, complaints, separation, retirement, time utilization, scholarship/fellowship or other school appointments, military service, reserve status, military check in/out sheets, military orders, security appraisal, career battery and other test results, language capability, military personnel utilization survey, work experience, notes and memoranda on individual aspects of performance, productivity and suitability, information on individual eligibility to serve on various boards and committees, emergency loan records, other information relevant to personnel management, and housing information where required.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, Public Law 86–36, (codified at 50 U.S.C. Section 402 note); 5 U.S.C. Chapter 11, Office of Personnel Management (OPM) and certain implementing OPM regulations contained within 5 CFR part 293, Personnel Records; 10 U.S.C. chapter 1124, Cash Awards for disclosures, suggestions, inventions, and scientific achievements; 44 U.S.C. 3101, Records management by agency heads; general duties; and E.O. 9397 (SSN) as amended.

PURPOSE(S):

To support the personnel management program; personnel training and career development; personnel planning, staffing and counseling; administration and personnel supervision; workforce study and analysis; manpower requirements studies; emergency loan program; and training curricula planning and research.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To gaining employers or financial institutions when individual has applied for credit; to contractor employees to make determinations as noted in the purpose above; to hearing examiners; the judicial branch or to other gaining government organization as required and appropriate; biographical information may be provided to the White House as required in support of the Senior Cryptologic Executive Service awards program.

To the Office of the Director of National Intelligence (ODNI) for Intelligence Community aggregate workforce planning, assessment, and reporting purposes. Records provided to the ODNI for this routine use will not include any individual's name or Social Security Number (SSN).

The DoD 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to these types of records.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By name, Social Security Number (SSN) or NSA/CSS Employee Identification Number.

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the offices housing these records, paper/hard-copy records are stored in locked containers with limited access, and access to electronic records is limited and controlled by password protection. Access to information is limited to those individuals authorized and responsible for personnel management or supervision. All personnel requiring access to the information receive annual Privacy Act training.

RETENTION AND DISPOSAL:

Primary System—Those forms, notices, reports and memoranda considered to be of permanent value or required by law or regulation to be preserved are retained for the period of employment or assignment and then forwarded to the gaining organization or retained indefinitely. If the action is separation or retirement, these items are forwarded to the Office of Personnel Management or retired to the Federal Records Center in St. Louis as appropriate. Those items considered to be relevant for a temporary period only are retained for that period and either transferred with the employee or assignee or destroyed when they are no longer relevant or at the time of separation or retirement. Computerized portion is purged and updated as appropriate. Records relating to adverse actions, grievances, excluding EEO complaints and performance-based actions, except SF–50s, will be retained for seven years. Personnel summary, training, testing and past activity segments are retained permanently. All other portions are deleted at end of tenure.

Decentralized System—Files are transferred to gaining organization or destroyed upon separation as appropriate. Computer listings of personnel assigned to an organization are destroyed upon receipt of updated listings.

SYSTEM MANAGER(S) AND ADDRESS:

The Associate Director, Human Resources, National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN), mailing address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, Social Security Number (SSN), mailing address, and signature.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR Part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

RECORD SOURCE CATEGORIES:

Forms used to collect and process individual for employment, access or assignment, forms and memoranda used to request personnel actions, training awards, professionalization, transfers, promotion, organization and supervisor reports and requests, educational institutions, references, Office of Personnel Management and other governmental entities as appropriate, and other sources as appropriate and required.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this file system may be exempt under 5 U.S.C. 552a(k)(1), (k)(4), (k)(5) and (k)(6), as applicable.

An exemption rule for this records system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR Part 322. For additional information, contact the system manager.

[FR Doc. 2011–33568 Filed 12–29–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2011–0028]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Army is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 30, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, or by phone at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Army proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 27, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

A0030 AMC, Food Taste Test Panel Files (February 1, 1996, 61 FR 3684).

REASON:

The methodology in this system of records is not used in this setting any longer and therefore the notice can be deleted. Records in this system will not be destroyed until the National Archives and Records Administration (NARA) retention has been fulfilled.

[FR Doc. 2011–33608 Filed 12–29–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Disability and Rehabilitation Research Projects and Centers Program—Advanced Rehabilitation Research Training (ARRT) Projects

AGENCY: Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research, Department of Education.

ACTION: Notice.

Overview Information

Disability and Rehabilitation Research Projects and Centers Program—Advanced Rehabilitation Research Training (ARRT) Projects.

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133P–1.

DATES:

Applications Available: December 30, 2011.

Date of Pre-Application Meeting: January 20, 2012.

Deadline for Transmittal of Applications: February 28, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide advanced research training and experience to individuals with doctorates, or similar advanced degrees, who have clinical or other relevant experience. ARRT projects train rehabilitation researchers, including researchers with disabilities, with particular attention to research areas that support the implementation and objectives of the Rehabilitation Act of 1973, as amended (Act), and that improve the effectiveness of services authorized under the Act.

Note: This program is in concert with NIDRR's currently approved long range plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8166), can be accessed on the Internet at the following site: *http://www2.ed.gov/legislation/FedRegister/other/2006-1/021506d.html*

Through the implementation of the Plan, NIDRR seeks to (1) improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of individuals with disabilities from traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for individuals with disabilities from underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities: This program contains one absolute and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), this absolute priority is from the regulations for this program (34 CFR 350.12 and 350.64 through 350.65).

Absolute Priority: For FY 2012, and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Advanced Rehabilitation Research Training Projects

ARRT projects must (1) recruit and select candidates for advanced research training; (2) provide a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific methodology, and may involve collaboration among institutions; (3) provide research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum that involve each individual in clinical research and in practical activities with organizations representing individuals with disabilities; (4) provide academic mentorship or guidance, and opportunities for scientific collaboration

with qualified researchers at the host university and other appropriate institutions; and (5) provide opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings, as appropriate for the individual's field of study and level of experience.

An ARRT project must provide training to individuals for at least one academic year, unless a longer training period is necessary to ensure that each trainee is qualified to conduct independent research upon completion of the course of training; and (2) require trainees to devote at least 80 percent of their time to the activities of the training program during the training period.

Note: We expect applicants to articulate goals, objectives, and expected outcomes for the research training activities. Applicants should describe expected public benefits of these training activities, especially benefits for individuals with disabilities, and propose projects that are optimally designed to demonstrate outcomes that are consistent with the proposed goals. Applicants are encouraged to include information describing how they will measure outcomes, including the indicators for determining that results have occurred. Submission of this measurement information is voluntary, except where required by the selection criteria listed in the application package.

Within this absolute priority, we are particularly interested in applications that address the following invitational priority.

Invitational Priority: Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

For FY 2012, the Secretary is particularly interested in applications that provide advanced research training to eligible individuals to enhance the capacity to conduct high-quality multidisciplinary disability policy research, aimed at improving the data sources, analytic strategies, and evidence base used to inform policy and program development affecting individuals with disabilities in the major life domains of employment, health and function and community living and participation.

Program Authority: 29 U.S.C. 762(k).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $600,000.

Estimated Range of Awards: $147,000 to $150,000.

Estimated Average Size of Awards: $150,000.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: Consistent with 34 CFR 75.562, indirect cost reimbursement for a training grant is limited to eight percent of a modified total direct cost base, defined as total direct costs less stipends, tuition and related fees, equipment and the amount of each subaward in excess of $25,000. Indirect costs can also be determined in the grantee's negotiated indirect cost rate agreement if that amount is less than the amount calculated under the formula above.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months. We will reject any application that proposes a project period exceeding 60 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching. However, any applicant may voluntarily promise to share in the cost of the ARRT project by supplementing the amount of the stipend paid to trainees with additional funds beyond the maximum awarded under this program. The policies governing grantee cost-sharing or matching are as follows:

a. Cost-sharing or matching is the portion of project costs not borne by the Federal Government. Applications submitted under this program with voluntary cost-sharing to supplement trainee stipends must use funds from non-Federal sources.

b. Any cost-sharing promised by the grantee in its application must be fully documented and accounted for in the grantee's budget and expenditure records and reports. Applications submitted for funding that have voluntary cost-sharing must include—

- The specific contributions proposed;
- The source of the cost-sharing; and
- In the case of in-kind contributions, a description of how the value was determined for the donated or contributed services or goods.

c. It is the policy of the Department that this additional cost share or match becomes part of the grantee's budget and therefore a condition of the grant. According to 34 CFR 74.25, any changes to an applicant's budget can be made only with the prior written approval of the Department.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.133P.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, are in the application package for this program, including the requirement for an applicant to provide assurances that it will comply with 34 CFR 350.64 and 350.65. The application package also provides the forms you must submit. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all

text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application project narrative section (Part III).

Applicants should consult NIDRR's Long-Range Plan when preparing their applications. The Plan is organized around the following research domains and arenas: (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; and (5) Demographics. Applicants should indicate, for each application, the domain or arena under which they are applying. In their applications, applicants should clearly indicate whether they are applying for a research grant in the area of (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; or (5) Demographics.

3. *Submission Dates and Times:*

Applications Available: December 30, 2011.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on January 20, 2012. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Marlene Spencer, U.S. Department of Education, Potomac Center Plaza (PCP), room 5133, 550 12th Street SW., Washington, DC 20202. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: February 28, 2012.

Applications for grants under this program must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via *Grants.gov,* you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the ARRT Projects program, CFDA Number 84.133P–1, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for ARRT Projects at *www.Grants.gov.* You must search for the downloadable application package for this program by CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.133, not 84.133P).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system homepage at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable .PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. (This notification indicates receipt by *Grants.gov* only, not receipt by the Department.) The Department then will retrieve your application from *Grants.gov* and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with theGrants.gov System: If you are experiencing problems submitting your application through *Grants.gov,* please contact the *Grants.gov* Support Desk, toll free, at 1 (800) 518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the *Grants.gov* system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, Potomac Center Plaza Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133P–1) LBJ Basement Level 1, 400 Maryland

Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133P–1), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high quality products. Performance measures for the ARRT Projects program include—

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) to assess performance. NIDRR also determines, using information submitted as part of the grantees' APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers

whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *Lynn.Medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *Marlene.Spencer@ed.gov.*

If you use a TDD call the Federal Relay Service, toll free, at 1–(800) 877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–(800) 877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 27, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–33607 Filed 12–29–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3963–001.
Applicants: Bruce Power Inc.
Description: Supplement to Updated Market Power Analysis for the Northeast Region of Bruce Power Inc.
Filed Date: 12/9/11.
Accession Number: 20111209–5275.
Comments Due: 5 p.m. ET 12/30/11.

Docket Numbers: ER12–21–002.
Applicants: Agua Caliente Solar, LLC.
Description: Notice of Change in Status and Request for Expedited Action of Agua Caliente Solar, LLC.
Filed Date: 12/20/11.
Accession Number: 20111220–5086.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: ER12–361–000.
Applicants: South Carolina Electric & Gas Company.
Description: Refund Report—12.20.2011 to be effective N/A.
Filed Date: 12/20/11.
Accession Number: 20111220–5065.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: ER12–595–000.
Applicants: Constellation Power Source Generation, Inc.
Description: Report regarding Keystone Project Joint Rate Schedule FERC No. 1 to be effective N/A.
Filed Date: 12/20/11.
Accession Number: 20111220–5077.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: ER12–596–000.
Applicants: Constellation Power Source Generation, Inc.
Description: Report regarding Conemaugh Project Joint Rate Schedule FERC No. 1 to be effective N/A.
Filed Date: 12/20/11.
Accession Number: 20111220–5079.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: ER12–639–000.
Applicants: ISO New England Inc., The United Illuminating Company.
Description: The United Illuminating Company Schedule 21 UI Tariff Clarification to be effective 12/21/2011.
Filed Date: 12/20/11.
Accession Number: 20111220–5018.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: ER12–642–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: G282 Termination to be effective 2/19/2012.
Filed Date: 12/20/11.
Accession Number: 20111220–5055.
Comments Due: 5 p.m. ET 1/10/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33516 Filed 12–29–11; 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: EC12–53–000.
Applicants: ITC Midwest LLC.
Description: Application of ITC Midwest LLC.
Filed Date: 12/19/11.
Accession Number: 20111219–5230.
Comments Due: 5 p.m. ET 1/9/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1706–003.
Applicants: California Independent System Operator Corporation.
Description: 2011–12–19 CAISO IRRP Compliance to be effective 7/3/2010.
Filed Date: 12/19/11.
Accession Number: 20111219–5153.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER11–2580–002.
Applicants: ISO New England Inc.

Description: ISO–NE Response to Staff Request for Further Information RE: Tie Benefits Compliance Filing.
Filed Date: 12/15/11.
Accession Number: 20111215–5147.
Comments Due: 5 p.m. ET 1/5/12.

Docket Numbers: ER11–2875–003.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing per Order dated November 17, 2011 in Docket ER11–2875 to be effective 12/19/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5182.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER11–3616–002.
Applicants: California Independent System Operator Corporation.
Description: 2011–12–19 Filing in response to 2011–11–18 FERC letter to be effective 2/20/2012.
Filed Date: 12/19/11.
Accession Number: 20111219–5101.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER11–4266–002.
Applicants: Richland-Stryker Generation LLC.
Description: Notice of Non-Material Change in Status of Richland-Stryker Generation LLC, *et al.*
Filed Date: 12/19/11
Accession Number: 20111219–5223.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER11–4584–001.
Applicants: Burgess Capital LLC.
Description: Revised MBR 10132011 to be effective 9/21/2011.
Filed Date: 12/19/11
Accession Number: 20111219–5102.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–246–001.
Applicants: Entergy Arkansas, Inc.
Description: Corrected MBR Tariff to be effective 4/20/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5160.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–255–001.
Applicants: Entergy Power, LLC.
Description: Entergy Power LLC Corrected MBRT to be effective 4/20/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5162.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–256–001.
Applicants: EWO Marketing, Inc.
Description: MBRT Corrected Filing to be effective 4/20/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5163.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–262–001.
Applicants: Llano Estacado Wind, LLC.
Description: Corrected MBRT to be effective 4/20/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5166.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–263–001.
Applicants: Northern Iowa Windpower, LLC.
Description: Corrected MBRT to be effective 4/20/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5173.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–634–000.
Applicants: San Diego Gas & Electric Company.
Description: 2012 SDGE RS Update to Transmission Owner Tariff to be effective 1/1/2012.
Filed Date: 12/19/11.
Accession Number: 20111219–5004.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–635–000.
Applicants: New York State Electric & Gas Corporation.
Description: NYSEG–Bath Fairview Taps Facilities Agreement to be effective 12/20/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5099.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–636–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the PJM Tariff, OA & RAA *re* the Quality Review Project to be effective 2/18/2012.
Filed Date: 12/19/11.
Accession Number: 20111219–5104.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–637–000.
Applicants: Calhoun Power Company, LLC.
Description: Notice of Succession to Market-Based Rate Tariff to be effective 11/22/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5150.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–638–000.
Applicants: Oklahoma Gas and Electric Company.
Description: AECC Filing to be effective 5/1/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5184.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–640–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of PJM Interconnection, L.L.C.
Filed Date: 12/19/11.
Accession Number: 20111219–5229.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: ER12–641–000.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Company Notification of Cancellation—Second Revised Service Agreement No. 21 and FERC Electric Tariff, Second Revised Volume No.1.
Filed Date: 12/19/11.
Accession Number: 20111219–5232.
Comments Due: 5 p.m. ET 1/9/12.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–4–000.
Applicants: Niagara Generation, LLC.
Description: Land Acquisition Report (4Q 2011).
Filed Date: 12/19/11.
Accession Number: 20111219–5231.
Comments Due: 5 p.m. ET 1/9/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33519 Filed 12–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–251–000.
Applicants: Big Sandy Pipeline, LLC.
Description: EQTE 12–31–2011 Negotiated Rate Agreement to be effective 12/31/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5092.
Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: RP12–252–000.
Applicants: Iroquois Gas Transmission System, L.P.

Description: 12/19/11 Negotiated Rates—BP Energy Company—HUB to be effective 12/20/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5145.
Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: RP12–253–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/19/11 Negotiated Rates—Repsol Energy—HUB to be effective 12/20/2011.
Filed Date: 12/19/11.
Accession Number: 20111219–5146.
Comments Due: 5 p.m. ET 1/2/12.

Docket Numbers: CP12–27–000
Applicants: Hope Gas, Inc.
Description: Application for Limited Jurisdiction Blanket Certificate of Public Convenience and Necessity Pursuant to 18 CFR 284.224.
Filed Date: 12/8/11.
Accession Number: 20111208–5099.
Comments Due: 5 p.m. ET 1/2/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33518 Filed 12–29–11; 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: ER10–1869–002; ER10–1727–002; ER10–1726–002; ER10–1671–002.
Applicants: GenOn Energy Management, LLC, GenOn Florida, LP, GenOn Wholesale Generation, LP, RRI Energy Services, LLC.
Description: Updated Market Power Analysis of GenOn Energy Management, LLC, *et al.*
Filed Date: 12/16/11.
Accession Number: 20111216–5224.
Comments Due: 5 p.m. ET 1/6/12.

Docket Numbers: ER12–620–000.
Applicants: Xcel Energy Services Inc.
Description: Xcel Energy Services Inc. submits Notice of Terminations.
Filed Date: 12/15/11.
Accession Number: 20111215–5269.
Comments Due: 5 p.m. ET 1/5/12.

Docket Numbers: ER12–630–000.
Applicants: San Diego Gas & Electric Company.
Description: SDGE Black Start Agreement to be effective 2/1/2012.
Filed Date: 12/16/11.
Accession Number: 20111216–5164.
Comments Due: 5 p.m. ET 1/6/12.

Docket Numbers: ER12–631–000.
Applicants: Windpower Partners 1993, LLC.
Description: Windpower Partners 1993, LLC Notice of Succession and Revisions to MBR Tariff to be effective 12/8/2011.
Filed Date: 12/16/11.
Accession Number: 20111216–5185.
Comments Due: 5 p.m. ET 1/6/12.

Docket Numbers: ER12–632–000.
Applicants: Duquesne Conemaugh, LLC.
Description: Certificate of Concurrence re Conemaugh Project to be effective 1/1/2012.
Filed Date: 12/16/11.
Accession Number: 20111216–5186.
Comments Due: 5 p.m. ET 1/6/12.

Docket Numbers: ER12–633–000.
Applicants: Duquesne Keystone, LLC.
Description: Certificate of Concurrence re Keystone Project to be effective 1/1/2012.
Filed Date: 12/16/11.
Accession Number: 20111216–5189.
Comments Due: 5 p.m. ET 1/6/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–12–000.
Applicants: Prairie Wind Transmission, LLC.
Description: Application of Prairie Wind Transmission, LLC for authorization under Section 204 of the Federal Power Act to borrow up to $175.
Filed Date: 12/15/11.
Accession Number: 20111215–5282.
Comments Due: 5 p.m. ET 1/5/12.

Docket Numbers: ES12–14–000.
Applicants: Southern Power Company.
Description: Southern Power Company's application requesting authorization to issue and sell common stock, preference stock and secured and unsecured long-term debt securities.
Filed Date: 12/16/11.
Accession Number: 20111216–5215.
Comments Due: 5 p.m. ET 1/6/12.

Docket Numbers: ES12–15–000.
Applicants: KCP&L Greater Missouri Operations Company.
Description: Application for Authorization of Issuance of Short-Term Debt Securities Under Section 204 of the Federal Power Act.
Filed Date: 12/16/11.
Accession Number: 20111216–5219.
Comments Due: 5 p.m. ET 1/6/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 19, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33517 Filed 12–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–254–000.
Applicants: Gas Transmission Northwest LLC.
Description: Pacific Gas and Electric Agreement to be effective 1/1/2012.
Filed Date: 12/20/11.
Accession Number: 20111220–5139.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: RP12–255–000.
Applicants: Crossroads Pipeline Company.

Description: Crossroads Pipeline Company Penalty Revenue Crediting Report.
Filed Date: 12/21/11.
Accession Number: 20111221–5079.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: RP12–256–000.
Applicants: Central Kentucky Pipeline Company.
Description: Central Kentucky Pipeline Company Penalty Revenue Crediting Report.
Filed Date: 12/21/11.
Accession Number: 20111221–5086.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: RP12–257–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company Penalty Revenue Crediting Report.
Filed Date: 12/21/11.
Accession Number: 20111221–5089.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: RP12–258–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC Penalty Revenue Crediting Report.
Filed Date: 12/21/11.
Accession Number: 20111221–5094.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: RP12–259–000.
Applicants: USG Pipeline Company, LLC.
Description: Housekeeping Filing to be effective 1/20/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5184.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: RP12–260–000.
Applicants: Millennium Pipeline Company, L.L.C.
Description: Filed Date: 12/22/11.
Accession Number: 20111222–5038.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: CP12–32–000.
Applicants: Equitrans, L.P.
Description: Abbreviated Application For Amended Certificate, Abandonment, and Certificate Authority To Lease Facilities.
Accession Number: 20111216–5177.
Comments Due: 5 p.m. ET 1/3/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–208–001.
Applicants: MarkWest Pioneer, L.L.C.
Description: MarkWest Pioneer—Substitute Quarterly FRP Filing to be effective 1/1/2012.
Filed Date: 12/14/11.
Accession Number: 20111214–5171.
Comments Due: 5 p.m. ET 1/3/12.

Docket Numbers: RP11–2639–002.
Applicants: Northern Border Pipeline Company.
Description: Compliance to RP11–2639–001 to be effective 11/1/2011.
Filed Date: 12/20/11.
Accession Number: 20111220–5083.
Comments Due: 5 p.m. ET 1/3/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33559 Filed 12–29–11; 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: EC12–54–000.
Applicants: Rensselaer Holdings, LLC, Rensselaer Cogeneration LLC.
Description: Application of Rensselaer Holdings, LLC and Rensselaer Cogeneration LLC for Authorization of a Transaction.
Filed Date: 12/20/11.
Accession Number: 20111220–5167.
Comments Due: 5 p.m. ET 1/10/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–21–000.
Applicants: California Ridge Wind Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of California Ridge Wind Energy LLC.
Filed Date: 12/21/11.
Accession Number: 20111221–5113.
Comments Due: 5 p.m. ET 1/11/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1526–001; ER10–1525–001.
Applicants: KGen Hinds LLC, KGen Hot Spring LLC.
Description: Market Power Update of KGen Hinds LLC and KGen Hot Spring LLC.
Filed Date: 12/21/11.
Accession Number: 20111221–5178.
Comments Due: 5 p.m. ET 2/21/12.

Docket Numbers: ER12–643–000.
Applicants: Hafslund Energy Trading LLC.
Description: Filing to revise MBR to be effective 12/21/2011.
Filed Date: 12/20/11.
Accession Number: 20111220–5108.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: ER12–644–000.
Applicants: PacifiCorp.
Description: Revised Network Integration Transmission Service Agreements to be effective 1/1/2012.
Filed Date: 12/20/11.
Accession Number: 20111220–5133.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: ER12–645–000.
Applicants: California Ridge Wind Energy LLC.
Description: Application for Market-Based Rate Authorization & Request for Waivers & Approval to be effective 2/20/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5109.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–646–000.
Applicants: California Independent System Operator Corporation.
Description: 2011–12–21 Second Amended MSSA with City of Vernon to be effective 1/1/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5114.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–646–000.
Applicants: California Independent System Operator Corporation.
Description: 2011–12–21 Second Amended MSSA with City of Vernon to be effective 1/1/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5115.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–647–000.
Applicants: PacifiCorp.
Description: Revised Non-Conforming Long Term Firm Point to Point Agreements to be effective 1/1/2012.

Filed Date: 12/21/11.
Accession Number: 20111221–5116.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–648–000.
Applicants: Interstate Power and Light Company.
Description: IPL and DPC—LBAAOC Agreement to be effective 12/1/2011.
Filed Date: 12/21/11.
Accession Number: 20111221–5121.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–649–000.
Applicants: Wisconsin Power and Light Company.
Description: WPL and DPC—LBAAOC Agreement to be effective 12/1/2011.
Filed Date: 12/21/11.
Accession Number: 20111221–5127.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–650–000.
Applicants: New York Independent System Operator, Inc.
Description: NYISO 205 Filing of Amendments to the Market Monitoring Plan to be effective 2/22/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5151.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–651–000.
Applicants: Alabama Power Company.
Description: Black Warrior NITSA Amendment (Revising Distribution Facilities Charge) to be effective 8/1/2011.
Filed Date: 12/21/11.
Accession Number: 20111221–5161.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–652–000.
Applicants: EWO Marketing, LLC.
Description: Notice of Succession and Conforming Agreements to be effective 11/30/2011.
Filed Date: 12/21/11.
Accession Number: 20111221–5179.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–653–000.
Applicants: Arizona Public Service Company.
Description: Service Agreement No. 319; Interconnection Agreement between ANPP and AVSE II to be effective 12/15/2011.
Filed Date: 12/21/11.
Accession Number: 20111221–5181.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–654–000.
Applicants: Baltimore Gas and Electric Company.
Description: Change in Category Status to be effective 1/1/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5183.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–655–000.
Applicants: Handsome Lake Energy, LLC.
Description: Change in Category Status to be effective 1/1/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5185.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–656–000.
Applicants: Calvert Cliffs Nuclear Power Plant, LLC.
Description: Change in Category Status to be effective 1/1/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5186.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–657–000.
Applicants: Nine Mile Point Nuclear Station, LLC.
Description: Change in Category Status to be effective 1/1/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5190.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–658–000.
Applicants: R.E. Ginna Nuclear Power Plant, LLC.
Description: Change in Category Status to be effective 1/1/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5198.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–659–000.
Applicants: Baconton Power LLC.
Description: Baconton Power LLC submits tariff filing per 35.37: Updated Market Power Analysis to be effective 12/22/2011.
Filed Date: 12/21/11.
Accession Number: 20111221–5211.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–660–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits tariff filing per 35.13(a)(2)(iii): 2012 SDGE TRBAA TACBAA Update to Transmission Owner Filing to be effective 1/1/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5216.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER12–661–000.
Applicants: Constellation Power Source Generation, Inc.
Description: Constellation Power Source Generation, Inc. submits tariff filing per 35: Change in Category Status to be effective 1/1/2012.
Filed Date: 12/21/11.
Accession Number: 20111221–5217.
Comments Due: 5 p.m. ET 1/11/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–106–000.
Applicants: City of Elizabeth City, NC.
Description: City of Elizabeth City, NC submits FERC Form 556 Notice of Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility.
Filed Date: 12/19/11.
Accession Number: 20111219–5218.
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 21, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33533 Filed 12–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL12–18–000; QF82–207–007]

Central Power & Lime LLC; Notice of Filing

December 23, 2011.

Take notice that on December 22, 2011, Central Power & Lime LLC, pursuant to sections 18 CFR 292.205(c) and 385.207 of the Federal Energy Regulatory Commission's (Commission) Regulations, filed a petition for temporary waiver of the operating standard set forth in 18 CFR 282.205(a)(1), with respect to its cogeneration facility located in Brooksville, Florida for calendar year 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, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 12, 2012.

Dated: December 21, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33534 Filed 12–29–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9000–8]

Environmental Impacts Statements; Notice of Availability

AGENCY: *Responsible Agency:* Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 12/19/2011 through 12/23/2011.

Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110430, Draft EIS, HUD, CA, Alice Griffith Redevelopment Project, Redevelopment of the #4-Arce ''Project Site'' for 1,200 New Dwelling Units, Retail Development, Open Space and Associated Infrastructure, City and County of San Francisco, CA, *Comment Period Ends:* 02/13/2012, *Contact:* Eugene T. Flannery (415) 701–5598.

EIS No. 20110431, Draft EIS, USFS, NV, Geothermal Leasing on the Humboldt-Toiyabe National Forest, To Facilitate the Development and Production of Geothermal Energy, Ely, Austin, Tonopah and Bridgeport Ranger Districts, NV, *Comment Period Ends:* 02/13/2012, *Contact:* Keith Whaley (760) 932–7070.

EIS No. 20110432, Final EIS, USACE, FL, Brevard County, Florida Hurricane and Storm Damage Reduction Project, To Reduce the Damages Caused by Erosion and Coastal Storms to Shorefront Structures Along the Mid-Reach Segment, Implementation, Brevard County, FL, *Review Period Ends:* 01/30/2012, *Contact:* Candida Bronson (904) 232–1697.

EIS No. 20110433, Draft EIS, USFS, SD, Vestal Project, Commercial and Non-commercial Vegetation Treatments and Prescribed Burning to Reduce Mountain Pine Beetle Risk and Fire Hazard, Hell Canyon Ranger District, Black Hills National Forest, Custer County, SD, *Comment Period Ends:* 02/13/2012, *Contact:* Kelly Honors (605) 673–4853.

EIS No. 20110434, Draft EIS, DOI, 00, Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales: 2012–2017 Western Planning Area Lease Sales 229, 233, 238, 246, and 248: Central Planning Area Lease Sales 227, 231, 235, 241, and 247, TX, LA, MS, AL and Northwestern FL, *Comment Period Ends:* 02/13/2012, *Contact:* Gary Goeke (504) 736–3233.

EIS No. 20110435, Final EIS, NPS, IL, Lincoln Home National Historic Site, General Management Plan, Implementation, Sangamon County, Springfield, IL, *Review Period Ends*: 01/30/2012, *Contact:* Nick Chevance (402) 661–1844.

EIS No. 20110436, Draft EIS, NOAA, AK, Effects of Oil and Gas Activities in the Arctic Ocean, Beaufort and Chukchi Seas, AK, *Comment Period Ends:* 02/13/2012, *Contact:* James H. Lecky (301) 713–1632.

EIS No. 20110437, Draft EIS, USFS, UT, Chicken Creek Gypsum Mine, Proposed Plan of Operations to Conduct Mining Operations, San Pitch Mountains, Sanpete Ranger District, Manti-La Sal National Forest, Juab County, UT, *Comment Period Ends:* 02/13/2012, *Contact:* Karl Boyer (435) 637–2817.

EIS No. 20110438, Draft EIS, USFS, ID, Scriver Integrated Restoration Project, Improve Watershed Conditions by Reducing Road-Related Impacts to Wildlife, Fish, Soil, and Water Resources and Restoration of 2010 Forest Plan Vegetation Conditions, Emmett Ranger District, Boise National Forest, Boise and Valley Counties, ID, *Comment Period Ends:* 02/13/2012, *Contact:* Melissa Yenko (208) 373–4245.

Amended Notices

EIS No. 20110307, Draft EIS, BLM, CO, Colorado River Valley (formerly known as Glenwood Springs) Resource Management Plan, Implementation, Colorado River Valley Field Office, Portions of Eagle, Garfield, Mesa, Ritkin, and Routt Counties, CO, *Comment Period Ends:* 01/17/2012, *Contact:* John Russell (970) 876–9025.

Revision to Notice Published 09/16/2011: Extending Comment Period from 12/14/2011 to 01/17/2012.

Dated: December 27, 2011.

Elaine Suriano,

Environmental Protection Special, Office of Federal Activities.

[FR Doc. 2011–33618 Filed 12–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0746; FRL–9331–4]

Pyrethrins/Pyrethroid Cumulative Risk Assessment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of November 9, 2011, concerning the availability of EPA's cumulative risk assessment for the naturally occurring pyrethrins and synthetic pyrethroid pesticides (often collectively called ''the pyrethroids'') and opened a public comment period on this document and other supporting documents. This notice extends the comment period for 30 days, from January 9, 2012 to February 8, 2012.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0746, must be received on or before February 8, 2012.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of November 9, 2011.

FOR FURTHER INFORMATION CONTACT: Dana L. Friedman, Pesticide Re-evaluation Division, Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8827; email address: *friedman.dana@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice extends the public comment period established in the **Federal Register** of November 9, 2011 (76 FR 69726) (FRL–8888–9). In that notice, the Agency announced the availability of EPA's cumulative risk assessment for the pyrethroids. Based on this assessment, the EPA concluded that the cumulative risks from existing pyrethroid uses are below the Agency's level of concern. Because this cumulative risk assessment uses a number of very conservative assumptions, EPA provided an opportunity, through that notice, for interested parties to provide comments and input on any additional information that may be used to refine the very conservative nature of the pyrethroid cumulative risk assessment.

The Agency has received two requests to extend the comment period based on the complexity of the issue. The submitters are Beyond Pesticides and a member of the public. EPA is hereby extending the comment period, which was set to end on January 9, 2012, to February 8, 2012.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the November 9, 2011 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Cumulative Risk Assessment, Pesticides and pests, Pyrethrins and Pyrethroids.

Dated: December 21, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–33437 Filed 12–29–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 28, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Accessible Telecommunications and Advanced Communications Services and Equipment.

Form Number: N/A.

Type of Review: New collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit Institutions.

Number of Respondents and Responses: 9,454 respondents; 119,660 responses.

Estimated Time per Response: .50 to 40 hours.

Frequency of Response: Annual, one time, and on occasion reporting requirements; Recordkeeping requirement; Third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Act, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619.

Total Annual Burden: 408,695 hours.

Total Annual Cost: $110, 588.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries,'' in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

In addition, upon the service of an informal or formal complaint, a service provider or equipment manufacturer must produce to the Commission, upon request, records covered by 47 CFR 14.31 of the Commission's rules and may assert a statutory request for confidentiality for these records. All other information submitted to the Commission pursuant to Subpart D of Part 14 of the Commission's rules or to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Note: The Commission will prepare a revision to the SORN and PIA to cover the PII collected related to this information collection, as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Needs and Uses: On October 7, 2011, in document FCC 11–151, the Commission released a *Report and Order* adopting final rules to implement sections 716 and 717 of the Communications Act of 1934 (the Act), as amended, which were added to the Act by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (CVAA). *See* Public Law 111–260, 104. Section 716 of the Act requires providers of advanced communications services and

manufacturers of equipment used for advanced communications services to make their services and equipment accessible to individuals with disabilities, unless doing so is not achievable. *See* 47 U.S.C. 617. Section 717 of the Act establishes new recordkeeping requirements and enforcement procedures for service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act. *See* 47 U.S.C. 618. Section 255 of the Act requires telecommunications and interconnected VoIP services and equipment to be accessible, if readily achievable. *See* 47 U.S.C. 255. Section 718 of the Act requires web browsers included on mobile phones to be accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. *See* 47 U.S.C. 619.

Specifically, the rules adopted in document FCC 11–151 have the following possible related information collection requirements:

(a) The rules adopted in document FCC 11–151 establish procedures for advanced communications service providers and equipment manufacturers to seek waivers from the accessibility obligations of section 716 of the Act and, in effect, waivers from the recordkeeping requirements and enforcement procedures of section 717 of the Act. Waiver requests may be submitted for individual or class offerings of services or equipment which are designed for multiple purposes, but are designed primarily for purposes other than using advanced communications services. All such waiver petitions will be put on public notice for comments and oppositions.

(b) The CVAA and the rules adopted in document FCC 11–151 require service providers and equipment manufacturers that are subject to sections 255, 716, or 718 of the Act to maintain records of the following: (1) Their efforts to consult with people with disabilities; (2) descriptions of the accessibility features of their products and services; and (3) information about the compatibility of their products with peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access. These recordkeeping requirements are necessary to facilitate enforcement of accessibility obligations. Document FCC 11–151 provides flexibility by allowing covered entities to keep records in any format, recognizing the unique recordkeeping methods of individual entities. Because complaints regarding accessibility of a service or equipment may not occur for years after the release of the service or equipment, covered entities must keep records for two years from the date the service ceases to be offered to the public or the equipment ceases to be manufactured. Service providers and equipment manufacturers are not required to keep records of their consideration of achievability or the implementation of accessibility, but they must be prepared to carry their burden of proof in any enforcement proceeding, which requires greater than conclusory or unsupported claims.

(c) The CVAA and the rules adopted in document FCC 11–151 require an officer of service providers and equipment manufacturers that are subject to sections 255, 716, or 718 of the Act to certify annually to the Commission that records are kept in accordance with the recordkeeping requirements. The certification must be supported with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the entity with personal knowledge of the representations provided in the company's certification, verifying the truth and accuracy of the information. The certification must also identify the name and contact details of the person or persons within the company that are authorized to resolve accessibility complaints, and the agent designated for service of process. The certification must be filed with the Consumer and Governmental Affairs Bureau on or before April 1 each year for records pertaining to the previous calendar year. The certification must be updated when necessary to keep the contact information current.

(d) The Commission also established procedures in document FCC 11–151 to facilitate the filing of formal and informal complaints alleging violations of sections 255, 716, or 718 of the Act. Those procedures include a nondiscretionary pre-filing notice procedure to facilitate dispute resolution. As a prerequisite to filing an informal complaint, complainants must first request dispute assistance from the Consumer and Governmental Affairs Bureau's Disability Rights Office.

The rules adopted in document FCC 11–151 temporarily exempt advanced communications service providers and equipment manufacturers from the accessibility obligations of section 716 of the Act and, in effect, from the recordkeeping requirements and enforcement procedures of section 717 of the Act, if they qualify as small business concerns under the Small Business Administration's (SBA) rules and size standards for the industry in which they are primarily engaged. These size standards are based on the maximum number of employees or maximum annual receipts of a business concern. The SBA categorizes industries for its size standards using the North American Industry Classification System (NAICS).

The temporary exemption will begin on the effective date of the rules adopted in document FCC 11–151 and will expire the earlier of the following: (1) The effective date of small entity exemption rules adopted pursuant to the Further Notice of Proposed Rulemaking in document FCC 11–151; or (2) October 8, 2013.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–31081 Filed 12–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First Arkansas BancShares, Inc., Jacksonville, Arkansas,* to increase its ownership in BV Card Assets, LLC, Atlanta, Georgia, from 18 percent to 100

percent, and thereby continue to engage in lending activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 27, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–33537 Filed 12–29–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

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 committee:

Dates: Times and Dates: 8:30 a.m.–5 p.m., February 14, 2012. 8:30 a.m.–12:30 p.m., February 15, 2012.

Place: Marriott Atlanta Century Center, 2000 Century Boulevard NE., Atlanta, Georgia 30345.

Online Registration Required: All CLIAC attendees are required to register for the meeting online at least 5 business days in advance for U.S. citizens and at least 10 business days in advance for international registrants. Register at *http://wwwn.cdc.gov/cliac/default.aspx* by scrolling down and clicking the appropriate link under ''Meeting Registration'' (either U.S. Citizen Registration or Non-U.S. Citizen Registration) and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than February 7, 2012 for U.S. registrants and January 31, 2012 for international registrants.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary, Department of Health and Human Services; the Assistant Secretary for Health; the Director, CDC; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS), regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include agency updates from the CDC, the Centers for Medicare & Medicaid Services (CMS), and the Food and Drug Administration (FDA). Additional agenda items include presentations and discussions addressing the following: activities of the Coordinating Council on the Clinical Laboratory Workforce; laboratory communication and electronic health records, integration of laboratory services into healthcare models; automated cytology workload limits; and emerging challenges in digital pathology.

Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. Oral Comments: In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date. Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Availability of Meeting Materials: To support the green initiatives of the federal government, the CLIAC meeting materials will be made available to the public in electronic format (PDF) on the Internet instead of by printed copy. Refer to the CLIAC Web site on the day of the meeting for materials. *http://wwwn.cdc.gov/cliac/cliac_meeting_all_documents.aspx.*

An Internet connection, power source and limited hard copies may be available at the meeting location, but cannot be guaranteed.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Science and Standards, Laboratory Science, Policy and Practice Program Office, Office of Surveillance, Epidemiology and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop F–11, Atlanta, Georgia 30333; telephone (404) 498–2741; fax (404) 498–2219; or via email at *Nancy.Anderson@cdc.hhs.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 22, 2011.

Ronald Ergle,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–33388 Filed 12–29–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Data Coordinating Center for Autism and Other Developmental Disabilities Research and Epidemiologic Studies, RFA DD12–001, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11 a.m.–5 p.m., February 14, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Data Coordinating Center for Autism and Other Developmental Disabilities Research and Epidemiologic Studies, RFA DD12–001, initial review.''

For Further Information Contact: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–46, Atlanta, Georgia 30341, Telephone: (770) 488–3585.

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 23, 2011.

Ronald Ergle,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–33574 Filed 12–29–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Request for Nominations of Candidates To Serve on the Advisory Committee on Breast Cancer in Young Women (ACBCYW)

The CDC is soliciting nominations for membership on the ACBCYW. The Committee provides advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; and the Director, CDC, regarding the formative research, development, implementation and evaluation of evidence-based activities designed to prevent breast cancer (particularly among those at heightened risk) and promote the early detection and support of young women who develop the disease. The advice provided by the Committee will assist in ensuring scientific quality, timeliness, utility, and dissemination of credible appropriate messages and resource materials.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. The Secretary, HHS, acting through the Director, CDC, shall appoint to the advisory committee nominees with expertise in breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in young women, or in related disciplines with a specific focus on young women. Members may be invited to serve for up to four years. The next cycle of selection of candidates will begin in the winter of 2012, for selection of potential nominees to replace members whose terms will end on October 15, 2012 and October 15, 2013 respectively.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACBCYW objectives *http://www.cdc.gov/maso/FACM/facmACBCYW.htm*. The U.S. Department of Health and Human Services will give close attention to equitable geographic distribution and to minority and female representation so long as the effectiveness of the Committee is not impaired. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government.

Candidates should submit the following items:

- Current curriculum vitae or resume, including complete contact information (name, affiliation, mailing address, telephone numbers, fax number, email address);
- A 150 word biography for the nominee;
- At least one letter of recommendation from a person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by HHS.

Nominations should be submitted (postmarked or received) by January 25, 2012.

- *Electronic submission:* You may submit nominations, including attachments, electronically to *acbcyw@cdc.gov*.
- *Regular, Express or Overnight Mail:* Written nominations may be submitted to the following addressee only: Temeika L. Fairley, Ph.D., c/o ACBCYW Designated Federal Officer, CDC, 4770 Buford Highway NE., Mailstop K–52, Atlanta, Georgia 30341.

Telephone and facsimile submissions cannot be accepted. Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

Candidates invited to serve will be asked to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the Centers for Disease Control and Prevention.'' This form allows CDC to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee 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 at *http://www.usoge.gov/forms/oge450_pdf/oge450_accessible.pdf*. This form should not be submitted as part of the nomination.

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 the Agency for Toxic Substances and Disease Registry.

Dated: December 23, 2011.

Ronald Ergle,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–33576 Filed 12–29–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0827]

Agency Information Collection Activities; Proposed Collection; Comment Request; Revisions to Labeling Requirements for Blood and Blood Components, Including Source Plasma

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on certain labeling requirements for blood and blood components, including Source Plasma. These requirements will facilitate the use of a labeling system using machine-readable information that would be acceptable as a system for labeling blood and blood components, and the use of new labeling systems that may be developed in the future. Additionally, these requirements are issued to help ensure the continued safety of the blood supply and facilitate consistency in labeling.

DATES: Submit either electronic or written comments on the collection of information by February 28, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of

Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–7651, *Juanmanuel.vilela@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. This document solicits comments on certain labeling requirements for blood and blood components, including Source Plasma, finalized as part of a rule FDA is publishing elsewhere in this **Federal Register** entitled ''Revisions to Labeling Requirements for Blood and Blood Components, Including Source Plasma.''

Revisions to Labeling Requirements for Blood and Blood Components, Including Source Plasma—(OMB Control Number 0910–NEW)

FDA is finalizing the labeling requirements for blood or blood components intended for use in transfusion or for further manufacture pursuant to the provisions of the Public Health Service Act (PHS Act) (42 U.S.C. 262–264), and the drugs, devices, and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351–353, 355, 360, 360j, 371, and 374). Under these provisions of the PHS Act and the Federal Food, Drug, and Cosmetic Act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, potent, and properly labeled, and to prevent the introduction, transmission, and spread of communicable disease.

Under this rulemaking, FDA is consolidating the regulations related to labeling blood and blood components. Regulations for labeling of blood and blood components will be consolidated into § 606.121 (Container label) (21 CFR 606.121) and 21 CFR 606.122 (Circular of information). This notice solicits comments on the information collection associated with § 606.121(c)(11) (21 CFR 606.121(c)(11)) which requires that if the product is intended for further manufacturing use, a statement listing the results of all the tests for communicable disease agents required under § 610.40 (21 CFR 610.40) for which the donation has been tested and found negative must be on the container label; except that the label for Source Plasma is not required to list the negative results of serological syphilis testing under § 610.40(i) (21 CFR 610.40(i)) and § 640.65(b) (21 CFR 640.65(b)). In addition, this notice also solicits comments on the information collection associated with § 606.121(e)(2)(i) (21 CFR 606.121(e)(2)(i)) which requires that the product labels of certain red blood cells must include the type of additive solution with which the product was prepared.

The Agency believes the rule amendments and the information collection provisions under § 606.121(c)(11) and § 606.121(e)(2)(i) in the final rule are part of usual and customary business practice and do not create any new burden for respondent.

The collection of information requirements under §§ 606.121 and 606.122 are approved under OMB control number 0910–0116; and those in 21 CFR 640.70 have been approved under OMB control number 0910–0338. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: December 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33555 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0619]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices: Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 30, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: (202) 395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0332. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, (301) 796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices: Humanitarian Use Devices—(OMB Control Number 0910–0332)—Extension

This collection of information implements the humanitarian use device (HUD) provision of section 520(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(m)) and subpart H, part 814 (21 CFR part 814). Under section 520(m) of

the FD&C Act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless an exemption is granted because there is no comparable device other than another HUD approved under this exemption that is available to treat or diagnose the disease or condition; and (3) will not expose patients to an unreasonable or significant risk of illness or injury with the probable benefit to health from using the device outweighing the risk of injury or illness from its use. This takes into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collected will assist FDA in making determinations on the following: (1) Whether to grant HUD designation of a medical device; (2) exempt an HUD from the effectiveness requirements under sections 514 and 515 of the FD&C Act, provided that the device meets requirements set forth under section 520(m) of the FD&C Act; and (3) whether to grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making a determination on the factors listed previously in this document. Further, the collected information would also enable FDA to determine whether the holder of an HUD is in compliance with the HUD provisions under section 520(m) of the FD&C Act.

The number of respondents in tables 1 and 2 of this document are an average from data for the previous 3 years, *i.e.,* fiscal years 2008 to 2010. The number of annual reports submitted under section 814.126(b)(1) in table 1 reflects 43 respondents with approved HUD applications. Likewise, under section 814.126(b)(2) in table 2, the number of recordkeepers is 43.

In the **Federal Register** of September 7, 2011 (76 FR 55394), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
814.102	17	1	17	40	680
814.104	5	1	5	320	1,600
814.106	5	5	25	50	1,250
814.108	47	1	47	80	3,760
814.116(e)(3)	3	1	3	1	3
814.124(a)	22	1	22	1	22
814.124(b)	12	1	12	2	24
814.126(b)(1)	43	1	43	120	5,160
Total					12,499

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeeper	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
814.126(b)(2)	43	1	43	2	86

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 27, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33551 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–P–0555]

Determination That HYCODAN (Hydrocodone Bitartrate and Homatropine Methylbromide) Tablets, 5 Milligrams/1.5 Milligrams, and HYCODAN (Hydrocodone Bitartrate and Homatropine Methylbromide) Oral Solution, 5 Milligrams/5 Milliliters and 1.5 Milligrams/5 Milliliters, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 milligrams (mg)/1.5 mg, and HYCODAN (hydrocodone bitartrate and homatropine methylbromide) oral solution, 5 mg/5 milliliters (mL) and 1.5 mg/5 mL, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for hydrocodone bitartrate and homatropine methylbromide tablets, 5 mg/1.5 mg, and HYCODAN (hydrocodone bitartrate and homatropine methylbromide) oral solution, 5 mg/5 mL and 1.5 mg/5 mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Kristiana Brugger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6262, Silver Spring, MD 20993–0002, (301) 796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 mg/1.5 mg, and HYCODAN (hydrocodone bitartrate and homatropine methylbromide) oral solution, 5 mg/5 mL and 1.5 mg/5 mL, are the subject of NDA 05–213, held by Endo Pharmaceuticals, and initially approved on March 23, 1943. In 1982, a Drug Efficacy Study Implementation review concluded that HYCODAN syrup, tablets, and powder were effective ''for the symptomatic relief of cough.'' (47 FR 23809, June 1, 1982). Subsequently, the sponsor submitted an NDA for HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 mg/1.5 mg, and HYCODAN (hydrocodone bitartrate and homatropine methylbromide) oral solution, 5 mg/5 mL and 1.5 mg/5 mL, which was approved on July 26, 1988. HYCODAN is indicated for the symptomatic relief of cough in adults and children 6 years of age and older.

In a letter dated January 4, 2008, Endo Pharmaceuticals notified FDA that HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 mg/1.5 mg, were being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book. Vintage Pharmaceutical, Inc., submitted a citizen petition dated October 15, 2008 (Docket No. FDA–2008–P–0555), under 21 CFR 10.30, requesting that the Agency determine whether HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 mg/1.5 mg, were withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not request it, FDA has determined, on its own initiative, whether the oral solution dosage form was withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 mg/1.5 mg, and HYCODAN (hydrocodone bitartrate and homatropine methylbromide) oral solution, 5 mg/5 mL and 1.5 mg/5 mL, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 mg/1.5 mg, or HYCODAN (hydrocodone bitartrate and homatropine methylbromide) oral solution, 5 mg/5 mL and 1.5 mg/5 mL, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 mg/1.5 mg, and HYCODAN (hydrocodone bitartrate and homatropine methylbromide) oral solution, 5 mg/5 mL and 1.5 mg/5 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that these products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 mg/1.5 mg, and HYCODAN (hydrocodone bitartrate and homatropine methylbromide) oral solution, 5 mg/5 mL and 1.5 mg/5 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to HYCODAN (hydrocodone bitartrate and homatropine methylbromide) tablets, 5 mg/1.5 mg, or HYCODAN (hydrocodone bitartrate and homatropine methylbromide) oral solution, 5 mg/5 mL and 1.5 mg/5 mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33549 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0868]

Draft Guidance for Industry on Responding to Unsolicited Requests for Off-Label Information About Prescription Drugs and Medical Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Responding to Unsolicited Requests for Off-Label Information About Prescription Drugs and Medical Devices.'' This draft guidance responds to stakeholder requests for specific guidance on FDA's current views on how manufacturers and distributors (firms) of prescription human and animal drug products and

medical devices can respond to unsolicited requests for information about unapproved or uncleared indications or conditions of use (off-label information) related to their FDA-approved or cleared products. This draft guidance updates and clarifies FDA's policies on unsolicited requests for off-label information, including those that firms may encounter through emerging electronic media.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 29, 2012. Submit written comments on the proposed collection of information by February 28, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communications, Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; to the Communications Staff, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl. (HFV–12), Rockville, MD 20855; or to the Division of Small Manufacturers, International and Consumer Assistance, Office of Communication, Education and Radiation Programs, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding human prescription drugs: Jean-Ah Kang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Silver Spring, MD 20993, (301) 796–1200.

Regarding prescription human biological products: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, (301) 827–6210.

Regarding animal prescription drugs: Dorothy McAdams, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 276–9300.

Regarding medical devices: Deborah Wolf, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993, (301) 796–5732.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Responding to Unsolicited Requests for Off-Label Information About Prescription Drugs and Medical Devices.'' In July 2011, FDA received a citizen petition, filed on behalf of seven prescription drug manufacturers, seeking additional clarification on several areas of FDA policy regarding distribution of information about prescription drugs. One of the areas was how to respond to unsolicited requests from health care professionals or consumers for information about off-label uses of approved products.

In addition, on November 12 and 13, 2009, FDA held a Part 15 public hearing on ''Promotion of FDA-Regulated Medical Products Using the Internet and Social Media Tools'' to provide an opportunity for broad public participation and comment on the following questions that relate specifically to promotional issues: (1) For what online communications are manufacturers, packers, or distributors accountable? (2) How can manufacturers, packers, or distributors fulfill regulatory requirements (*e.g.,* fair balance, disclosure of indication and risk information, post-marketing submission requirements) in their internet and social media promotion, particularly when using tools that are associated with space limitations and tools that allow for real-time communications (*e.g.,* microblogs, mobile technology)? (3) What parameters should apply to the posting of corrective information on Web sites controlled by third parties? (4) When is the use of links appropriate? Subsequent to the live testimony heard at the Part 15 public hearing, FDA received 72 comments to the docket. This draft guidance is the first of multiple draft guidances the Agency plans to publish that address questions and issues related to emerging electronic media.

This draft guidance provides FDA's recommendations to firms wishing to respond to unsolicited requests for off-label information about their products, including both requests made directly and privately to firms and requests made in public forums, including through emerging electronic media. This draft guidance discusses the difference between unsolicited and solicited requests and presents a number of examples of both types of requests. If a firm responds to unsolicited requests for off-label information in the manner described in this draft guidance, FDA does not intend to use such responses as evidence of the firm's intent that its product be used for an unapproved or uncleared use. Such responses also would not be expected to comply with the disclosure requirements related to promotional labeling and advertising. Firms may choose to respond to unsolicited requests for information about off-label uses of their approved or cleared products in a manner other than that recommended in this draft guidance. Such activity would not constitute a per se violation of the law, but could potentially be introduced as evidence of a new intended use.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on responding to unsolicited requests for off-label information about prescription drugs and medical devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information

before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden 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 collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Industry Responses to Unsolicited Requests for Off-Label Information About Prescription Drugs and Medical Devices.

Description of Respondents: Respondents to this collection of information are manufacturers and distributors (firms) of prescription human and animal drug products or medical devices.

Burden Estimate: The draft guidance pertains to the dissemination of scientific or medical information about off-label uses for approved or cleared products by FDA-regulated industry when it responds to (1) non-public unsolicited requests for off-label information made directly and privately to them, or (2) public unsolicited requests for off-label information, including those that firms may encounter through emerging electronic media.

The draft guidance explains that FDA's current policy position is that, regardless of whether the initial unsolicited request for off-label information was made in a non-public or public forum, FDA does not intend to use the firm's actions as evidence of a new intended use, nor expect distributed materials to conform to existing regulatory requirements for promotional labeling or advertising, if the firm responds in the manner outlined in the guidance. Specifically, the draft guidance recommends that a firm that chooses to respond to an unsolicited request for off-label information provide the final response containing the requested off-label information about its product only to the specific individual who requested the information as a private, one-on-one communication. FDA also recommends that information distributed in response to an unsolicited request be truthful, non-misleading, accurate, balanced, and non-promotional scientific or medical information that is tailored to answer only the specific question asked, even if responding to the request requires the firm to provide information regarding unapproved or uncleared indications or conditions of use. To meet this standard, the draft guidance recommends that firms disclose certain information to others when responding to their unsolicited requests. This ''third-party disclosure'' constitutes a ''collection of information'' under the PRA. In addition, the PRA is triggered because the draft guidance also recommends that firms maintain certain records related to this disclosure.

Non-Public Responses

When providing *non-public* responses to unsolicited requests for information about unapproved or uncleared indications or conditions of use, the draft guidance recommends the following:

- A response should provide non-biased information or data relating to the particular off-label use that is the subject of the request, including applicable data that are not supportive or that cast doubt on the safety or efficacy of that use. For example, when conclusions of articles or texts that are disseminated have been specifically called into question by other articles or texts, a firm should disseminate representative publications that reach contrary or different conclusions regarding the use at issue. The response should include complete copies of scientific reprints, technical literature, or other scientific and medical information responsive to the request, not just summary documents or abstracts prepared by the firm. The response may include unpublished data on file if they are responsive to the specific request (either supporting or casting doubt on the safety or efficacy of the off-label use). However, to the greatest extent possible, a firm should rely on published peer-reviewed journal articles, medical texts, or data derived from independent sources. To the extent the response consists of published reprints from journals, those reprints should be from journals that have a publicly stated policy, to which the organization adheres, of full disclosure of any conflict of interest or biases for all authors, contributors, or editors associated with the journal or organization.

In addition to responsive materials as described previously in this document, the guidance recommends that the following information be provided to the requestor:

1. A copy of the FDA-required labeling, if any, for the product (*e.g.,* FDA-approved package insert and, if the response is for a consumer, FDA-approved patient labeling or, for new animal drugs, FDA-approved client information sheet).
2. A prominent statement notifying the recipient that FDA has not approved or cleared the product as safe and effective for the use addressed in the materials provided.
3. A prominent statement disclosing the indication(s) for which FDA has approved or cleared the product.
4. A prominent statement providing all relevant safety information including, if applicable, any boxed warning for the product.
5. A complete list of references for all of the information disseminated in the response (*e.g.,* a bibliography of publications in peer-reviewed medical journals or in medical or scientific texts; citations for data on file, for summary documents, or for abstracts).

Finally, the draft guidance recommends that a firm maintain the following related records:

1. The nature of the request for information, including the name, address, and affiliation of the requestor.
2. Records regarding the information provided to the requestor.
3. Any followup inquiries or questions from the requestor.

Public Responses

When providing *public* responses to unsolicited requests for information about unapproved or uncleared indications or conditions of use, the draft guidance recommends that the following information be disclosed to the requestor:

1. A firm's public response to public unsolicited requests for off-label information about its named product should convey that the question pertains to an unapproved or uncleared use of the product and be limited to providing the firm's contact information for the medical or scientific personnel or department so that individuals can follow up independently with the firm to obtain specific information about the off-label use of the product through a non-public, one-on-one communication. After an individual has privately contacted the firm for more information regarding an off-label use of the firm's product, the firm should provide a detailed response and maintain records following the parameters outlined in Section V of the draft guidance (and summarized previously in this

document for non-public responses to unsolicited requests).

2. Representatives who provide public responses to unsolicited requests for off-label information should clearly disclose their involvement with a particular firm.

3. Public responses to public unsolicited requests for off-label information should not be promotional in nature or tone and should include a mechanism for providing readily accessible FDA-required labeling, if any, for the product (*e.g.,* FDA-approved package insert and, if the response is for a consumer, FDA-approved patient labeling or, for new animal drugs, FDA-approved client information sheet).

FDA estimates that approximately 400 firms respond annually to approximately 40,000 non-public unsolicited requests for off-label information made directly and privately to them as well as to public unsolicited requests for off-label information, including those that firms may encounter on emerging electronic media. FDA estimates that it will take firms approximately 4 hours to provide responses to each unsolicited request for off-label information as recommended in the draft guidance.

FDA also estimates that approximately 40,000 records will be maintained for all responses to non-public and public unsolicited requests for off-label information, and that each record will take approximately 15 minutes to prepare and maintain.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Draft guidance on responding to unsolicited requests for off-label information	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Responses to non-public and public unsolicited requests	400	100	40,000	4	160,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Draft guidance on responding to unsolicited requests for off-label information	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Records related to responses to non-public and public unsolicited requests	400	100	40,000	.25	10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons can submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either

http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,

http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,

http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm,

http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm, or *http://www.regulations.gov*.

Dated: December 27, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33550 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0872]

Draft Guidance for Industry on Use of Histology in Biomarker Qualification Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Use of Histology in Biomarker Qualification Studies.'' This guidance is intended to assist sponsors that conduct biomarker qualification studies for which histology is a reference standard. This guidance discusses the processes that should be considered to ensure the quality and integrity of histology data in biomarker studies, and outlines the scientific standards for histology used in biomarker characterization and qualification. The recommendations in this guidance are intended for studies in biomarker qualification designated to justify the proposed context of use, where scientifically rigorous evaluation of biomarker performance in relation to histologic changes is essential. The principles outlined in this guidance are also applicable to exploratory biomarker studies.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 29, 2012.

Submit either electronic or written comments concerning the proposed collection of information by February 28, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY**

INFORMATION section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hausner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4145, Silver Spring, MD 20993–0002, (301) 796–1084.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Use of Histology in Biomarker Qualification Studies.'' The discovery, characterization, qualification, and implementation of biomarkers have been identified by the FDA Critical Path Initiative as an important means for improving the efficiency and success rate of medical product development. Biomarkers have been broadly applied to describe the following:

- Structural features from the molecular to the anatomic level (*e.g.,* genetic composition, receptor expression patterns, radiographic appearances);
- Biochemical measurements (*e.g.,* serum levels of electrolytes, enzyme activity levels, prostate-specific antigen);
- Physiologic organ system function (*e.g.,* creatinine clearance, pulmonary function tests, cardiac ejection fraction, electrocardiography).

The studies to be submitted in support of a biomarker qualification will depend upon the proposed context of use and the ultimate goal of the submission. If a biomarker becomes qualified, analytically valid measurements of it can be relied upon to have a specific and interpretable meaning (*e.g.,* physiologic, toxicologic, pharmacologic, or clinical) in drug development and regulatory decisionmaking. Industry can then employ the biomarker for the qualified context of use during premarketing drug development, and FDA reviewers can be confident about the qualified context of use without the need to reconfirm its applicability or utility. Accordingly, biomarker qualification studies are held to the same Good Laboratory Practice standards as are other premarketing studies.

Traditionally, histology has been used to identify morphologic changes in the context of nonclinical safety assessment, clinical diagnosis, and evaluation of response to therapy. There is a strong correlation between specific histology findings, clinical outcomes, and some clinical chemistry parameters. Because of this history, histology is currently used in biomarker qualification as a reference standard to evaluate the sensitivity and specificity of potential biomarkers and their ability to indicate temporal correlation with the evolution and reversibility of morphologic changes. Because of the many variations in the practice of histology, this guidance is offered to facilitate quality, consistency, and scientific rigor in biomarker qualification studies where histology is used as a reference standard.

Although great benefit may accrue from use of a qualified biomarker, a poorly characterized biomarker can do considerable harm. A poorly characterized biomarker may lead to inappropriate removal of a drug from development, encourage development of a drug that is unlikely to be approved, or lead to an erroneous perception of safety. Thus, for biomarkers to achieve the desired goal, the science that identifies, characterizes, and informs the biomarker use should be unbiased and of the highest quality.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the use of histology in biomarker qualification studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)), requires Federal Agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This draft guidance refers to previously approved collections of information found in FDA regulations. Sections II, IV, V, and VI of the guidance request that certain information be submitted to FDA and certain records be maintained by the sponsor. We may request this information under 21 CFR 58.81, 58.120, 58.185, 312.23, and 312.53. The collections of information for 21 CFR parts 58 and 312 have been approved under OMB control numbers 0910–0119 and 0910–0014, respectively.

The draft guidance discusses certain information that should be described in the standard operating procedures (SOPs) and recommends that sponsors document and maintain records of the SOPs. In addition to the SOPs already covered by previously approved collections of information, the draft guidance recommends that two new procedures be included in the SOPs. The new procedures that require OMB approval for the collection of information are as follows: (1) Procedures for describing and documenting the type and extent of background lesions and (2) a detailed description of the pathology peer review process, including how disagreements among reviewers will be adjudicated.

Based on FDA's data on the number of sponsors that would be covered by the draft guidance, we estimate that approximately 180 SOPs related to histologic evaluation will include the new procedures, and that sponsors will need approximately 30 minutes to document, maintain, and update their SOPs with the new procedures.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED RECORDKEEPING BURDEN [1]

	Number of record-keepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping (in hours)	Total hours
SOP New Procedures	30	6	180	0.5	90
Total					90

[1] There are no capital costs or operating and maintenance costs associated with this information collection.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: December 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33553 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0659]

Guidance for Industry: Current Good Tissue Practice and Additional Requirements for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Current Good Tissue Practice (CGTP) and Additional Requirements for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated December 2011. The guidance document provides recommendations to establishments for complying with CGTP and additional requirements for manufacturers of HCT/Ps. The guidance is intended for any HCT/P establishment that performs a manufacturing step and is responsible for complying with CGTP requirements. The guidance also addresses whether the establishment registration and HCT/P listing requirements apply in certain instances. The guidance announced in this notice finalizes the draft guidance of the same title dated January 2009.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–(800) 835–4709 or (301) 827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lori Jo Churchyard, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, (301) 827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Current Good Tissue Practice (CGTP) and Additional Requirements for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated December 2011. The guidance provides recommendations for complying with the CGTP requirements under part 1271 (21 CFR part 1271), subpart D, and additional requirements for manufacturers of HCT/Ps under part 1271, subpart E. The guidance is intended for any HCT/P establishment that performs a manufacturing step and is responsible for complying with CGTP requirements. However, at this time, part 1271, subpart D (with the exceptions of §§ 1271.150(c) and 1271.155) and subpart E do not apply to reproductive HCT/P establishments regulated solely under section 361 of the Public Health Service Act (42 U.S.C. 264) (the PHS Act). In consideration of the input FDA received from stakeholders, this guidance provides recommendations for establishments that manufacture HCT/Ps that meet the criteria listed in § 1271.10 and are regulated solely under section 361 of the PHS Act and the regulations in part 1271. CGTP requirements also apply to HCT/Ps regulated as drugs, devices, and/or biological products under section 351 of the PHS Act (42 U.S.C. 262) and/or the Federal Food, Drug, and Cosmetic Act (see § 1271.1(b)(2)). The guidance also addresses whether the establishment registration and HCT/P listing requirements under part 1271, subparts A and B, apply in certain instances.

In the **Federal Register** of January 16, 2009 (74 FR 3055), FDA announced the availability of the draft guidance of the same title dated January 2009. FDA received numerous comments on the draft guidance, and those comments were considered as the guidance was finalized. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated January 2009.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 1271 have been approved under OMB control number 0910–0543, and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: December 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33572 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 9, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm*; under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Caleb Briggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, (301) 796–9001, FAX: (301) 847–8533, email: *ODAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–(800) 741–8138; (301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: During the morning session, the committee will discuss supplemental new drug application (NDA) 21790/010 for DACOGEN (decitabine) for injection, application submitted by Eisai, Inc. The proposed indication (use) for this product is for the treatment of acute myelogenous leukemia (AML) in adults 65 years of age or older who are not considered candidates for induction chemotherapy, which is the standard first phase of treatment for AML.

During the afternoon session, the committee will discuss NDA 022481, with the proposed trade name PIXUVRI (pixantrone dimaleate) injection, application submitted by Cell Therapeutics, Inc. The proposed indication (use) for this product is as a single agent treatment for patients with relapsed or refractory (difficult to treat), aggressive Non-Hodgkin's Lymphoma who received two or more prior lines of therapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 25, 2012. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m., and 3:30 p.m. to 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 17, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 18, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caleb Briggs at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 23, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33552 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 23, 2012, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/ Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD 20910. The hotel's telephone number is (301) 589–5200.

Contact Person: Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, (301) 796–9001, Fax: (301) 847–8533, email: *CRDAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1 (800) 741–8138 ((301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 203202, proposed trade name NORTHERA (droxidopa capsules), submitted by Chelsea Therapeutics, Inc., for the treatment of symptomatic neurogenic orthostatic hypotension in patients with primary autonomic failure (Parkinson's Disease, Multiple System Atrophy, and Pure Autonomic Failure), Dopamine Beta-Hydroxylase Deficiency, and Non-Diabetic Autonomic Neuropathy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 8, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 31, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 1, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 23, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33561 Filed 12–29–11; 8:45 am]

BILLING CODE 4130–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 8, 2012, from 8 a.m. to 12:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Caleb Briggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, (301) 796–9001, Fax: (301) 847–8533, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1 (800) 741–8138 ((301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about

last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss supplemental biologics license application 125320/28 for XGEVA (denosumab) injection, application submitted by Amgen Inc. The proposed indication (use) for this product is for the treatment of men with castrate-resistant prostate cancer at high risk of developing bone metastases, or spread of cancer to the bones.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 25, 2012. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11:30 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 17, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 18, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caleb Briggs at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 22, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33548 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0247]

Food and Drug Administration Transparency Initiative: Food and Drug Administration Report on Good Guidance Practices: Improving Efficiency and Transparency; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments.

SUMMARY: As part of the Transparency Initiative, the Food and Drug Administration (FDA or Agency) is announcing the availability of a report entitled ''Food and Drug Administration Report on Good Guidance Practices: Improving Efficiency and Transparency.'' This report was prepared in response to Action Item 11 in the *Phase III Report* (FDA Transparency Initiative: Improving Transparency to Regulated Industry, dated January 2011). In that action item, the Commissioner of Food and Drugs (the Commissioner), Dr. Margaret A. Hamburg, called for a cross-Agency working group to prepare a report identifying FDA's ''best practices'' and making recommendations to streamline the development of guidance documents, reduce the time between issuing draft and final guidance documents, and make it easier to find guidance documents on FDA's Web site.

DATES: Submit either electronic or written comments by February 28, 2012.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets at the heading of this document.

FOR FURTHER INFORMATION CONTACT: Lisa M. Dwyer, Office of Policy, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4228, Silver Spring, MD 20993, (301) 796–4820, FAX: (301) 847–8616, *lisa.dwyer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 2009, President Obama issued a memorandum urging the heads of executive departments and Agencies to create an ''unprecedented level of openness'' to ''strengthen our democracy and promote efficiency and effectiveness'' (see *Memorandum* to Heads of Executive Departments and Agencies on Transparency and Open Government, January 21, 2009, (74 FR 4685, January 26, 2009)). In response, the following June FDA launched its Transparency Initiative. Information on the FDA Transparency Initiative is available at *http://www.fda.gov/AboutFDA/Transparency/TransparencyInitiative/default.htm.*

As part of this initiative, FDA issued the *Phase III Report* (FDA Transparency Initiative: Improving Transparency to Regulated Industry, dated January 2011) in January 2011. The *Phase III Report* contained 19 action items and 5 draft proposals to make FDA's operations and decisionmaking processes more transparent and to foster more efficient and cost-effective regulatory processes. In Action Item 11 of the *Phase III Report,* the Commissioner called for a cross-Agency working group to prepare a report identifying FDA's ''best practices'' and making recommendations to: (1) Streamline the development of guidance documents, (2) reduce the time between issuing draft and final guidance documents, and (3) make it easier to find guidance documents on FDA's Web site.

In response to that action item, a cross-Agency working group under the leadership of the Office of Policy in the Office of the Commissioner prepared a report entitled ''Food and Drug Administration Report on Good Guidance Practices: Improving Efficiency and Transparency'' (GGP

Report). The GGP Report identifies current ''best practices'' and recommends strategies to make the Agency's guidance processes more efficient and transparent. The cross-Agency working group submitted the GGP Report to the Commissioner on September 30, 2011.

These ''best practices'' and strategies are critical to the Agency because developing and issuing guidance documents is an enormous undertaking and one that is critical to fulfilling FDA's mission. In fiscal year (FY) 2009, the Agency issued approximately 124 guidance documents. Since that time, its issuance of guidance documents has been trending upward, with the Agency issuing approximately 133 guidance documents in FY 2010 and approximately 144 guidance documents in FY 2011. These numbers include draft and final Level 1 guidance documents and Level 2 guidance documents.

Guidance documents are prepared for FDA staff, the regulated industry, and/or the public and describe the Agency's interpretation of or policy on a regulatory issue (§ 10.115(b) (21 CFR 10.115(b)). Unlike statutes and regulations, guidance documents do not establish legally enforceable rights or responsibilities (§ 10.115(d)). There are two types of guidance documents: Level 1 and Level 2. Level 1 guidance documents are those that: (1) Set forth initial interpretations of statutory or regulatory requirements, (2) set forth changes in interpretation or policy that are of more than a minor nature, (3) include complex scientific issues, or (4) cover highly controversial issues (§ 10.115(c)). In contrast, Level 2 guidance documents set forth existing practices or minor changes in interpretation or policy. Level 2 guidance documents include all guidance documents that are not classified as Level 1 (see *id.*).

FDA's Good Guidance Practices regulation (§ 10.115) governs the development and issuance of guidance documents, and it gives interested persons a number of opportunities to provide input into the guidance document development process. Generally, FDA solicits public input on Level 1 guidance documents before implementation. The Agency posts draft Level 1 guidance documents on its Web site, and it publicizes them by issuing a Notice of Availability (NOA) in the **Federal Register**. Generally, the Agency accepts public comments on the guidance document for 60 days. In some instances, FDA may also hold public meetings or workshops on draft Level 1 guidance documents to solicit additional comments, or present the draft Level 1 guidance document to an advisory committee for review. Once the comment period has closed, the Agency reviews the comments and considers them as it prepares the final guidance document. The Agency also posts final Level 1 guidance documents on its Web site and publicizes them by issuing an NOA in the **Federal Register**.

Generally, FDA does not solicit public input on Level 2 guidance documents or on Level 1 guidance documents ''for immediate implementation'' (i.e., Level 1 guidance documents for which ''prior public participation is not feasible or appropriate,'' § 10.115(g)(2)) before implementing the guidance document. However, FDA publishes an NOA in the **Federal Register** for Level 1 guidance ''for immediate implementation'' and posts both types of guidance documents on its Web site, and interested persons may comment on them at any time after they have been issued. FDA will review the comments and revise the guidance documents, as appropriate. This streamlined approach permits FDA to issue Level 1 guidance documents ''for immediate implementation'' and Level 2 guidance documents more expeditiously than standard Level 1 guidance documents, while still providing stakeholders with an opportunity to comment. Importantly, the additional administrative steps required for standard Level 1 guidance documents (*i.e.*, issuing a draft guidance document, providing a comment period, and issuing a final guidance document) generally make the issuance of standard Level 1 guidance documents a longer process.

In addition to the opportunity to comment on guidance documents themselves, interested persons have opportunities to provide input to FDA on topics for guidance documents. FDA publishes an annual guidance agenda, listing possible topics for future guidance document development or revision during the next year. FDA's most recent guidance agenda may be found in the **Federal Register** (75 FR 76011, December 7, 2010) online at *http://edocket.access.gpo.gov/2010/pdf/2010-30623.pdf.* Interested persons may submit comments on the topics on the list or comments that suggest additional topics for guidance. Interested persons also may identify issues in citizen petitions that the Agency may decide to address by issuing a guidance document. (The procedures for filing citizen petitions are in 21 CFR 10.30.)

Requests for guidance documents also come to FDA informally. Frequently, interested persons identify issues that would benefit from guidance at advisory committee meetings, industry meetings, roundtables, and listening sessions or by contacting the appropriate FDA office. Interested persons sometimes submit a proposed draft guidance document to FDA. Submitting proposed draft guidance documents, rather than guidance topics, enables FDA to approach a guidance topic with a better understanding of the issues that interest the stakeholder. This may expedite the guidance document development process, particularly if the topic involves novel scientific issues. FDA solicits proposed draft guidance at a variety of different venues, such as trade association meetings and on the FDA Web site. Interested persons may submit proposed draft guidance documents on unsolicited topics as well.

All guidance topic suggestions and proposed draft guidance documents are taken into consideration, but resource limitations may prevent us from responding to each suggestion. In addition, resource limitations often prevent the Agency from taking action on the suggestions, as may legal constraints and policy considerations.

The Commissioner is issuing the GGP Report to the public to make the Agency's processes regarding guidance document development and issuance more transparent and to solicit public comment on the report and recommendations. The Agency looks forward to engaging with its stakeholders as it continues to seek opportunities to enhance the efficiency and transparency of the guidance document development process.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the GGP Report at either *http://www.fda.gov/downloads/AboutFDA/Transparency/TransparencyInitiative/UCM285124.pdf* or *http://www.regulations.gov.*

Dated: December 27, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–33573 Filed 12–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Initial Review Group Interventions Committee for Disorders Involving Children and Their Families.

Date: February 6, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group Mental Health Services in Non-Specialty Settings.

Date: February 7, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1225, *aschulte@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group Interventions Committee for Adult Disorders.

Date: February 9–10, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, (301) 443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Health Services in MH Specialty Settings.

Date: February 10, 2012.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Marina Broitman, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, (301) 402–8152, *mbroitma@mail.nih.gov*.

(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 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33599 Filed 12–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Beeson Review 2012/05.

Date: February 24, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road Bethesda, MD 20852

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2c/212, 7201 Wisconsin Avenue Bethesda, MD 20892, (301) 496–9666, *parsadaniana@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33597 Filed 12–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Transportation Security Officer (TSO) Medical Questionnaire

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: 60-Day Renewal Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0032, abstracted below, that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves using a questionnaire to collect medical information from candidates for the job of Transportation Security Officer (TSO) to ensure their qualifications to perform TSO duties pursuant to 49 U.S.C 44965. In certain cases, TSO candidates' health care providers may be asked to complete supplemental forms.

DATES: Send your comments by February 28, 2012.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Number 1652–0032; TSO Medical Questionnaire.

TSA currently collects relevant medical information from Transportation Security Officer (TSO) candidates who successfully complete the steps in the hiring process leading up to the medical portion. This information is used to assess whether the candidates meet the medical qualification standards the agency has established pursuant to 49 U.S.C. 44935. TSA collects this information through a medical questionnaire completed by TSO candidates and, in certain cases, supplemental forms completed by TSO candidates' health care providers. The medical questionnaire and supplemental forms are used to evaluate a candidate's physical and medical qualifications to be a TSO, including visual and aural acuity, and physical coordination and motor skills.

Candidates who disclose certain medical conditions on the medical questionnaire may be asked to have their health care provider complete one or more supplemental forms. These supplemental forms pertain to particular body systems and medical conditions, including cardiac, orthopedic, endocrine, vitals, and others; the type of supplemental form(s) completed by a candidate's health care provider depend(s) on the condition(s) revealed during a candidate's initial medical evaluation and disclosed on the initial medical questionnaire. For example, a candidate who discloses a previous back injury may be required to have his/her health care provider complete a supplemental form to enable the agency to better evaluate whether the candidate can perform the TSO job safely and efficiently without excessive risk of accident or injury to himself/herself or others. Historical data indicate that approximately 30 percent of candidates reaching the medical evaluation will be required to complete one or more further evaluation forms.

TSA estimates that the potential annual respondent population for this collection of information will be 19,175 candidates and health care providers. This number includes 14,750 candidates and 4,425 health care providers, nationwide. TSA estimates the total annual hour burden as a result of the TSO medical questionnaire and supplemental forms to be 11,677 hours.

Issued in Arlington, Virginia, on December 23, 2011.

Joanna Johnson,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–33520 Filed 12–29–11; 8:45 am]

BILLING CODE 9100–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Small Vessel Reporting System

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Establishment of a new collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: the Small Vessel Reporting System (SVRS). CBP is proposing that the SVRS be established as a new collection of information. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 65206) on October 20, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 30, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Small Vessel Reporting System.

OMB Number: Will be assigned upon approval.

Form Number: None.

Abstract: CBP proposes to establish a collection of information for the Small Vessel Reporting System (SVRS), which is a pilot program to allow certain participants using small pleasure boats to report their arrival telephonically instead of having to appear in person for inspection by a CBP officer each time they enter the United States. In some cases, a participant may also be asked to report to CBP for an in person inspection upon arrival. Participants may be U.S. citizens, U.S. lawful permanent residents, Canadian citizens, and permanent residents of Canada who are nationals of Visa Waiver Program countries listed in 8 CFR 217.2(a). In addition, participants of one or more trusted traveler pilot or programs and current Canadian Border Boater Landing Permit (CBP Form I–68) holders may also participate in SVRS.

In order to register for the SVRS pilot program, participants enter data via the SVRS Web site which collects

information such as biographical information and vessel information. Participants will go through the in person CBP inspection process during SVRS registration, and in some cases, upon arrival in the United States. SVRS is authorized by 8 U.S.C. 1103, 8 U.S.C. 1225, 8 CFR 235.1, 19 U.S.C. 1433, 19 U.S.C. 1498, and 19 CFR 4.2.

Current Actions: CBP proposes to establish a new collection of information.

Type of Review: Approval of a new collection.

Affected Public: Individuals.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Responses: 40,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 20,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at (202) 325–0265.

Dated: December 27, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–33609 Filed 12–29–11; 8:45 a.m.]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Prior Disclosure

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Prior Disclosure. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 66741) on September 27, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 30, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Prior Disclosure.

OMB Number: 1651–0074.

Form Number: None.

Abstract: The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties or misclassified merchandise. The procedure for making a prior disclosure is set forth in 19 CFR 162.74 which requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4).

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 3,500.

Estimated Number of Annual Responses: 3,500.

Estimated Time per Response: 1 hour.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177, at (202) 325–0265.

Dated: December 27, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–33606 Filed 12–29–11; 8:45 a.m.]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Entry/Immediate Delivery Application and Simplified Entry

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Revision and extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Entry/Immediate Delivery Application (Forms 3461 and 3461 ALT) and Simplified Entry. This is a proposed revision and extension of an information collection that was previously approved. CBP is proposing that this information collection be revised and extended with a change to

the burden hours and to the information collected. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 66740) on October 27, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 30, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Entry/Immediate Delivery Application and Simplified Entry.

OMB Number: 1651–0024.

Form Number: CBP Form 3461 and Form 3461 ALT.

Abstract: All items imported into the United States are subject to examination before entering the commerce of the United States. There are two procedures available to effect the release of imported merchandise, including ''entry'' pursuant to 19 U.S.C. 1484, and ''immediate delivery'' pursuant to 19 U.S.C. 1448(b). Under both procedures, CBP Forms 3461 and 3461 ALT are the source documents in the packages presented to Customs and Border Protection (CBP). The information collected on CBP Forms 3461 and 3461 ALT allow CBP officers to verify that the information regarding the consignee and shipment is correct and that a bond is on file with CBP. CBP also uses these forms to close out the manifest and to establish the obligation to pay estimated duties in the time period prescribed by law or regulation. CBP Form 3461 is also a delivery authorization document and is given to the importing carrier to authorize the release of the merchandise. CBP Forms 3461 and 3461 ALT are provided for by 19 CFR 141 and 142. These forms are accessible at: *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

CBP proposes to establish a new program for ACE entry summary filers called ''Simplified Entry'' in which importers or brokers may file Simplified Entry data in lieu of filing CBP Form 3461. This data includes 12 required elements: Importer of record; buyer name and address; buyer employer identification number (consignee number); seller name and address; manufacturer/supplier name and address; Harmonized Tariff Schedule 10-digit number; country of origin; bill of lading; house air waybill number; bill of lading issuer code; entry number; entry type; and estimated shipment value. There will also be three optional data elements including: Container stuffing location; consolidator name and address; and ship to party name and address. The data collected under the proposed Simplified Entry program is intended to expedite the entry process.

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours as a result of the proposed addition of the Simplified Entry program.

Type of Review: Revision and Extension.

Affected Public: Businesses.

CBP Form 3461

Estimated Number of Respondents: 6,029.

Estimated Number of Responses per Respondent: 1,410.

Estimated Total Annual Responses: 8,500,890.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,125,223.

CBP Form 3461 ALT

Estimated Number of Respondents: 6,795.

Estimated Number of Responses per Respondent: 1,390.

Estimated Total Annual Responses: 9,444,069.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 472,203.

Simplified Entry

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1,410.

Estimated Total Annual Responses: 705,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 117,030.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at (202) 325–0265.

Dated: December 27, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–33604 Filed 12–29–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2011–0025]

Final Determination Regarding Petition To Reconcile Inconsistent Customs Decisions Concerning the Tariff Classification of CN–9 Solution

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination regarding petition to reconcile inconsistent customs decisions.

SUMMARY: This document publishes a summary of a decision issued by U.S. Customs and Border Protection (''CBP'') in response to a petition filed pursuant to section 177.13 of the CBP regulations requesting the reconciliation of inconsistent classification decisions issued by CBP under the Harmonized Tariff Schedule of the United States (''HTSUS'') of a certain CN–9 solution, a hydrated ammonium calcium nitrate double salt that is primarily used as a

fertilizer but is also used for waste water treatment. In the decision, CBP informed the party filing the petition that the correct classification of the subject CN–9 Solution is under subheading 3102.60.00, HTSUS.

DATES: The final classification decision was issued on December 16, 2011. The classification set forth in the decision applies to all entries of the described CN–9 Solution for which liquidation was not finalized as of December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

I. Petition

A petition dated June 16, 2010 [1] was filed under section 177.13 of the U.S. Customs and Border Regulations (''CBP'') regulations (19 CFR 177.13), on behalf of Yara North America, Inc. (''Yara'') requesting the reconciliation of inconsistent classification decisions under the Harmonized Tariff Schedule of the United States (''HTSUS'').

Yara is a subset of Yara International ASA, a global firm specializing in agricultural products and environmental protection agents. It is a supplier of mineral fertilizers. As an importer of these products, Yara received inconsistent classification decisions on its merchandise at different ports. The petition concerned Yara's importation of CN–9 Solution, a hydrated ammonium calcium nitrate double salt that is primarily used as a fertilizer but is also used for waste water treatment. Yara entered the subject merchandise at the Port of Long Beach between January 24, 2009 and September 8, 2009, and at the Port of Baltimore on April 20, 2010, under subheading 3102.60.00, HTSUS, as ''Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate.'' Citing Legal Note 2(a)(v) to Chapter 31, HTSUS,[2] the Port of Long Beach liquidated the subject merchandise as entered. Citing Legal Note 5 to Chapter 28, HTSUS,[3] the Port of Baltimore liquidated the subject merchandise under subheading 2842.90.90, HTSUS, as ''Other salts of inorganic acids or peroxoacids (including aluminosilicates whether or not chemically defined), other than azides: Other: Other.''

Yara met the requirements as an interested party set forth in 19 CFR 177.13(a)(2) and 19 U.S.C. 1514(c) and met the requirements regarding the types of decisions subject to petition set forth in 19 CFR 177.13(a)(1) and 19 U.S.C. 1514(a). Furthermore, having filed the petition within 180 days of the latest decision it received from a port, Yara met the timeliness requirements of 19 CFR 177.13(a)(3). Lastly, Yara also met the requirements of 19 CFR 177.13(b)(2), and specifically 19 CFR 177.13(b)(2)(i) in that the petition contained a complete description of the inconsistent decisions of which they complained. The company submitted a sample that had been tested by the CBP laboratories. Yara requested that CBP classify the imported merchandise under subheading 3102.60.00, HTSUS.

Notice of the petition, along with a request for comments, was published in the **Federal Register** (76 FR 48875) on August 9, 2011. No comments were received in response to the notice. This document informs all interested parties of CBP's decision regarding the issue raised in the petition.

II. Decision

The subject merchandise is a hydrated ammonium calcium nitrate double salt that is used as a fertilizer. While it can also be used for water treatment, its primary use is as a fertilizer and its chemical structure is identical for both uses. As a result, it is described by the terms of heading 3102, HTSUS, as a nitrogenous mineral fertilizer.

Furthermore, Legal Note 2 to Chapter 31, HTSUS, specifically lists this merchandise: double salts, whether or not pure, or mixtures of calcium nitrate and ammonium nitrate. In addition, Explanatory Note (EN) 31.02 confirms this interpretation. The subject merchandise is a fertilizer with a secondary use in waste water treatment. This alternate function is explicitly allowed by EN 31.02.

The Port of Baltimore liquidated the subject merchandise under heading 2842, HTSUS. Legal Note 5 to Chapter 28, HTSUS, directs classification of double or complex salts into heading 2842, HTSUS, ''except where the context otherwise requires.'' There is no dispute that the subject merchandise is a double salt, but the context here requires that it be classified outside heading 2842, HTSUS. In this case, the subject merchandise is specifically described by Legal Note 2 to heading 3102, HTSUS, as being classified in that heading. The subject merchandise is also described, *eo nomine,* by the terms of heading 3102, HTSUS, as a nitrogenous mineral fertilizer. As a result, the context requires that it be classified there instead of heading 2842, HTSUS.

This notice informs all interested parties that in a decision dated December 16, 2011, CBP classified the subject CN–9 Solution under subheading 3102.60.00, HTSUS, which provides for: ''Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate.'' In accordance with 19 CFR 177.13(e), the decision was effective immediately upon issuance and, where applicable, applies to all entries for which liquidation is not final.

III. Authority

This notice is published in accordance with section 177.13(d), CBP Regulations (19 CFR 177.13(d)).

Dated: December 27, 2011.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

[FR Doc. 2011–33603 Filed 12–29–11; 8:45 am]

BILLING CODE 9111–14–P

[1] The **Federal Register** (76 FR 48875) notice of August 9, 2011 erroneously listed the petition as being dated June 6, 2010.

[2] Legal Note 2(a)(v) to chapter 31, HTSUS, provides that: ''Heading 3102 applies only to the following goods, provided that they are not put up in the forms or packages described in heading 3105: (a) Goods which answer to one or other of the descriptions given below: … (v) Double salts (whether or not pure) or mixtures of calcium nitrate and ammonium nitrate.''

[3] Legal Note 5 to chapter 28, HTSUS, provides that: ''Headings 2826 to 2842 apply only to metal or ammonium salts or peroxysalts. Except where the context otherwise requires, double or complex salts are to be classified in heading 2842.''

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–52]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or

call the toll-free Title V information line at (800) 927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-(800) 927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, +-DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202: (571) 256–8145; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: December 22, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs

.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/30/2011

Suitable/Available Properties

Building

Arkansas

99 Shore Court Structure
99 Shore Court
Hot Springs AR 71901
Landholding Agency: GSA
Property Number: 54201140010
Status: Surplus
GSA Number: 7–I–AR–0415–13
Comments: Off-site removal only; 1,845 sq. ft.; current use: residential

132 Clubb Street Structure
132 Clubb Street
Hot Springs AR 71901
Landholding Agency: GSA
Property Number: 54201140014
Status: Surplus
GSA Number: 7–I–AR–0415–14
Comments: Off-site removal only; 1,090 sq. ft.; current use: residential

Washington

Small Arms Firing Range
322 Coast Guard Rd
Ilwaco WA
Landholding Agency: Coast Guard
Property Number: 88201140003
Status: Unutilized
Comments: Off-site removal only; 2,640 sq. ft.; current use: firing range; lead around bld.; need repairs

Land

Illinois

FAA Middle Marker Site
467 37th Ave
St. Charles IL 60174
Landholding Agency: GSA
Property Number: 54201140008
Status: Excess
GSA Number: 1–U–IL–798
Comments: Zoning law/bldg. code prohibits construction; 0.135 acres; current use: FAA communications tower

South Carolina

Marine Corps Air Station
3481 TRASK Parkway
Beaufort SC 29904
Landholding Agency: GSA
Property Number: 54201140009
Status: Excess
GSA Number: 4–N–SC–0608AA
Comments: 18,987.60 sq. ft. (.44 acres); physical features: swamp, periodic flooding, 5 ft. off of main road

Unsuitable Properties

Building

Arkansas

Bldg. 2383
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140064

Status: Excess
Reasons: Secured Area

13 Bldgs.
Military Family Housing
Little Rock AR 92099
Landholding Agency: Air Force
Property Number: 18201140065
Status: Excess
Directions: 2355, 2368, 2369, 2370, 2371, 2376, 2378, 2385, 2397, 2481, 2405, 2447, 2457
Reasons: Secured Area

8 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140066
Status: Excess
Directions: 2413, 2416, 2421, 2425, 2440, 2441, 2453, 2458
Reasons: Secured Area

14 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140067
Status: Excess
Directions: 2356, 2358, 2365, 2380, 2399, 2407, 2408, 2410, 2419, 2442, 2445, 2449, 2452, 2456
Reasons: Secured Area

3 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140068
Status: Excess
Directions: 2432, 2434, 2437
Reasons: Secured Area

12 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140069
Status: Excess
Directions: 2366, 2367, 2390, 2422, 2426, 2427, 2428, 2429, 2430, 2431, 2433, 2436
Reasons: Secured Area

3 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140070
Status: Excess
Directions: 2392, 2393, 2394
Reasons: Secured Area

3 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140071
Status: Excess
Directions: 2384, 2391, 2404
Reasons: Secured Area

9 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140072
Status: Excess
Directions: 2372, 2409, 2411, 2446, 2448, 2450, 2451, 2455, 2460
Reasons: Secured Area, Contamination

22 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140073
Status: Excess
Directions: 2354, 2373, 2374, 2375, 2377, 2381, 2382, 2386, 2387, 2388, 2395, 2396, 2400, 2402, 2403, 2406, 2412, 2414, 2418, 2439, 2454, 2459
Reasons: Secured Area

6 Bldgs.
Military Family Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140074
Status: Excess
Directions: 2379, 2398, 2420, 2423, 2424, 2435
Reasons: Secured Area

13 Bldgs.
Military Housing
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201140075
Status: Excess
Directions: 2357, 2359, 2360, 2361, 2362, 2363, 2364, 2411, 2417, 2438, 2443, 2444, 2461
Reasons: Secured Area

Bldg. 57230
Pine Bluff Arsenal
Pine Bluff AR 71602
Landholding Agency: Army
Property Number: 21201140080
Status: Unutilized
Comments: REDETERMINATION: Previously w/property #21201140055; agency submitted additional info. re: the deteriorated state of property due to chem. contamination; non-removable
Reasons: Contamination, Extensive deterioration

California

China Lake-91076
1 Administration Circle
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77201140020
Status: Excess
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material

Pennsylvania

11 Bldgs.
NSA
Mechanicsburg PA
Landholding Agency: Navy
Property Number: 77201140019
Status: Excess
Directions: 29, 30, 914, 915, 916, 917, 918, 940, 941, 942, 943
Reasons: Secured Area

Virginia

W–55
30 Battle Group Way
Wallops Island VA 23337
Landholding Agency: GSA
Property Number: 54201140011
Status: Excess
GSA Number: 4–N–VA–0761–AA
Reasons: Secured Area

W–141
30 Battle Group Way
Wallops Island VA 23337
Landholding Agency: GSA
Property Number: 54201140012
Status: Excess
GSA Number: 4–N–VA–0761–AB
Reasons: Secured Area

U–12
30 Battle Group Way
Wallops Island VA 23337
Landholding Agency: GSA
Property Number: 54201140013
Status: Excess
GSA Number: 4–N–VA–0761–AC
Reasons: Secured Area

[FR Doc. 2011–33301 Filed 12–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Gulf of Mexico (GOM), Outer Continental Shelf (OCS), Western Planning Area (WPA) and Central Planning Area (CPA), Oil and Gas Lease Sales for 2012–2017

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability (NOA) of the Draft Environmental Impact Statement (EIS) and Public Meetings.

Authority: This NOA is published pursuant to the regulations (40 CFR 1503) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.* (1988)).

SUMMARY: The BOEM has prepared a Draft EIS on oil and gas lease sales tentatively scheduled in 2012–2017 in the WPA and CPA offshore the States of Texas, Louisiana, Mississippi, and Alabama. Under the proposed *Outer Continental Shelf Oil and Gas Leasing Program: 2012–2017* (5-Year Program), five annual areawide lease sales are scheduled for the WPA and five annual areawide lease sales are scheduled for the CPA. The proposed WPA lease sales are Lease Sale 229 in 2012, Lease Sale 233 in 2013, Lease Sale 238 in 2014, Lease Sale 246 in 2015, and Lease Sale 248 in 2016; the proposed CPA lease sales are Lease Sale 227 in 2013, Lease Sale 231 in 2014, Lease Sale 235 in 2015, Lease Sale 241 in 2016, and Lease Sale 247 in 2017.

SUPPLEMENTARY INFORMATION: The BOEM has prepared a draft EIS (Multisale EIS) for the five WPA and five CPA Gulf of Mexico lease sales scheduled for 2012–2017 in the proposed 5-Year Program. This draft Multisale EIS provides information on the baseline conditions and potential environmental effects of oil and natural gas leasing, exploration, development, and production in the WPA and CPA. The BOEM conducted an extensive

search for information pertinent to the lease sales, including consideration of the *Deepwater Horizon* event, surveys of scientific journals and credible scientific data and information from academic institutions and Federal, State, and local agencies, and interviews with personnel from academic institutions and Federal, State, and local agencies. The BOEM has examined potential impacts of routine activities and accidental events, including a possible low probability, catastrophic event associated with the proposed lease sales, as well as the proposed lease sales' incremental contribution to the cumulative impacts on environmental and socioeconomic resources. The oil and gas resource estimates and scenario information for this draft Multisale EIS are presented as a range that would encompass the resources and activities estimated for the WPA and CPA proposed lease sales.

Draft Multisale EIS Availability: To obtain a single, printed or CD–ROM copy of the draft Multisale EIS, you may contact the Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). An electronic copy of the Draft EIS is available on BOEM's Internet Web site at *http://www.boem.gov/Environmental-Stewardship/Environmental-Assessment/NEPA/nepaprocess.aspx.* Several libraries along the Gulf Coast have been sent copies of the Draft EIS. To find out which libraries have copies of the Draft EIS for review, and their locations, you may contact BOEM's Public Information Office.

Comments: Federal, State, and local government agencies and other interested parties are requested to send their written comments on the Draft EIS in one of the following two ways:

1. In written form enclosed in an envelope labeled ''Comments on the Draft Multisale EIS'' and mailed (or hand carried) to Mr. Gary D. Goeke, Chief, Regional Assessment Section, Office of the Environment (MS 5410), Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

2. Electronically to the BOEM email address: *MultisaleEIS@BOEM.gov.*

Comments should be submitted no later than 45 days from the publication of this NOA or February 13, 2012.

Public Meetings: The BOEM will hold public meetings to obtain comments regarding the Draft EIS. These meetings are scheduled as follows:

- *Houston, Texas:* January 10, 2012, Houston Airport Marriott at George Bush Intercontinental, 18700 John F. Kennedy Boulevard, Houston, Texas 77032, beginning at 1 p.m. CST;
- *New Orleans, Louisiana:* January 11, 2012, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123, beginning at 1 p.m. CST; and
- *Mobile, Alabama:* January 12, 2012, Five Rivers—Alabama's Delta Resource Center, 30945 Five Rivers Boulevard, Spanish Fort, Alabama, 36527, beginning at 1 p.m. CST.

FOR FURTHER INFORMATION CONTACT: For more information on the Draft EIS, you may contact Mr. Gary D. Goeke, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (MS 5410), New Orleans, Louisiana 70123–2394, or by email at *MultisaleEIS@BOEM.gov.* You may also contact Mr. Goeke by telephone at (504) 736–3233.

Dated: December 7, 2011.

Walter D. Cruickshank,

Deputy Director, Bureau of Ocean Energy Management.

[FR Doc. 2011–33605 Filed 12–29–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

National Park Service

Extension of Public Scoping Period for the Draft Environmental Impact Statement for Adoption of a Long-term Experimental and Management Plan for the Operation of Glen Canyon Dam

AGENCY: Bureau of Reclamation and National Park Service, Interior.

ACTION: Notice of extension.

SUMMARY: The Department of the Interior, through the Bureau of Reclamation and the National Park Service, is extending the public scoping period for the Draft Environmental Impact Statement (EIS) for Adoption of a Long-term Experimental and Management Plan (LTEMP) for the Operation of Glen Canyon Dam to January 31, 2012. The Notice to Solicit Comments and Hold Public Scoping Meetings was published in the **Federal Register** on October 17, 2011 (76 FR 64104). The public scoping period was originally scheduled to end on Friday, December 30, 2011.

DATES: Comments on the scope of the EIS will be accepted until close of business on Tuesday, January 31, 2012.

ADDRESSES: You may submit comments by the following methods:

- *Web site: http://ltempeis.anl.gov* (preferred method).
- *Mail:* Glen Canyon LTEMP EIS Scoping, Argonne National Laboratory, EVS/240, 9700 S. Cass Avenue, Argonne, Illinois 60439.

FOR FURTHER INFORMATION CONTACT: For further information, contact Beverley Heffernan, Bureau of Reclamation, Upper Colorado Region, Attention: UC–700, 125 South State Street, Salt Lake City, Utah 84138–1147; facsimile (801) 524–3826; or visit the Glen Canyon LTEMP EIS Web site at: *http://ltempeis.anl.gov.* Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: In response to several requests from interested parties for an extension, Reclamation and the National Park Service are extending the close of the public scoping period to January 31, 2012. Comments should focus on the issues relevant to the proposed Federal action published in the July 6, 2011, **Federal Register** notice (76 FR 39435).

Public Disclosure

Before including a name, address, telephone number, email address, or other personal identifying information in the comment, please be advised that the entire comment—including 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 22, 2011.

Larry Walkoviak,

Regional Director—Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 2011–33538 Filed 12–29–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

SUMMARY: Section 423(c) of the Tax Reform Act of 1986, as amended (19 U.S.C. 2703 note), requires the United States International Trade Commission to determine annually the amount (expressed in gallons) that is equal to 7 percent of the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. This determination is to be used to establish the ''base quantity'' of imports of fuel ethyl alcohol with a zero percent local feedstock requirement that can be imported from U.S. insular possessions or CBERA-beneficiary countries. The base quantity to be used by U.S. Customs and Border Protection in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption, as determined by the Commission.

For the 12-month period ending September 30, 2011, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 12.955 billion gallons; 7 percent of this amount is 906.9 million gallons (these figures have been rounded). Therefore, the base quantity for 2012 should be 906.9 million gallons. The Commission's determination is based on official data of the U.S. Department of Energy.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: For information specific to this investigation, contact project leader Douglas Newman (202) 205–3328, *douglas.newman@usitc.gov*, in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart, *william.gearhart@usitc.gov*, of the Commission's Office of the General Counsel at (202) 205–3091. The media should contact Margaret O'Laughlin, Office of External Relations (202) 205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000.

Background: The Commission published its notice instituting this investigation in the **Federal Register** of March 21, 1990 (55 FR 10512), and published its most recent previous determination for the 2011 amount in the **Federal Register** of December 29, 2010 (75 FR 82069).

By order of the Commission.

James R. Holbein,

Secretary.

[FR Doc. 2011–33560 Filed 12–29–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Controversion of Right to Compensation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, Notice of Controversion of Right to Compensation,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The LS–207 is used by insurance carriers and self-insured employers to controvert claims under the Longshore Act and extensions.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0042. The current OMB approval is scheduled to expire on December 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on October 19, 2011 (76 FR 64976).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1240–0042. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Title of Collection: Notice of Controversion of Right to Compensation.

OMB Control Number: 1240–0042.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 700.

Total Estimated Number of Responses: 17,500.

Total Estimated Annual Burden Hours: 4,375.

Total Estimated Annual Other Costs Burden: $9,013.

Dated: December 21, 2011.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2011–33556 Filed 12–29–11; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Mass Layoff Statistics Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Mass Layoff Statistics Program,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The information collected and compiled in the MLS program is used to satisfy the legislatively required reporting mandated by Clause (iii) of Section 309(2)(15)(a)(1)(A) of the Workforce Investment Act, which states that the Secretary of Labor shall oversee the development, maintenance, and continuous improvements of the program to measure the incidence of, industrial and geographical location of, and number of workers displaced by, permanent layoffs and plant closings. In addition to the BLS uses of MLS data, such data are used by Congress, the Executive Branch, the business, labor, and academic communities, SWAs, and the U.S. Department of Labor (DOL) for both macro- and microeconomic analysis, including specific labor market studies geared towards manpower assistance and development. Moreover, State agencies use the MLS data in various ways, including the identification of geographic areas in need of special manpower services; the identification of ailing or troubled industries; the identification of specific employers needing assistance; the targeting of outreach activities for the unemployed; and the determination of those workers in need of temporary health care services. Respondents consist of entirely private, for-profit and not-for-profit establishments.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0090. The current OMB approval is scheduled to expire on February 29, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on September 30, 2011 (76 FR 60930).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0090. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Mass Layoff Statistics Program.

OMB Control Number: 1220–0090.

Affected Public: Private Sector, State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 21,053.

Total Estimated Number of Responses: 21,848.

Total Estimated Annual Burden Hours: 75,380.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 22, 2011.

Linda Watts Thomas,

Acting Departmental Clearance Officer.

[FR Doc. 2011–33557 Filed 12–29–11; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0296]

Design, Inspection, and Testing Criteria for Air Filtration and Adsorption Units

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment draft regulatory guide (DG), DG–1274, ''Design, Inspection, and Testing Criteria for Air Filtration and Adsorption Units of Postaccident Engineered-Safety-Feature Atmosphere Cleanup Systems in Light-Water-Cooled Nuclear Power Plants.'' This guide applies to the design, inspection, and testing of air filtration and iodine adsorption units of engineered-safety-feature (ESF) atmosphere cleanup systems in light-water-cooled nuclear power plants.

DATES: Submit comments by February 25, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please include Docket ID NRC–2011–0296 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0296. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

You can access publicly available documents related to this regulatory guide using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1 (800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* DG–1278 is available electronically under ADAMS Accession Number ML11244A045. The regulatory analysis is available under ADAMS Accession Number ML11244A050.
- *NRC's Public Web Site:* Electronic copies of DG–1274 are also available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Library at *http://www.nrc.gov/reading-rm/doc-collections/.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this regulatory guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0296.

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FOR FURTHER INFORMATION CONTACT: Mekonen Bayssie, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7489 or email: *Mekonen.Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled, ''Design, Inspection, and Testing Criteria for Air Filtration and Adsorption Units of Postaccident Engineered-Safety-Feature Atmosphere Cleanup Systems in Light-Water-Cooled Nuclear Power Plants,'' is temporarily identified by its task number, DG–1274. The DG–1274 is proposed revision 4 of Regulatory Guide 1.52, dated June 2001.

This guide provides a method that the NRC considers acceptable to implement Title 10, of the *Code of Federal Regulations,* part 50, ''Domestic Licensing of Production and Utilization Facilities,'' Appendix A, ''General Design Criteria for Nuclear Power Plants,'' as it applies to the design, inspection, and testing of air filtration and iodine adsorption units of engineered-safety-feature (ESF) atmosphere cleanup systems in light-water-cooled nuclear power plants. For the purposes of this guide, ESF atmosphere cleanup systems are those systems that are credited in the licensee's current design-basis accident (DBA) analysis, as described in the safety analysis report (SAR), or those systems that the licensee has described in the SAR as ESF atmosphere cleanup systems. This guide addresses ESF atmosphere cleanup systems, including the various components and ductwork, in the postulated DBA environment.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 21st day of December, 2011.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–33545 Filed 12–29–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

Federal Register Citation of Previous Announcement: 76 FR 80984 (December 27, 2011)

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Wednesday, January 4, 2012, at 11 a.m.

CHANGES IN THE MEETING: The time and date of the meeting is Thursday, January 5, 2012, at 11 a.m.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, (202) 789–6820 or *stephen.sharfman@prc.gov.*

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–33665 Filed 12–28–11; 4:15 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66040; File No. SR–NYSEAmex–2011–104]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Amex Equities Rule 500 To Extend the Operation of the Pilot Program That Allows Nasdaq Stock Market Securities To Be Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or July 31, 2012

December 23, 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 December 16, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend YSE Amex Equities Rule 500 to extend the operation of the pilot program that allows Nasdaq Stock Market (''Nasdaq'') securities to be traded on the Exchange pursuant to a grant of unlisted trading privileges. The pilot is currently scheduled to expire on January 31, 2012; the Exchange proposes to extend it until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or July 31, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex Equities Rules 500–525, as a pilot program, govern the trading of any Nasdaq-listed security on the Exchange pursuant to unlisted trading privileges (''UTP Pilot Program'').[3] The Exchange hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on January 31, 2012, until the earlier of Commission approval to make such pilot permanent or July 31, 2012.

The UTP Pilot Program includes any security listed on Nasdaq that (i) is designated as an ''eligible security'' under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended (''UTP Plan''),[4] and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended (the ''Act''),[5] (collectively, ''Nasdaq Securities'').[6]

The Exchange notes that its New Market Model Pilot (''NMM Pilot''), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker (''DMM''),[7] is also scheduled to end on January 31, 2012.[8] The timing of the operation of the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act [9] and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits.[10] Furthermore, the UTP Pilot Program rules pertaining to the assignment of securities to DMMs are substantially similar to the rules implemented through the NMM Pilot.[11] The Exchange has similarly filed to extend the operation of the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or July 31, 2012.[12]

Extension of the UTP Pilot Program in tandem with the NMM Pilot, both from January 31, 2012 until the earlier of Commission approval to make such pilots permanent or July 31, 2012, will provide for the uninterrupted trading of Nasdaq Securities on the Exchange on a UTP basis and thus continue to encourage the additional utilization of, and interaction with, the NYSE Amex Equities market, and provide market participants with improved price

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex–2010–31). *See also* Securities Exchange Act Release Nos. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR–NYSEAmex–2010–89); 63601 (December 22, 2010), 75 FR 82117 (December 29, 2010) (SR–NYSEAmex–2010–124) and 64746 (June 24, 2011), 76 FR 38446 (June 30, 2011) (SR–NYSEAmex–2011–45).

[4] *See* Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (File No. S7–24–89). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007) (File No. S7–24–89). In March 2009, the Exchange changed its name to NYSE Amex LLC. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[5] 15 U.S.C. 78l.

[6] ''Nasdaq Securities'' is included within the definition of ''security'' as that term is used in the NYSE Amex Equities Rules. *See* NYSE Amex Equities Rule 3. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an ''issued,'' ''when issued,'' or ''when distributed'' basis. *See* NYSE Amex Equities Rule 501.

[7] *See* NYSE Amex Equities Rule 103.

[8] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex–2010–86); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123) and 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR–NYSEAmex–2011–43).

[9] 15 U.S.C. 78.

[10] *See* SR–NYSEAmex–2010–31, *supra* note [3] [sic], at 41271.

[11] *Id.*

[12] *See* SR–NYSEAmex–2011–102.

discovery, increased liquidity, more competitive quotes and greater price improvement for Nasdaq Securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal to extend the UTP Pilot Program is consistent with (i) Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; (ii) Section 11A(a)(1) of the Act,[15] in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (iii) Section 12(f) of the Act,[16] which governs the trading of securities pursuant to UTP consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

Specifically, the Exchange believes that extending the UTP Pilot Program would provide for the uninterrupted trading of Nasdaq Securities on the Exchange on a UTP basis and thus continue to encourage the additional utilization of, and interaction with, the NYSE Amex Equities market, thereby providing market participants with additional price discovery, increased liquidity, more competitive quotes and potentially greater price improvement for Nasdaq Securities. Additionally, under the UTP Pilot Program, Nasdaq Securities trade on the Exchange pursuant to rules governing the trading of Exchange-Listed securities that previously have been approved by the Commission. Accordingly, this proposed rule change would permit the Exchange to extend the effectiveness of the UTP Pilot Program in tandem with the NMM Pilot, which the Exchange has similarly proposed to extend until the earlier of Commission approval to make such pilot permanent or July 31, 2012.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–104. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEAmex–2011–104 and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33578 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 15 U.S.C. 78l(f).

[17] *See supra* note 13.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66042; File No. SR–NYSEAmex–2011–102]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Extending the Operation of Its New Market Model Pilot Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or July 31, 2012

December 23, 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 December 16, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its New Market Model Pilot, currently scheduled to expire on January 31, 2012, until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or July 31, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 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 Exchange proposes to extend the operation of its New Market Model Pilot (''NMM Pilot'') that was adopted pursuant to its merger with the New York Stock Exchange LLC (''NYSE'').[3] The NMM Pilot was approved to operate until October 1, 2009. The Exchange filed to extend the operation of the Pilot to November 30, 2009, March 30, 2010, September 30, 2010, January 31, 2011, August 1, 2011, and January 31, 2012, respectively.[4] The Exchange now seeks to extend the operation of the NMM Pilot, currently scheduled to expire on January 31, 2012, until the earlier of Commission approval to make such pilot permanent or July 31, 2012.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE.[5]

Background [6]

In December 2008, NYSE Amex implemented significant changes to its equities market rules, execution technology and the rights and obligations of its equities market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model that it implemented through the NMM Pilot.

As part of the NMM Pilot, NYSE Amex eliminated the function of equity specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[7] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement [8] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[9]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'').[10] CCS provides the Display Book® [11] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer (''BBO''). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot orders, or portions thereof, that establish priority [12] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October

[3] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC. *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger). Subsequently NYSE Alternext US LLC was renamed NYSE Amex LLC and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act''). *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[4] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex–2010–86); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123) and 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR–NYSEAmex–2011–43).

[5] *See* SR–NYSE–2011–65.

[6] The information contained herein is a summary of the NMM Pilot. *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) for a fuller description.

[7] *See* NYSE Amex Equities Rule 103.

[8] *See* NYSE Amex Equities Rule 104.

[9] *See* NYSE Amex Equities Rule 60; *see also* NYSE Amex Equities Rules 104 and 1000.

[10] *See* NYSE Amex Equities Rule 1000.

[11] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[12] *See* NYSE Amex Equities Rule 72(a)(ii).

1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on several occasions [13] in order to prepare a rule filing seeking permission to make the above described changes permanent. The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before January 31, 2012.

Proposal To Extend the Operation of the NMM Pilot

NYSE Amex established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until July 31, 2012, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, requesting an extension of the NMM Pilot will permit adequate time for: (i) the Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–102. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEAmex–2011–102 and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33580 Filed 12–29–11; 8:45 a.m.]

BILLING CODE 8011–01–P

[13] *See supra* note [4].

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66041; File No. SR–NYSEAmex–2011–103]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot Under Rule 107B Until the Earlier of the Securities and Exchange Commission's Approval To Make Such Pilot Permanent or July 31, 2012

December 23, 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 December 16, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot (''SLP Pilot'' or ''Pilot'') (See Rule 107B—NYSE Amex Equities), currently scheduled to expire on January 31, 2012, until the earlier of the Securities and Exchange Commission's (''SEC'' or ''Commission'') approval to make such Pilot permanent or July 31, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot,[3] currently scheduled to expire on January 31, 2012, until the earlier of Commission approval to make such Pilot permanent or July 31, 2012.

Background [4]

In October 2008, the New York Stock Exchange LLC (''NYSE'') implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the NYSE. These changes were all elements of the NYSE's and the Exchange's enhanced market model referred to as the ''New Market Model'' (''NMM Pilot'').[5] The NYSE SLP Pilot was launched in coordination with the NMM Pilot (see NYSE Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or ''DMM.'' [6] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[7]

The NYSE adopted NYSE Rule 107B governing SLPs as a six-month pilot program commencing in November 2008. This NYSE pilot has been extended several times, most recently to January 31, 2012.[8] The NYSE is in the process of requesting an extension of their SLP Pilot until July 31, 2012 or until the Commission approves the pilot as permanent.[9] The extension of the NYSE SLP Pilot until July 31, 2012 runs parallel with the extension of the NMM pilot until July 31, 2012, or until the Commission approves the NMM Pilot as permanent.

Proposal To Extend the Operation of the NYSE Amex Equities SLP Pilot

NYSE Amex Equities established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. NYSE Amex Equities Rule 107B is based on NYSE Rule 107B. NYSE Amex Rule 107B was filed with the Commission on December 30, 2009, as a ''me too'' filing for immediate effectiveness as a pilot program.[10] The NYSE Amex Equities SLP Pilot is scheduled to end operation on January 31, 2012 or such earlier time as the Commission may determine to make the rules permanent.

The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot and the NYSE SLP Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such,

[3] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex-2009–98) (establishing the NYSE Amex Equities SLP Pilot). *See also* Securities Exchange Act Release Nos. 61841 (April 5, 2010), 75 FR 18560 (April 12, 2010) (SR–NYSEAmex-2010–33) (extending the operation of the SLP Pilot to September 30, 2010); 62814 (September 1, 2010), 75 FR 54671 (September 8, 2010) (SR–NYSEAmex-2010–88) (extending the operation of the SLP Pilot to January 31, 2011); 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot); 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending the operation of the SLP Pilot to March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the operation of the SLP Pilot to September 30, 2010); 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR–NYSE–2010–62) (extending the operation of the SLP Pilot to January 31, 2011); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex-2010–123) (extending the operation of the SLP Pilot to August 1, 2011); and 64772 (June 29, 2011), 76 FR 39455 (July 6, 2011) (SR–NYSEAmex-2011–44) (extending the operation of the SLP Pilot to January 31, 2012).

[4] The information contained herein is a summary of the NMM Pilot and the SLP Pilot. *See supra* note [3] and *[i]nfra* note [8] [sic] for a fuller description of those pilots.

[5] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[6] *See* NYSE Rule 103.

[7] *See* NYSE and NYSE Amex Equities Rules 107B.

[8] *See* Securities Exchange Act Release Nos. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (adopting SLP pilot program); 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending SLP pilot program until October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending SLP pilot program until November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending SLP pilot program until March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the SLP Pilot until September 30, 2010); 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR–NYSE–2010–62) (extending the SLP Pilot until January 31, 2011); 63616 (December 29, 2010), 76 FR 612 (January 5, 2011) (SR–NYSE–2010–86) (extending the operation of the SLP Pilot to August 1, 2011); and 64762 (June 28, 2011), 76 FR 39145 (July 5, 2011) (SR–NYSE–2011–30) (extending the operation of the SLP Pilot to January 31, 2012).

[9] *See* SR–NYSE–2011–66.

[10] *See* Securities Exchange Act Release No. 61308 (January 7, 2010), 75 FR 2573 (January 15, 2010) (SR–NYSEAmex–2009–98).

the Exchange believes that the rules governing the SLP Pilot (NYSE Amex Equities Rule 107B) should be made permanent.

Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until July 31, 2012, in order to allow the Exchange to formally submit a filing to the Commission to convert the Pilot rule to a permanent rule. The Exchange is currently preparing a rule filing seeking permission to make the NYSE Amex Equities SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before January 31, 2012.[11]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[11] The NMM Pilot was scheduled to expire on January 31, 2012 as well. On December 16, 2011, the NYSE filed to extend the NMM Pilot until July 31, 2012 (*See* SR–NYSE–2011–65) (extending the operation of the New Market Model Pilot to July 31, 2012).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2011–103. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–103 and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33579 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66043; File No. SR–NYSEAmex–2011–101]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Equities Rules 504 and 509 To Modify the Quoting Requirements Applicable to Designated Market Maker Units Registered in Nasdaq Stock Market Securities Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges

December 23, 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 15, 2011, NYSE Amex LLC (''NYSE Amex'' 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 self-regulatory organization. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rules 504 and 509 to modify the quoting requirements applicable to Designated Market Maker units (''DMM units'') registered in Nasdaq Stock Market (''Nasdaq'') securities traded on the Exchange pursuant to a grant of unlisted trading privileges (''UTP''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rules 504 and 509 to modify the quoting requirements applicable to DMM units [3] registered in Nasdaq-listed securities traded on the Exchange pursuant to UTP.

NYSE Amex Equities Rules 500–525, as a pilot program, govern the trading of Nasdaq-listed securities on the Exchange pursuant to UTP (''UTP Pilot Program'').[4] The UTP Pilot Program includes any security listed on Nasdaq that (i) is designated as an ''eligible security'' under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended (''UTP Plan''),[5] and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended (the ''Act'') [6] (collectively, ''Nasdaq Securities'').[7]

DMM units registered in one or more Nasdaq Securities must comply with all ''DMM rules,'' as defined in NYSE Amex Equities Rule 98,[8] subject to the modifications enumerated in NYSE Amex Equities Rule 509. In this regard, NYSE Amex Equities Rule 509(a)(1) states that, in lieu of NYSE Amex Equities Rule 104(a)(1)(A), with respect to maintaining a continuous two-sided quote with reasonable size, a DMM unit must maintain a quote at the National Best Bid or Offer (''NBBO'') in each assigned Nasdaq Security an average of at least 10% of the time during the regular business hours of the Exchange for each calendar month.[9] In contrast, NYSE Amex Equities Rule 104(a)(1)(A) requires that DMM units maintain a bid or offer at the NBBO at least 10% of the trading day cumulatively for all less active securities in which the DMM unit is registered and at least 5% of the trading day cumulatively for all more active securities in which the DMM unit is registered.

The Exchange proposes to amend the text of NYSE Amex Equities Rule 509(a)(1) to reflect that DMM units registered in Nasdaq Securities would be obligated to maintain a quote at the NBBO in each assigned Nasdaq Security an average of at least 5% of the time during the regular business hours of the Exchange for each calendar month for Nasdaq Securities with a consolidated average daily volume equal to or greater than one million shares per calendar month, i.e., securities that would qualify as ''more active'' securities under NYSE Amex Equities Rule 103B(II)(C).[10] This proposed change would result in DMM units being obligated to maintain a bid or offer at the NBBO for a specified percentage of the trading day (either 10% or 5%, depending upon volume) that is more consistent with the percentages applicable under NYSE Amex Equities Rule 104(a)(1)(A) for Exchange-listed securities. However, as opposed to the percentage requirements under NYSE Amex Equities Rule 104(a)(1)(A), which apply cumulatively across all Exchange-listed securities in which a DMM unit is registered, NYSE Amex Equities Rule 509(a)(1) would continue to apply the percentage requirements therein for each individual Nasdaq Security in which the DMM unit is assigned.[11]

The Exchange also proposes to delete from NYSE Amex Equities Rule 504(b)(1)(A) text referencing NYSE Amex Equities Rule 103B(II), which provides for security allocation eligibility. This reference is not necessary within NYSE Amex Equities Rule 504(b)(1)(A), which, as discussed above, provides for DMM unit quoting obligations. The Exchange notes that, despite the proposed deletion, DMM units would remain subject to NYSE Amex Equities Rule 103B(II) with respect to security allocation eligibility.

The Exchange proposes to announce the implementation date, if approved by the Commission, via Trader Update.

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[3] *See* NYSE Amex Equities Rule 98(b)(2). ''DMM unit'' means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) has been approved by NYSE Regulation pursuant to section (c) of this Rule, (ii) is eligible for allocations under Rule 103B—NYSE Amex Equities as a DMM unit in a security listed or traded on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit.

[4] The UTP Pilot Program is currently scheduled to expire on the earlier of Commission approval to make such pilot permanent or January 31, 2012. *See* Securities Exchange Act Release No. 64746 (June 24, 2011), 76 FR 38446 (June 30, 2011) (SR–NYSEAmex–2011–45). *See also* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex–2010–31) (''UTP Pilot Program Approval Order''). The Exchange anticipates proposing an extension of the UTP Pilot Program beyond the current January 31, 2012 expiration date.

[5] *See* Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (Notice of Filing and Immediate Effectiveness of Amendment No. 20 to the UTP Plan). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 2091 (April 27, 2007) (S7–24–89). In March 2009, the Exchange changed its name to NYSE Amex LLC. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24).

[6] 15 U.S.C. 78l.

[7] ''Nasdaq Securities'' is included within the definition of ''security'' as that term is used in the NYSE Amex Equities Rules. *See* NYSE Amex Equities Rule 3. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an ''issued,'' ''when issued,'' or ''when distributed'' basis. *See* NYSE Amex Equities Rule 501.

[8] ''DMM rules'' means any rules that govern DMM conduct or trading.

[9] These obligations are also included within current NYSE Amex Equities Rule 504.

[10] The Exchange proposes to make conforming changes to NYSE Amex Equities Rules 504(b)(1)(A). DMM units would remain obligated to maintain a quote at the NBBO an average of at least 10% of the time during the regular business hours of the Exchange for each calendar month in each assigned Nasdaq Security with a consolidated average daily volume less than one million shares per calendar month, *i.e.,* securities that would qualify as ''less active'' securities under NYSE Amex Equities Rule 103B(II)(B).

[11] The Exchange notes that it is proposing this change to DMM unit quoting obligations in Nasdaq Securities based on the current trading characteristics of Nasdaq Securities at the Exchange. The Exchange would continue to review and monitor the trading of Nasdaq Securities and the associated DMM unit obligations and would seek to modify those obligations as may be appropriate.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal is consistent with (i) Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; (ii) Section 11A(a)(1) of the Act,[14] because it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (iii) Section 12(f) of the Act,[15] which governs the trading of securities pursuant to UTP consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

The Exchange's decision to establish DMM unit quoting obligations was initially based on commercial considerations at the time, including the desire to encourage quoting activity on the Exchange in Nasdaq Securities, and an estimate of the volume in Nasdaq Securities that might trade at the Exchange.[16] However, based on the nearly 17 months of experience with the UTP Pilot Program thus far, the Exchange believes that it is appropriate to modify the DMM unit quoting obligations for more active Nasdaq Securities, as described above.[17] In particular, the Exchange believes that it is appropriate to more closely align DMM unit quoting requirements for Nasdaq Securities with those applicable for Exchange-listed securities. In this regard, the Exchange believes that the current DMM unit quoting obligation for more active Nasdaq Securities may outweigh the benefit that such higher quoting provides to the marketplace. The Exchange therefore proposes to reflect the distinction between more active and less active securities for the DMM unit quoting requirements for Nasdaq Securities, while still requiring that these quoting requirements be calculated on a stock-by-stock basis rather than a portfolio basis across all of the DMM unit's assigned securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR– NYSEAmex–2011–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR– NYSEAmex–2011–101. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–101 and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33581 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

[15] 15 U.S.C. 78l(f).

[16] In the UTP Pilot Program Approval Order, the Commission took into account the specific obligations that DMMs in Nasdaq Securities would be subject to, including the increased quoting obligation for Nasdaq Securities as compared to the quoting obligation for Exchange-listed securities. *See* UTP Pilot Program Approval Order at Section III.A. The Commission noted that the obligations proposed for DMMs in Nasdaq Securities would closely track, but would be slightly different from, those applicable to DMMs in Exchange-listed securities.

[17] In particular, before the UTP Pilot Program began, the Exchange did not have any data on the volume in Nasdaq Securities that would trade at the Exchange. Accordingly, the Exchange identified in its original filing a set of obligations that were largely based on the trading characteristics of Exchange-listed securities.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66054; File No. SR–CBOE–2011–120]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

December 23, 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 December 12, 2011, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to implement a Volume Incentive Program (the ''Program''). Under the Program, the Exchange shall credit each Trading Permit Holder (''TPH'') the per contract amount set forth in the table below resulting from each public customer (''C'' origin code or ''C'') order transmitted by that TPH which is executed electronically on the Exchange in all multiply-listed option classes (excluding qualified contingent cross (''QCC'') trades), provided the TPH meets certain volume thresholds in a month as described below. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume will be recorded for and credits will be delivered to the TPH Firm that enters the order into CBOE*direct.*

Customer contracts per day (''CPD'') threshold per month in multiply-listed option classes	Per contract credit at each tier per trading day
Contracts 0–100,000 Customer CPD	$.00 per contract.
Contracts 100,001–250,000 Customer CPD	$.05 per contract.
Contracts 250,001–375,000 Customer CPD	$.12 per contract.
Contracts 375,001 + Customer CPD	$.20 per contract.

The Exchange will aggregate the contracts resulting from customer orders transmitted and executed electronically on the Exchange from affiliated TPHs for purposes of the thresholds below, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. Additionally, the Exchange will aggregate all the contracts contained in any complex order (*e.g.,* a 10-lot butterfly spread will count as 40 contracts).

By way of example, Electronic Access Permit (''EAP'') TPH Firm XYZ, Inc. (''XYZ'') electronically executes 3,000,000 customer (C) multiply-listed option contracts during the month of January. XYZ, also executes 1,000,000 customer (C) multiply-listed option contracts in open outcry, and 800,000 customer (C) SPX and VIX option contracts both electronically and in open outcry during the month of January, for a total of 4,800,000 customer contracts. The 1,000,000 customer (C) multiply-listed option contracts executed in open outcry would not count towards the Program, because they were not executed electronically. The 800,000 SPX and VIX option contracts would also not count towards the Program because those are not multiply-listed products. Assume for the sake of these examples that there are 20 trading days in the month. The 3,000,000 customer (C) multiply-listed option contracts executed during the month by XYZ, divided by the 20 trading days in the month, yields an average of 150,000 contracts per day (''CPD''). Per the Program, XYZ would receive a $0.00 credit for the first 100,000 CPD, and a $.05/contract credit for the 50,000 CPD above the first 100,000 CPD. Therefore, XYZ would receive a credit of $2,500 per day, multiplied by the 20 trading days in the month, for a total credit of $50,000 for the month.

For another example, EAP TPH Firm ABC, Inc. (''ABC'') electronically executes 6,000,000 customer (C) multiply-listed option contracts during the month of January. The 6,000,000 customer (C) multiply-listed option contracts executed during the month by ABC, divided by the 20 trading days in the month, yields an average of 300,000 CPD. Per the Program, XYZ would receive a $0.00 credit for the first 100,000 CPD, and a $.05/contract credit for the next 150,000 CPD (100,001 CPD–250,000 CPD), and then a credit of $0.12/contract for the last 50,000 CPD (250,001–300,000 CPD). Therefore, ABC would receive a credit of $13,500 per day, multiplied by the 20 trading days in the month, for a total credit of $270,000 for the month.

The purpose of the Program is to encourage TPHs to direct greater customer trade volume to the Exchange. Increased customer volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,[3] customer posting incentive

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Fees Schedule, Footnote 6

programs,[4] and equity sharing arrangements,[5] are based on attracting public customer order flow. The Program similarly intends to attract customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

The specific volume thresholds of the Program's tiers were set based upon business determinations and an analysis of current volume levels. The volume thresholds are intended to incentivize firms that route some customer orders to the Exchange to increase the number of orders that are sent to the Exchange to achieve the next threshold. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing ''rewards'' for increasing the volume of trades sent to the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of customer order flow to reach for higher tiers.

The Exchange proposes limiting the Program to multiply-listed options classes because CBOE does not compete with other exchanges for order flow in the Exchange's proprietary, singly-listed products. Further, the Exchange devoted a lot of resources to developing the Exchange's proprietary products, and desires to retain funds collected in order to recoup those expenditures.

The Exchange also proposes limiting the Program to electronic orders because the vast majority of TPHs that transmit customer orders in multiply-listed options to the Exchange do so electronically. Moreover, the competitive pressures from other exchanges in electronic orders and different business model for electronic orders as opposed to open outcry orders leads the Exchange to offer a rebate in order to compete with other exchanges for electronic orders.

The Exchange proposes excluding QCC trades from the Program because the vast majority of QCC trades in multiply-listed classes are facilitation trades on which the Exchange does not collect revenue. As such, it would not be viable for the Exchange to pay credits for QCC trades that do not create revenue for the Exchange.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.[6] The Exchange calculates volume thresholds on a daily basis over the course of a month instead of a flat monthly basis because some months contain more trading days than others. The proposed rule change is to take effect January 1, 2011 [sic].[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4)[9] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. The Program is reasonable because it will allow providers of customer order flow to receive a credit for such activity. The Program is equitable and not unfairly discriminatory because, while only customer order flow qualifies for the Program, an increase in customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits for executing higher numbers of customer contracts (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage TPHs to direct increased amounts of customer contracts to the Exchange. The resulting increased volume and liquidity will benefit those TPHs who receive the lower tier levels, or do not qualify for the Program at all, by providing more trading opportunities and tighter spreads.

Limiting the Program to multiply-listed options classes is reasonable because those parties trading heavily in multiply-listed classes will now begin to receive a credit for such trading, and is equitable and not unfairly discriminatory because the Exchange has devoted a lot of resources to develop its proprietary singly-listed options classes, and therefore needs to retain funds collected in order to recoup those expenditures.

The Exchange believes that it is reasonable to offer a rebate only for order entered electronically in an attempt to attract greater electronic business and compete with other exchanges for such business. The business models surrounding electronic orders and open outcry orders are different, and as such, the Exchange offers different incentives to encourage the entry of electronic and open outcry orders. For example, the Exchange waives the transaction fee for public customer orders in SPY and XLF options that are executed in open outcry.[10] Furthermore, in assessing whether to offer rebates, the Exchange experiences different competitive pressures from other exchanges with respect to electronic orders than it does with respect to open outcry orders. The Exchange also believes that paying a different rebate for electronic orders than it does for open outcry orders is equitable and not unfairly discriminatory because other exchanges distinguish between delivery methods for certain market participants and pay different rebates depending on the method of delivery. This type of distinction is not novel and has long existed within the industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12]

[4] *See* NYSE Arca, Inc. Fees Schedule, page 3 (section titled ''Customer Monthly Posting Thresholds in Post/Take Executions in Penny Pilot Issues'').

[5] *See* the NYSE Amex, LLC's ''Volume-Based Equity Plan'', Securities Exchange Act Release No. 64742 (June 24, 2011) (SR–NYSEAmex–2011–18).

[6] Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization. *See* email from Jeff Dritz, Attorney, CBOE, to Sara Hawkins, Special Counsel, and Adam Moore, Attorney Advisor, Division of Trading and Markets, Commission, dated December 20, 2011.

[7] The Commission notes that CBOE intends the proposed rule change to be effective on January 1, 2012, not 2011, as stated in the Form 19b–4.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Exchange Fees Schedule, footnote 8.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–120 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–CBOE–2011–120. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–120, and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33590 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66050; File No. SR–FINRA–2011–071]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Increase the Trading Activity Fee Rate for Transactions in Covered Equity Securities

December 23, 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 December 14, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 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 Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's Trading Activity Fee (''TAF'') for transactions in covered equity securities.

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

FINRA's primary member regulatory pricing structure consists of the following fees: the Personnel Assessment (PA); the Gross Income Assessment (GIA); and the Trading Activity Fee (TAF). These fees are used to fund FINRA's regulatory activities, including examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.[3] Because the proceeds from these fees are used to fund FINRA's regulatory mandate, Section 1 of Schedule A to FINRA's By-Laws notes that ''FINRA shall periodically review these revenues in conjunction with costs to determine the applicable rate.''[4]

FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq's Automated Confirmation Transaction system then in place.[5] Currently, the TAF is generally assessed on the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-Eligible Securities), over-the-counter equity securities, security futures, TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to Municipal Securities Rulemaking Board (''MSRB'') reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.[6]

The current TAF rate for covered equity securities is $0.000090 per share for each sale of a covered equity security, with a maximum charge of $4.50 per trade. This rate has been in place for trades occurring on or after July 1, 2011, and was based on estimated trading volumes for the remainder of 2011.[7] In addition, if the execution price for a covered equity security is less than the TAF rate on a per share basis, then no TAF is assessed.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* FINRA By-Laws, Schedule A, § 1(a).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

[6] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[7] *See* Securities Exchange Act Release No. 64590 (June 2, 2011), 76 FR 33388 (June 8, 2011); *Regulatory Notice* 11–27 (June 2011).

Because the TAF is based on trading volumes, FINRA's revenues derived from the TAF are subject to the volatility of trading in the securities markets and, in particular, the equity markets. Although the TAF is generally charged on transactions in equity securities, TRACE-reportable securities, options, and futures, over 95% of TAF revenue is generated by transactions in covered equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets.

Share volume in the equity markets during 2011 has been difficult to project given the volatility of the markets. Declining share volumes during the first half of 2011, which led to the prior increase to the TAF rate for equity securities, were followed by a spike in volume in August, which was then followed by declining volumes heading into the fourth quarter of 2011. Year-to-date volume, excluding an extraordinary spike during the month of August, has averaged just under an average daily share volume of 7.7 billion shares. Recognizing these volume conditions remain weaker than the 2010 average daily share volume of 8.5 billion shares, which FINRA used as the baseline for estimating TAF revenues, it is necessary for FINRA to adjust the rate for 2012.

To stabilize revenue flows necessary to support FINRA's regulatory mission in light of the decreased volume of trading in the equity markets, FINRA is proposing an increase to the TAF rate for covered equity securities from $0.000090 per share to $0.000095 per share, with a corresponding increase to the per-transaction cap for covered equity securities from $4.50 to $4.75.[8] FINRA believes that increasing the TAF rate on these securities by $0.000005 per share is the minimum increase necessary to bring the revenue from the TAF to its needed levels to adequately fund FINRA's member regulatory obligations. As with the prior rate change to the TAF, the proposed increase to the TAF rate on transactions in covered equity securities seeks to remain revenue neutral to FINRA (*i.e.,* as adjusted, FINRA would aim to receive a substantially similar amount in revenue from the TAF as the TAF has generated in prior years).

The proposed effective date of the proposed rule change will be February 1, 2012. FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[9] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. Because of the recent decrease in trading volumes in the equity markets, FINRA believes that the proposed rate change to the TAF is now necessary to ensure that FINRA can continue to maintain a robust regulatory program and meet its regulatory obligations effectively while attempting to remain revenue neutral.

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–2011–071 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–2011–071. 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 will also be available for inspection and copying at 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 publicly available.

All submissions should refer to File Number SR–FINRA–2011–071 and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33589 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

[8] Because, as noted above, transactions in covered equity securities account for over 95% of TAF revenues, FINRA is not proposing adjustments to the TAF rates for other types of securities.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66048; File No. SR–CBOE–2011–116]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Its Automated Improvement Mechanism

December 23, 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 December 14, 2011, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to its Automated Improvement Mechanism (''AIM''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend CBOE Rule 6.74A to (i) allow Trading Permit Holders (''TPHs'') to enter orders they represent as agent (''Agency Orders'') for fewer than 50 contracts into AIM at the national best bid or offer (''NBBO''); (ii) eliminate the requirement that there be at least three market-makers quoting in the relevant series in order for an AIM auction (''Auction'') to commence; (iii) allow TPHs that initiate an Auction (''Initiating TPHs'') to designate a limit price if it elects to automatically match the price and size of all Auction responses (''auto-match''); and (iv) eliminate the restriction that only market-makers with an appointment in the relevant option class may submit responses to a Request for Responses (''RFR'') for an Agency Order in an Auction.

This proposed rule change would make AIM more similar to current rules of the Boston Options Exchange Group, LLC (''BOX'')[3] and the International Securities Exchange, LLC (''ISE'')[4] relating to the Price Improvement Period (''PIP'') and Price Improvement Mechanism (''PIM''), respectively, which are automated price improvement mechanisms.[5]

AIM allows a TPH to submit an Agency Order along with a contra-side second order (a principal order or a solicited order for the same size as the Agency Order) into an Auction where other participants could compete with the Initiating TPH's second order to execute against the Agency Order, which guarantees that the Agency Order will receive an execution. Once an Auction commences, the Initiating TPH cannot cancel it.[6]

Under this proposal, Agency Orders of all sizes submitted to AIM will be guaranteed execution at a price at least as good as the NBBO while providing the opportunity for execution at a price better than the NBBO. The proposal will incent more TPHs to initiate and participate in Auctions and will allow even broader participation in Auctions by all types of market participants. As a result, CBOE expects the proposal will increase the number of and participation in Auctions, which would enhance competition in the Auctions. The Exchange believes that this proposal will ultimately provide additional opportunities for price improvement over the NBBO for its customers.

Elimination of Entry Price Restriction on Agency Orders for Fewer Than 50 Contracts

CBOE Rule 6.74A(a)(2) and (3) currently provides that if an Initiating TPH submits an Agency Order to AIM for 50 contracts or more, the Initiating TPH must enter its contra-side second order (or stop the Agency Order) at the better of the NBBO or the Agency Order's limit price (if the order is a limit order); however, if an Initiating TPH submits an Agency Order to AIM for fewer than 50 contracts, the Initiating TPH must stop the entire Agency Order at the better of the NBBO price improved by one minimum price improvement increment or the Agency Order's limit price (if the order is a limit order). The Exchange is proposing to eliminate this distinction and allow Initiating TPHs to submit to AIM Agency Orders of any size at the NBBO.

The Exchange believes this proposal will increase the likelihood that TPHs will initiate Auctions for Agency Orders for fewer than 50 contracts because the TPHs will only be required to guarantee an execution at the NBBO, which will provide additional customer orders with an opportunity for price improvement over the NBBO. The Exchange believes the proposal will also encourage increased participation in AIM by TPHs willing to trade with an Agency Order for fewer than 50 contracts at the NBBO but not better than the NBBO.

In support of this proposal, the Exchange notes that both BOX[7] and ISE[8] allow entry of orders into PIP and PIM, respectively, at the NBBO without distinguishing between orders of more than or fewer than 50 contracts. Because BOX and ISE are currently able to offer their customers price improvement for orders of fewer than 50 contracts at the NBBO in PIP and PIM, respectively, the Exchange has determined that it is important for competitive purposes that it be able to offer the same opportunities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BOX Rules Chapter V, Section 18.

[4] *See* ISE Rule 723.

[5] AIM, PIP and PIM have certain characteristics in common with each other. All three mechanisms (a) provide for the opportunity for customer price improvement, (b) have certain periods where the initial orders are exposed for potential price improvement, (c) have certain guidelines regarding the types of orders that may be eligible for price improvement, and (d) have certain defined rules related to the allocation of trades within price improvement auctions.

[6] *See* CBOE Rule 6.74A(b)(1)(A).

[7] *See supra* note 3; *see also* Securities Exchange Act Release No. 34–59654 (March 30, 2009), 74 FR 15551 (April 6, 2009) (SR–BX–2009–08) (order approving proposed rule change allowing entry of orders into PIP at the NBBO when BOX's best bid or offer is inferior to the NBBO with no order size distinction).

[8] *See supra* note 4; *see also* Securities Exchange Act Release No. 34–57847 (May 21, 2008), 73 FR 30987 (May 29, 2008) (SR–ISE–2008–29) (order approving proposed rule change allowing entry of orders into PIM at the NBBO when ISE's best bid or offer is inferior to the NBBO with no order size distinction).

to its customers for price improvement on CBOE through AIM.

The Exchange notes that certain allocation differences exist between AIM and PIM as well as AIM and PIP. As proposed, our AIM change would make the handling of AIM trades for 50 or more contracts consistent with AIM trades under 50 contracts.[9] However, unlike PIM, which requires auctions to commence at prices better than the ISE best bid or offer and thus precludes an auction initiator from establishing priority ahead of any resting ISE interest, an AIM Auction can begin and conclude at the CBOE best bid or offer. This means that, like for orders of 50 or more contracts on CBOE, the Initiating TPH can trade at a price in which resting interest existed and can establish priority over resting broker-dealer interest. Although PIP allows auctions to occur at the BOX best bid or offer, PIP uses an order allocation structure based on price-time priority sequence with priority for public customer orders (like CBOE) and secondary priority for non-BOX Participant broker-dealers. On CBOE, when an Auction concludes at the CBOE best bid or offer, first priority is for public customers, second priority is for the Initiating TPH (for 40%), third priority is for nonpublic customer resting orders or quotes that are unchanged from when the Auction began, and last priority is for RFR responses. The Exchange references these differences for informational purposes but does not believe that the differences are material to the Exchange's goals of handling AIM orders of all sizes the same and allowing Auctions of orders smaller than 50 contracts at the NBBO (like PIP and PIM).

The Exchange further notes that certain components of AIM were approved on a pilot basis, including that there is no minimum size requirement for orders to be eligible for the Auction.[10] The Commission has approved six one-year extensions to the pilot programs, most recently until July 18, 2012.[11] In connection with the pilot programs, the Exchange has submitted, and will continue to submit, to the Commission reports providing detailed AIM Auction and order execution data, including monthly data regarding executions through AIM of Agency Orders for more or fewer than 50 contracts, as supporting evidence that, among other things, there is meaningful competition for all size orders.

Elimination of Three Market-Maker Requirement

CBOE Rule 6.74A(a)(4) currently requires that there be at least three market-makers quoting in the relevant series for an Auction to commence. The Exchange is proposing to eliminate this requirement. The Exchange does not believe that customer orders should be denied the benefits of AIM simply because there may be less than three market-makers quoting in a relevant options class at a specific point in time. Any concern regarding an Auction starting with a lower number of market-makers quoting in a relevant series is offset by the broad participation and competition that would be present once an Auction commenced.

In support of this proposal, the Exchange notes that both PIP[12] and PIM[13] permit auctions to commence without the condition that there be a minimum number of market-makers quoting in the particular series. The Exchange believes that AIM, and in turn the customers that benefit from AIM, would be disadvantaged if the three market-maker requirement remained as a condition to start an Auction because this requirement potentially reduces the number of Auctions and, as a result, opportunities for price improvement. Because BOX and ISE are currently able to offer their customers price improvement without a minimum quoter requirement in PIP and PIM, respectively, the Exchange believes it is essential for competitive purposes that it be able to offer the same opportunities for price improvement on CBOE through AIM.

Addition of Option To Designate Auto-Match Limit Price

CBOE Rule 6.74A(b)(1)(A) currently allows an Initiating TPH to enter its contra-side second order in one of two formats: (1) A specified single price; or (2) a non-price specific commitment to auto-match all Auction responses achieved during the Auction. In this case, the Initiating TPH would have no control over the match price. The Exchange is proposing to provide Initiating TPHs with the additional option to auto-match competing prices from other market participants *up to a designated limit price.* The Initiating TPH will still not be able to cancel the auto-match instruction after an Auction commences and will have no control over the prices at which it receives an allocation of the Auction other than the outside boundary established by the designated limit price.

The Exchange notes that when the Initiating TPH selects the auto-match feature prior to the start of an Auction (with or without a designated limit price), the available liquidity at improved prices is increased and competitive final pricing is out of the Initiating TPH's control. The Exchange believes the proposal will encourage increased participation in AIM because it allows TPHs willing to trade with an Agency Order at a price better than the NBBO, but only up to a certain price, to initiate an Auction.

In support of this proposal, the Exchange also notes that both PIP[14] and PIM[15] permit initiating participants to elect to auto-match up to a designated limit price. The Exchange believes that AIM, and in turn the customers that benefit from AIM, would be disadvantaged if TPHs are not provided with the option to auto-match up to a designated limit price because this lack of flexibility reduces the number of Auctions and, as a result, opportunities for price improvement. Because BOX and ISE currently allow initiating participants or members, respectively, the option to auto-match up to the NBBO achieved during an auction or up to a designated limit price, the Exchange believes it is important for competitive purposes that it be able to offer the same

[9] PIP and PIM also do not distinguish between orders over 50 contracts and orders under 50 contracts.

[10] *See* Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR–CBOE–2005–60) (order approving implementation of AIM).

[11] *See* Securities Exchange Act Release Nos. 34–54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) (SR–CBOE–2006–64); 56094 (July 18, 2007), 72 FR 40910 (July 25, 2007) (SR–CBOE–2007–80); 58196 (July 18, 2008), 73 FR 43803 (July 28, 2008) (SR–CBOE–2008–76); 60338 (July 17, 2009), 74 FR 36803 (July 24, 2009) (SR–CBOE–2009–51); 62522 (July 16, 2010), 75 FR 43596 (July 26, 2010) (SR–CBOE–2010–67); and 34–64930 (July 20, 2011), 76 FR 44636 (July 26, 2011) (SR–CBOE–2011–66).

[12] *See supra* note 3; *see also* Securities Exchange Act Release No. 34–58999 (November 21, 2008), 73 FR 72536 (November 28, 2008) (SR–BSE–2008–54) (order approving proposed rule change to eliminate requirement that there be at least three market-makers quoting in the relevant series for an auction to commence).

[13] *See supra* note 4; *see also* Securities Exchange Act Release No. 34–58710 (October 1, 2008), 73 FR 59008 (October 8, 2008) (SR–ISE–2008–63) (order approving proposed rule change to eliminate requirement that there be at least three market-makers quoting in the relevant series for an auction to commence).

[14] *See supra* note 3; *see also* Securities Exchange Act Release No. 34–61805 (March 31, 2010), 75 FR 17454 (April 6, 2010) (SR–BX–2010–22) (order approving implementation of auto-match feature with the option to auto-match up to a designated limit price).

[15] *See supra* note 4; *see also* Securities Exchange Act Release No. 34–62644 (August 4, 2010), 75 FR 48395 (August 10, 2010) (SR–ISE–2010–61) (order approving implementation of auto-match feature with the option to auto-match up to a designated limit price).

opportunities for price improvement on CBOE through AIM.

The Exchange will provide the Commission with the following data: (1) The percentage of trades effected through AIM in which the Initiating TPH submitted an Agency Order with an auto-match instruction that included a designated limit price and the percentage that did not include a designated limit price; and (2) the average amount of price improvement provided to AIM Agency Orders when the Initiating TPH submitted an auto-match instruction that included a designated limit price and the average amount that did not include a designated limit price, versus the average amount of price improvement provided to AIM Agency Orders when the Initiating TPH submitted a single price (no auto-match instruction).

After effectiveness of the proposal, and at least one week prior to implementation of the rule change, CBOE will issue a notice to TPHs informing them of the implementation of the additional auto-match feature. This will give TPHs an opportunity to make any necessary modifications to coincide with the implementation date.

Elimination of Relevant Option Class Restriction

CBOE Rule 6.74A(b)(1)(D) currently provides that only market-makers with an appointment in the relevant option class may submit responses to an RFR in an Auction. The Exchange is proposing to eliminate this restriction and allow all TPHs that receive an RFR to submit responses in an Auction. The Exchange notes that the elimination of this restriction will allow for broader participation in Auctions by all types of market participants (*e.g.,* public customers, broker-dealers and market-makers). This broader participation will increase competition in Auctions because more market participants will be able to submit responses to RFRs, which responses may result in better prices for customers.

In support of this proposal, the Exchange notes both PIP [16] and PIM [17] permit all participants and members, respectively, to submit competing prices in an auction. The Exchange believes that the elimination of the restriction on which TPHs may compete in an Auction would increase the opportunities for all types of market participants to participate in AIM and submit price responses, leading to more robust competition in AIM.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes this proposed rule change is a reasonable modification designed to provide additional flexibility for TPHs to obtain executions on behalf of their customers while continuing to provide meaningful, competitive Auctions. The Exchange also believes that the proposed rule change will increase the number of and participation in Auctions, which will ultimately enhance competition in the AIM Auctions and provide customers with additional opportunities for price improvement. These changes are consistent with changes made by other exchanges and they serve to remove impediments to and to perfect the mechanism for a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–116 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–CBOE–2011–116. 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

[16] *See supra* note 3; *see also* Securities Exchange Act Release No. 34–51651 (May 3, 2005), 70 FR 24848 (May 11, 2005) (SR–BSE–2005–01) (order approving proposed rule change to eliminate certain restrictions on the ability of certain market participants to participate in PIP).

[17] *See supra* note 4; *see also* Securities Exchange Act Release No. 34–50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (SR–ISE–2003–06) (order approving proposed rule change to implement PIM without a restriction on which members may submit auction responses).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–116, and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33587 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66047; File No. SR–NYSE–2011–64]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 103B, Which Governs the Allocation of Securities to DMMs

December 23, 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 December 15, 2011, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 103B, which governs the allocation of securities to DMMs. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 103B, which governs the allocation of securities to DMMs. Specifically, as described in more detail below, the Exchange proposes to extend the effective period of an allocation decision from six to twelve months, to permit an issuer to submit a written letter to an Exchange Selection Panel (''ESP'') expressing a preference for a DMM if the issuer has delegated authority to the Exchange to select the DMM unit, align the quiet period rule, and to make other conforming changes.

First, the Exchange proposes to amend Rule 103(VI)(H), the Allocation Sunset Policy, to extend the effective period of an allocation decision from six to twelve months. The Exchange believes that extending the time period that allocation decisions remain effective is necessary because in some instances it is taking initial public offerings (''IPOs'') longer than six months to occur after the allocation process. Extending the effective period to twelve months will eliminate the need for a new IPO listing to repeat the allocation process if the six-month effective period has lapsed and thereby contribute to efficiency in the allocation process.

Second, in those instances in which an issuer has delegated authority to the Exchange to select the DMM unit for the issuer under Rule 103B(III)(B), the Exchange proposes to permit the ESP to consider, as part of the selection process, written submissions from the issuer that express the issuer's preference.[3] The written submission from the issuer would be non-binding on the ESP. The Exchange previously allowed a listing company to supply a letter to an allocation committee, but eliminated this part of the rule when the Exchange streamlined the allocation process.[4] The Exchange believes that allowing the issuer to provide a non-binding, written submission would better inform the ESP during the allocation process.

Third, the Exchange also proposes to align the quiet period rule text so that the quiet period is triggered at the appropriate point, whether the issuer selects the DMM unit itself or delegates authority to the Exchange to select the DMM unit. Currently, Rule 103B(III)(A)(2) provides that, if the issuer selects the DMM unit, no DMM unit, or any individuals acting on its behalf, may have any contact with any listing company once the Exchange provides written notice to DMM units that the listing company is listing on the Exchange. Rule 103B(III)(B)(1) provides that if the DMM unit is selected by the Exchange, then individuals associated with the DMM units may not communicate about the DMM unit selection process with members of the ESP from the time the issuer delegates the assignment responsibility to the Exchange until the ESP announces its assignment decision, but doesn't address communication with the issuer. To make the quiet periods more consistent regardless of the issuer's election, the Exchange proposes to amend Rule 103B(III) to provide that after the Exchange provides written notice to DMM units that the issuer is listing on the Exchange, no individual associated with a DMM unit may contact the issuer, or the ESP if applicable, until the allocation is made, except as otherwise provided in the Rule (*e.g.,* as permitted during the interview). The Exchange further proposes to add that, consistent with the manner by which the issuer selects a DMM unit, the ESP may also interview individuals associated with the DMM unit. The Exchange proposes a conforming change to delete the current quiet period text in Rule 103B(III)(A)(2) and Rule 103B(III)(B)(1).

Finally, the Exchange proposes to amend Rule 103B(III)(B)(1). Currently, the Rule provides that an ESP consist of: (a) at least one member of the Exchange's Senior Management, as designated by the Chief Executive Officer of the Exchange or his or her designee; (b) any combination of two Exchange Senior Management or Exchange Floor Operations Staff, to be designated by the Executive Vice-President of Exchange Floor Operations or his/her designee; and (c) any combination of three non-DMM

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under Rule 103B(III), an issuer may either select its DMM unit directly or delegate authority to the Exchange to select its DMM unit.

[4] *See* Securities Exchange Act Release No. 58857 (October 24, 2008), 73 FR 65435 (November 3, 2008) (SR–NYSE–2008–52).

Executive Floor Governors or non-DMM Floor Governors for a total of six members. The Exchange proposes to eliminate the reference to including non-DMM Executive Floor Governors in order to streamline the Rule. Executive Floor Governors are considered a subset of Floor Governors, and therefore both references are not necessary in the Rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that extending the sunset period from six to 12 months will foster cooperation and coordination with person engaged in facilitating securities transactions and will remove impediments to a free and open market because it recognizes that all IPOs may not be brought to market in a six month period and avoids repeating administrative steps in the listing process, thereby promoting efficient use of the Exchange's resources. The proposed rule change also supports just and equitable principles of trade by providing issuers with a greater opportunity for input in the allocation process. In addition, aligning the quiet periods under the Rule will promote consistency, fairness, and objectivity in the allocation process. Finally, the Exchange believes that the change to the rule text concerning the composition of the ESP is technical in nature and simply removes a redundancy.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–64 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–NYSE–2011–64. 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–NYSE–2011–64 and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33585 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66046; File No. SR–NYSE–2011–65]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its New Market Model Pilot, Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or July 31, 2012

December 23, 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 December 16, 2011, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its New Market Model Pilot, currently scheduled to expire on January 31, 2012, until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or July 31, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its New Market Model Pilot (''NMM Pilot''),[3] currently scheduled to expire on January 31, 2012, until the earlier of Commission approval to make such pilot permanent or July 31, 2012.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC.[4]

Background[5]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model. Certain of the enhanced market model changes were implemented through a pilot program.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[6] The DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement[7] in their assigned securities and no longer have a negative obligation. DMMs are also no longer agents for public customer orders.[8]

In addition, the Exchange implemented a system change that allowed DMMs to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'').[9] CCS provides the Display Book®[10] with the amount of shares that the DMM is willing to trade at price points outside, at and inside the Exchange Best Bid or Best Offer (''BBO''). CCS interest is separate and distinct from other DMM interest in that it serves as the interest of last resort.

The NMM Pilot further modified the logic for allocating executed shares among market participants having trading interest at a price point upon execution of incoming orders. The modified logic rewards displayed orders that establish the Exchange's BBO. During the operation of the NMM Pilot orders, or portions thereof, that establish priority[11] retain that priority until the portion of the order that established priority is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

The NMM Pilot was originally scheduled to end operation on October 1, 2009, or such earlier time as the Commission may determine to make the rules permanent. The Exchange filed to extend the operation of the Pilot on several occasions in order to prepare a rule filing seeking permission to make the above described changes permanent.[12] The Exchange is currently still preparing such formal submission but does not expect that filing to be completed and approved by the Commission before January 31, 2012.

Proposal To Extend the Operation of the NMM Pilot

The NYSE established the NMM Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers and to add a new competitive market participant. The Exchange believes that the NMM Pilot allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the NMM Pilot should be made permanent. Through this filing the Exchange seeks to extend the current operation of the NMM Pilot until July 31, 2012, in order to allow the Exchange time to formally submit a filing to the Commission to convert the pilot rules to permanent rules.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in

[3] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46). *See also* Securities Exchange Act Release Nos. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending Pilot to November 30, 2009); 61031 (November 19, 2009), 74 FR 62368 (November 27, 2009) (SR–NYSE–2009–113) (extending Pilot to March 30, 2010); 61724 (March 17, 2010), 75 FR 14221 (March 24, 2010) (SR–NYSE–2010–25) (extending Pilot to September 30, 2010); 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR–NYSE–2010–61) (extending Pilot to January 31, 2011); 63616 (December 29, 2010), 76 FR 612 (January 5, 2011) (SR–NYSE–2010–86) (extending Pilot to August 1, 2011) and 64761 (June 28, 2011), 76 FR 39147 (July 5, 2011) (SR–NYSE–2011–29) (extending Pilot to January 31, 2012).

[4] *See* SR–NYSEAmex–2011–102.

[5] The information contained herein is a summary of the NMM Pilot. *See supra* note [4] [sic] for a fuller description.

[6] *See* NYSE Rule 103.

[7] *See* NYSE Rule 104.

[8] *See* NYSE Rule 60; *see also* NYSE Rules 104 and 1000.

[9] *See* NYSE Rule 1000.

[10] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[11] *See* NYSE Rule 72(a)(ii).

[12] *See supra* note 4.

general, to protect investors and the public interest. The Exchange believes that this filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently, and operates to reward aggressive liquidity providers. Moreover, requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–65 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–NYSE–2011–65. 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–NYSE–2011–65 and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33584 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66045; File No. SR–NYSE–2011–66]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Operation of Its Supplemental Liquidity Providers Pilot Under Rule 107B Until the Earlier of the Securities and Exchange Commission's Approval To Make Such Pilot Permanent or July 31, 2012

December 23, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') and Rule 19b–4 thereunder, notice is hereby given that December 16, 2011, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot (''SLP Pilot'' or ''Pilot'') (See Rule 107B), currently scheduled to expire on January 31, 2012, until the earlier of the Securities and Exchange Commission's (''SEC'' or ''Commission'') approval to make such Pilot permanent or July 31, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the operation of its Supplemental Liquidity Providers Pilot,[1] currently scheduled to expire on January 31, 2012, until the earlier of Commission approval to make such Pilot permanent or July 31, 2012.

Background[2]

In October 2008, the NYSE implemented significant changes to its market rules, execution technology and the rights and obligations of its market participants all of which were designed to improve execution quality on the Exchange. These changes are all elements of the Exchange's enhanced market model referred to as the ''New Market Model'' (''NMM Pilot'').[3] The SLP Pilot was launched in coordination with the NMM Pilot (see Rule 107B).

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM.[4] Separately, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[5]

The SLP Pilot is scheduled to end operation on January 31, 2012 or such earlier time as the Commission may determine to make the rules permanent. The Exchange is currently preparing a rule filing seeking permission to make the SLP Pilot permanent, but does not expect that filing to be completed and approved by the Commission before January 31, 2012.[6]

Proposal To Extend the Operation of the SLP Pilot

The NYSE established the SLP Pilot to provide incentives for quoting, to enhance competition among the existing group of liquidity providers, including the DMMs, and add new competitive market participants. The Exchange believes that the SLP Pilot, in coordination with the NMM Pilot, allows the Exchange to provide its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. As such, the Exchange believes that the rules governing the SLP Pilot (Rule 107B) should be made permanent. Through this filing the Exchange seeks to extend the current operation of the SLP Pilot until July 31, 2012, in order to allow the Exchange to formally submit a filing to the Commission to convert the Pilot rule to a permanent rule.[7]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles because the SLP Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the SLP Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the SLP Pilot permanent; (ii) public notice and comment; and (iii) completion of the 19b–4 approval process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[1] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (establishing the SLP Pilot). *See also* Securities Exchange Act Release Nos. 59869 (May 6, 2009), 74 FR 22796 (May 14, 2009) (SR–NYSE–2009–46) (extending the operation of the SLP Pilot to October 1, 2009); 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100) (extending the operation of the New Market Model and the SLP Pilots to November 30, 2009); 61075 (November 30, 2009), 74 FR 64112 (December 7, 2009) (SR–NYSE–2009–119) (extending the operation of the SLP Pilot to March 30, 2010); 61840 (April 5, 2010), 75 FR 18563 (April 12, 2010) (SR–NYSE–2010–28) (extending the operation of the SLP Pilot to September 30, 2010); 62813 (September 1, 2010), 75 FR 54686 (September 8, 2010) (SR–NYSE–2010–62) (extending the operation of the SLP Pilot to January 31, 2011); 63616 (December 29, 2010), 76 FR 612 (January 5, 2011) (SR–NYSE–2010–86) (extending the operation of the SLP Pilot to August 1, 2011); and 64762 (June 28, 2011), 76 FR 39145 (July 5, 2011) (SR–NYSE–2011–30) (extending the operation of the SLP Pilot to January 31, 2012).

[2] The information contained herein is a summary of the NMM Pilot and the SLP Pilot. *See supra* note [4] [sic] for a fuller description of those pilots.

[3] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[4] *See* NYSE Rule 103.

[5] *See* NYSE Rule 107B.

[6] The NMM Pilot was scheduled to expire on January 31, 2012. On December 16, 2011, the Exchange filed to extend the NMM Pilot until July 31, 2012 (*See* SR–NYSE–2011–65) (*See also* Securities Exchange Act Release Nos. 64761 (June 28, 2011) 76 FR 39147 (July 5, 2011) (SR–NYSE–2011–29) (extending the operation of the New Market Model Pilot to January 31, 2012); 63618 (December 29, 2010) 76 FR 617 (January 5, 2011) (SR–NYSE–2010–85) (extending the operation of the New Market Model Pilot to August 1, 2011); 62819 (September 1, 2010), 75 FR 54937 (September 9, 2010) (SR–NYSE–2010–61) (extending the operation of the New Market Model Pilot to January 31, 2011); 61724 (March 17, 2010), 75 FR 14221 (SR–NYSE–2010–25) (extending the operation of the New Market Model Pilot to September 30, 2010); and 61031 (November 19, 2009), 74 FR 62368 (SR–NYSE–2009–113) (extending the operation of the New Market Model Pilot to March 30, 2010).

[7] The NYSE Amex SLP Pilot (NYSE Amex Equities Rule 107B) is also being extended until July 31, 2012 or until the Commission approves it as permanent (*See* SR–NYSEAmex–2011–103).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

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–NYSE–2011–66 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–NYSE–2011–66. 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–NYSE–2011–66 and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33583 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66044; File No. SR–NYSEAmex–2011–100]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Amex Equities Rule 103B, Which Governs the Allocation of Securities to DMMs

December 23, 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 15, 2011, NYSE Amex LLC (''Exchange'' or ''NYSE Amex'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 103B, which governs the allocation of securities to DMMs. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 103B, which governs the allocation of securities to DMMs. Specifically, as described in more detail below, the Exchange proposes to extend the effective period of an allocation decision from six to twelve months, to permit an issuer to submit a written letter to an Exchange Selection Panel (''ESP'') expressing a preference for a DMM if the issuer has delegated authority to the Exchange to select the DMM unit, align the quiet period rule, and to make other conforming changes.

First, the Exchange proposes to amend NYSE Amex Equities Rule 103(VI)(H), the Allocation Sunset Policy, to extend the effective period of an allocation decision from six to twelve months. The Exchange believes that extending the time period that allocation decisions remain effective is necessary because in some instances it is taking initial public offerings (''IPOs'') longer than six months to occur after the allocation process. Extending the effective period to twelve months will eliminate the need for a new IPO listing to repeat the allocation process if the six-month effective period has lapsed and thereby contribute to efficiency in the allocation process.

Second, in those instances in which an issuer has delegated authority to the Exchange to select the DMM unit for the issuer under NYSE Amex Equities Rule 103B(III)(B), the Exchange proposes to permit the ESP to consider, as part of the selection process, written submissions from the issuer that express the issuer's preference.[3] The written submission from the issuer would be non-binding on the ESP. The Exchange previously allowed a listing company to supply a letter to an allocation committee, but eliminated this part of the rule when the Exchange streamlined the allocation process.[4] The Exchange believes that allowing the issuer to provide a non-binding, written submission would better inform the ESP during the allocation process.

Third, the Exchange also proposes to align the quiet period rule text so that the quiet period is triggered at the appropriate point, whether the issuer selects the DMM unit itself or delegates authority to the Exchange to select the DMM unit. Currently, NYSE Amex Equities Rule 103B(III)(A)(2) provides that, if the issuer selects the DMM unit, no DMM unit, or any individuals acting on its behalf, may have any contact with any listing company once the Exchange provides written notice to DMM units that the listing company is listing on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under NYSE Amex Equities Rule 103B(III), an issuer may either select its DMM unit directly or delegate authority to the Exchange to select its DMM unit.

[4] *See* Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10).

Exchange. NYSE Amex Equities Rule 103B(III)(B)(1) provides that if the DMM unit is selected by the Exchange, then individuals associated with the DMM units may not communicate about the DMM unit selection process with members of the ESP from the time the issuer delegates the assignment responsibility to the Exchange until the ESP announces its assignment decision, but doesn't address communication with the issuer. To make the quiet periods more consistent regardless of the issuer's election, the Exchange proposes to amend NYSE Amex Equities Rule 103B(III) to provide that after the Exchange provides written notice to DMM units that the issuer is listing on the Exchange, no individual associated with a DMM unit may contact the issuer, or the ESP if applicable, until the allocation is made, except as otherwise provided in the Rule (e.g., as permitted during the interview). The Exchange further proposes to add that, consistent with the manner by which the issuer selects a DMM unit, the ESP may also interview individuals associated with the DMM unit. The Exchange proposes a conforming change to delete the current quiet period text in NYSE Amex Equities Rule 103B(III)(A)(2) and NYSE Amex Equities Rule 103B(III)(B)(1).

Finally, the Exchange proposes to amend NYSE Amex Equities Rule 103B(III)(B)(1). Currently, the Rule provides that an ESP consist of: (a) At least one member of the Exchange's Senior Management, as designated by the Chief Executive Officer of the Exchange or his or her designee; (b) any combination of two Exchange Senior Management or Exchange Floor Operations Staff, to be designated by the Executive Vice-President of Exchange Floor Operations or his/her designee; and (c) any combination of three non-DMM Executive Floor Governors or non-DMM Floor Governors for a total of six members. The Exchange proposes to eliminate the reference to including non-DMM Executive Floor Governors in order to streamline the Rule. Executive Floor Governors are considered a subset of Floor Governors, and therefore both references are not necessary in the Rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that extending the sunset period from six to 12 months will foster cooperation and coordination with person engaged in facilitating securities transactions and will remove impediments to a free and open market because it recognizes that all IPOs may not be brought to market in a six month period and avoids repeating administrative steps in the listing process, thereby promoting efficient use of the Exchange's resources. The proposed rule change also supports just and equitable principles of trade by providing issuers with a greater opportunity for input in the allocation process. In addition, aligning the quiet periods under the Rule will promote consistency, fairness, and objectivity in the allocation process. Finally, the Exchange believes that the change to the rule text concerning the composition of the ESP is technical in nature and simply removes a redundancy.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–100. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–100 and should be submitted on or before January 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33582 Filed 12–29–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7746]

Assistance to the Autonomous Government of Southern Sudan and the United States Contribution to the Global Fund To Fight AIDS, Tuberculosis and Malaria (Global Fund) for Fiscal Year 2010

AGENCY: Department of State.

ACTION: Notice of a Waiver Determination under Section 202(d)(4)(A)(ii) of the United States Leadership against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, as amended, for Fiscal Year 2010.

SUMMARY: This is a notice of a waiver determination under Section 202(d)(4)(A)(ii) of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (the ''Leadership Act''). The Leadership Act requires that the U.S. Global AIDS Coordinator withhold from the U.S. contribution to the Global Fund an amount equal to expenditures by the Global Fund in the previous fiscal year to governments of countries that have been determined to have repeatedly provided support for acts of international terrorism in accordance with section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405 (j)(1)) (the ''6(j) list'').

The government of the Republic of Sudan is designated on the ''6(j) list.'' Thus, Global Fund expenditures to the Government of the Republic of Sudan trigger a withholding requirement from the U.S. contribution to the Global Fund, subject to the waiver authority provided for Global Fund expenditures in Southern Sudan. During FY 2009, $1,162,902 was provided to government entities in Southern Sudan under HIV/AIDS grants, thus triggering a potential withholding requirement in this amount from the FY 2010 U.S. contribution to the Global Fund. These funds were used to support HIV/AIDS prevention, treatment, and surveillance activities under six active grants.

Under the Leadership Act, the President has authority to waive the withholding requirement for assistance overseen by the Southern Sudan Country Coordinating Mechanism (SSCCM) if such an action is justified by the national interest or for humanitarian reasons. This authority has been delegated to the U.S. Global AIDS Coordinator. The United States places a high priority on ensuring appropriate disbursement and expenditure of foreign development and humanitarian funding. Following consultations with the relevant Congressional committees, the U.S. Global AIDS Coordinator has determined waiver of the withholding requirement for assistance by the Global Fund to the Autonomous Government of Southern Sudan through the Global Fund SSCCM is justified for humanitarian reasons. The application of the withholding requirement of Section 202(d)(4)(A)(ii) of the Act is hereby waived with respect to such assistance, allowing for the additional contribution of $1,162,902 to the Global Fund from the FY 2010 appropriations for the U.S. contribution to the Global Fund. This notice of waiver determination is published in the **Federal Register** in compliance with Section 202(d)(4)(A)(ii) of the Leadership Act.

DATES: *Date Effective:* January 13, 2012.

FOR FURTHER INFORMATION CONTACT: Guinnevere Roberts, Director, Multilateral Diplomacy, Office of the Global AIDS Coordinator, (202) 663–2586.

Dated: December 13, 2011.

Eric P. Goosby,

Ambassador, Office of the U.S. Global AIDS Coordinator, Department of State.

[FR Doc. 2011–33613 Filed 12–29–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 7747]

Culturally Significant Objects Imported for Exhibition Determinations: ''Alina Szapocznikow: Sculpture Undone, 1955–1972''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Alina Szapocznikow: Sculpture Undone, 1955–1972'' 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 Hammer Museum, Los Angeles, CA, from on or about February 5, 2012, until on or about April 29, 2012; the Wexner Center for the Arts, Columbus, OH, from on or about May 18, 2012, until on or about August 8, 2012; The Museum of Modern Art, New York, NY, from on or about October 7, 2012, until on or about January 28, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 22, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–33617 Filed 12–29–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7745]

Determination and Waiver Under the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003, as Amended, Relating to Assistance to the Autonomous Government of Southern Sudan and the United States Contribution to the Global Fund To Fight AIDS, Tuberculosis and Malaria for Fiscal Year 2010

Pursuant to Section 202(d)(4)(A)(ii) of the United States Leadership Against

HIV/AIDS, Tuberculosis and Malaria Act of 2003 (Pub. L. 108–25), as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Pub. L. 110–293), Executive Order 12163, as amended by Executive Order 13361, and Delegation of Authority 293–1, I hereby determine that assistance by the Global Fund to Fight AIDS, Tuberculosis and Malaria to the Autonomous Government of Southern Sudan through the Southern Sudan Country Coordinating Mechanism is justified for humanitarian reasons, and hereby waive, with respect to such assistance provided in the year preceding FY 2010, the application of Section 202(d)(4)(A)(ii) of the Act.

This determination shall be reported to Congress and published in the **Federal Register**.

Dated: December 13, 2011.

Eric P. Goosby,

Ambassador, U.S. Global AIDS Coordinator.

[FR Doc. 2011–33611 Filed 12–29–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Release of Aeronautical Property at Erie International Airport (ERI), Erie, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the Erie Regional Airport Authority's request to release airport property for use by the Pennsylvania Department of Transportation (PennDOT) to construct and maintain additional roadway and drainage facilities along the west side of Asbury Road. The request contains five (5) components consisting of a permanent release of land, release of land for drainage easement, release of land for temporary construction easement, release of land for substitute right-of-way, and release of land for permanent gas line easement.

(1) Permanent Release of Land (PennDOT Right-of-Way)—0.72 Acres

The parcel is located at Erie International Airport (ERI) in Millcreek Township, Erie County, PA. The property is currently depicted on the Airport Layout Plan of record as airport property and consists of a narrow strip of land varying from 22 feet to 48 feet in width and approximately 800 linear feet long consisting mostly of natural growth grass and vegetation bounded by Asbury Rd to the east. More specifically, the 0.72 acre parcel is located upon Parcel 4 and 5 of the airport property. The County Index Nos. are (33)039–147.00–001.00 and (33)039–148.00–001.00. The airport is requesting approval to sell this land to the PennDOT in a permanent right-of-way easement for roadway drainage improvements along the right-of-way boundary between Asbury Road and the airport property boundary. This area is not needed for aeronautical use and its use as PennDOT Right-of-Way does not limit or restrict the use of dedicated airport land for current or foreseeable aeronautical activities. Approval of this action will allow for the sale of the 0.72 acre right-of-way easement to PennDOT.

(2) Release of Land for Drainage Easement—0.014 Acres

The easement is located at Erie International Airport (ERI) in Millcreek Township, Erie County, PA. The 0.014 acre parcel is located on Parcel 1 and 5 of the airport property, Erie County Index No. 039–147.00–001.00. The Airport Authority is requesting release of this land for purposes of providing a drainage easement for construction, inspection, maintenance, repair, reconstruction, and alteration of the highway drainage facilities for Asbury Road. The easement area is on Parcel 5 and consists of undeveloped land with natural growth grass and vegetation. Asbury Road is being widened to accommodate additional anticipated traffic volume related to increased commercial development in and around the airport. This will result in an increase in impervious surface making it necessary to install new stormwater management facilities. As such, a drainage easement will be required for PennDOT to maintain stormwater facilities not located within the PennDOT Right-of-Way. The airport will be permitted to use this property, but will not be able to place any structures, create any adverse impacts to the flow of stormwater, or connect any pipes or drainage into the PennDOT system without written consent from PennDOT. This area is not needed for aeronautical use and its use as PennDOT easement does not limit or restrict the use of dedicated airport land for current or foreseeable aeronautical activities. Approval of this action will allow for the sale of the 0.014 acre drainage easement to PennDOT.

(3) Release of Land for Temporary Construction Easement—0.078 Acres

The easement is located at Erie International Airport (ERI) in Millcreek Township, Erie County, PA. The 0.078 acre area is located on Parcels 1 and 5 of the airport property, Erie County Index No. (33) 039–147.00–001.00. The Airport Authority is requesting release of this land for purposes of providing easement for construction activities outside the PennDOT Right-of-Way. This request for release of land from the Erie Regional Airport Authority is temporary and the land will revert back to the airport upon completion of the construction activities. The primary purpose of this temporary land release is to allow for the adjustment of the existing driveways on Parcel 1 of the airport to tie into Asbury Road. Parcel 5 is also temporarily impacted while Stormwater Management facilities are being constructed. The impacted land, currently consisting of asphalt paved driveways in Parcel 1 and undeveloped grass and vegetation on Parcel 5, will be restored to similar condition upon completion of the construction work. This area is not needed for aeronautical use and its use as a temporary construction easement does not limit or restrict the use of dedicated airport land for current or foreseeable aeronautical activities. Approval of this action will allow for the granting of the temporary easement consisting of 0.078 acres to PennDOT.

(4) Release of Land for Substitute Right-of-Way Utility Easement—0.198 Acres

The easement is located at Erie International Airport (ERI) in Millcreek Township, Erie County, PA. The 0.198 acre area is located along the west side of Asbury Road and is situated on Parcel 5 of the airport property on County Index No. (33) 039–147.00–001.00. The property to be released is a strip of land of natural growth grass and vegetation approximately 20′ wide and running parallel along the west side of Asbury Road. The release will provide a replacement utility easement for Millcreek Township Water and Sewer Authority to construct, inspect, maintain, repair and reconstruct water line facilities along Asbury Road. The existing utility easement is located on airport property. Asbury Road is being widened by PennDOT to accommodate additional traffic volume related to increased commercial development in the vicinity of the airport. As part of the roadway project, a new water main will need to be constructed outside the limits of the pavement of the widened Asbury Road. This easement will

provide a substitute Right-of-Way Easement for locating the replacement water main. This area is not needed for aeronautical use and its use as a temporary construction easement does not limit or restrict the use of dedicated airport land for current or foreseeable aeronautical activities. Approval of this action will allow for the granting of the substitute water line easement consisting of 0.198 acres to the Millcreek Township Water and Sewer Authority for the replacement water main.

(5) Release of Land for Replacement Gas Line Easement—Net Change 0.00 Acres

The existing and replacement easement are located at Erie International Airport (ERI) in Millcreek Township, Erie County, PA. The existing easement is located along the west side of Asbury Road and is situated on Parcels 4 and 5 of the airport property on County Index No. (33) 039–147.00–001.00. This replacement gas line easement will provide a replacement utility easement for National Fuel Gas (NGS) to construct, inspect, maintain, repair and reconstruct a gas line utility along Asbury Road. The existing utility easement is currently located on airport property. Asbury Road is being widened by PennDOT to accommodate additional traffic volume related to increased commercial development in the vicinity of the airport. As part of the roadway project, a new replacement gas line utility will need to be constructed outside the limits of the widened Asbury Road. This easement will provide a substitute Right-of-Way Easement for locating the replacement National Fuel Gas line. This easement area is not needed for aeronautical use and its use as a replacement utility easement does not limit or restrict the use of dedicated airport land for current or foreseeable aeronautical activities. Approval of this action will allow for the granting of of the substitute Gas Line easement to National Fuel Gas (NFG) for installing the relocated replacement gas line.

Documents reflecting the airport sponsor's request are available, by appointment only, for inspection at the Erie International Airport Executive Director's office and the FAA Harrisburg Airport District Office.

DATES: Comments must be received on or before December 31, 2011.

ADDRESSES: Documents are available for review at the Airport Manager's office:

Christopher L. Rodgers, Airport Executive Director, Erie Regional Airport Authority, 4411 W. 12th St., Erie, PA 16505, (814) 833–4258.

and at the FAA Harrisburg Airports District Office:

Oscar D. Sanchez, Program Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, (717) 730–2830.

FOR FURTHER INFORMATION CONTACT: Oscar D. Sanchez, Program Manager, Harrisburg Airports District Office (location listed above).

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release for sale or easement current airport property at the Erie International Airport at fair market value under the provisions of Section 47125(a) of Title 49 U.S.C.

The following is a brief overview of the request:

The Erie International Airport (ERI) has requested the sale of Right-of-Way and easements of airport property, along the airport's western boundary with Asbury Rd. The Erie Regional Airport Authority (ERAA), as owner of the Erie International Airport (ERI), have been approached by the Pennsylvania Department of Transportation (PennDOT) with a request for Right-of-way, drainage, construction and utility easement acquisition to support a State roadway widening project of Asbury Road. As part of this roadway widening project, PennDOT is required to obtain additional Right-of-Way on the west side of Asbury Road to construct and maintain additional roadway and drainage facilities. Drainage easements will also be needed for the maintenance of the drainage facilities outside the PennDOT Right-of-Way. Temporary construction easements will be needed for the connection of existing driveways and drainage facilities to the new roadway construction. A substitute utility easement needs to be granted to The Millcreek Water and Sewer Authority for the relocation of the existing water main, which will need to be brought outside the widened Asbury Road. In addition, National Fuel Gas (NFG) is requesting a permanent easement to relocate and maintain a replacement gas line. The current NFG gas line is located on airport property within an existing easement. The proposed relocated line will be located on airport property with a similar replacement easement.

Portions of this airport-owned land were acquired with the assistance of a Federal Aviation Agency Grant issued on June 7, 1962 for purchase of Parcels 4 and 5 by the Erie Municipal Airport Authority. There are no known adverse impacts to the operation of the airport and the land is not needed for any foreseeable future aeronautical development as shown on the approved Erie International Airport Layout Plan (ALP). Any proceeds from the sale of the right of way and easements are to remain on the airport for capital development and to cover the operating costs of the Airport.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment on the proposed change in use of the property. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, on December 1, 2011.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2011–33562 Filed 12–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 328X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Marietta, Lancaster County, PA

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 2.0 miles of rail line extending from milepost Borough of Marietta, Lancaster County, Pa. MU 83.9 (near S. Bridge Street) to milepost MU 85.9 (south of the intersection of Railroad Ave. and Old River Road), in the Borough of Marietta, Lancaster County, Pa. The line traverses United States Postal Service Zip Code 17547.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the

abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 1, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 9, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 19, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by January 6, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–(800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 30, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: December 23, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–33493 Filed 12–29–11; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board, DOT.

ACTION: 30-day notice of request for approval: Application to Open a Billing Account.

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 that it has submitted a request to the Office of Management and Budget (OMB) for an extension of approval with revision of a currently approved collection: Application to Open a Billing Account. The revision consists of a reduction in burden hours due to the agency's revised estimate of the number of annual respondents. The Board previously published a notice about this collection in the **Federal Register** on September 30, 2011, at 76 FR 60,964. That notice allowed for a 60-day public review and comment period. No comments were received.

The application to open a billing account is described in detail below. Comments may now be submitted to OMB 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 this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility.

Description of Collection

Title: Application to Open a Billing Account.

OMB Control Number: 2140–0006.

STB Form Number: STB Form 1032.

Type of Review: Revision of a currently approved collection.

Respondents: Rail carriers, shippers, and others doing business before the STB.

Number of Respondents: 5.

Estimated Time per Response: Less than .08 hours, based on actual survey of respondents.

Frequency: One time per respondent.

Total Burden Hours (annually including all respondents): Less than 0.4 hours.

Total ''Non-hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: The Board is, by statute, responsible for the economic regulation of freight rail carriers and certain other carriers operating in interstate commerce. The form for which this approval is sought is submitted by persons doing business before the Board who wish to open an account with the Board to facilitate their payment of filing fees; fees for the search, review, copying, and certification of records; and fees for other services rendered by the Board. An account holder is billed on a monthly basis for payment of accumulated fees. Data provided is also used for debt collection activities. The application form requests information as required by OMB and U.S. Department of the Treasury regulations for the collection of fees. This information is not duplicated by any other agency. In accordance with the Privacy Act, 5 U.S.C. 552a, all taxpayer identification and social security numbers are secured and used only for credit management and debt collection activities.

DATES: Comments on this information collection should be submitted by January 30, 2012.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board, Application to Open a Billing Account.'' These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Patrick Fuchs, Surface Transportation Board

Desk Officer, by fax at (202) 395–5167; by mail at Room 10235, 725 17th Street NW., Washington, DC 20500; or by email at *OIRA_SUBMISSION@OMB.EOP.GOV.*

For Further Information or To Obtain a Copy of the STB Form, Contact: Anthony Jacobik, Jr., (202) 245–0346. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: 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(b) of the PRA, Federal agencies are required to provide, concurrent with an agency's submitting a collection to OMB for approval, a 30-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 23, 2011.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–33526 Filed 12–29–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Mayer Brown LLP as outside counsel for BNSF Railway Company (WB461–18—11/14/11) for permission to use certain data from the Board's 1999 through 2010 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–33522 Filed 12–29–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35563]

Chicago, Central & Pacific Railroad Company—Trackage Rights Exemption—Cedar River Railroad Company

Pursuant to a written trackage rights agreement, Cedar River Railroad Company (CEDR) has agreed to grant nonexclusive overhead and local trackage rights to Chicago, Central & Pacific Railroad Company (CCP) [1] over 3.0 miles of rail line between the connection with CCP at milepost 0.0 at Mona Junction and milepost 3.0 at Dunkerton Road, in Cedar Falls, Iowa.[2]

The transaction is scheduled to be consummated on January 13, 2012, the effective date of the exemption (30 days after the exemption was filed).

The trackage rights will permit CCP to operate its trains in freight service with its own crews, including the right to enter and exit the trackage at CEDR's connection to the Cedar Falls Industrial Park near milepost 0.8 in Cedar Falls. In addition, the proposed trackage rights will allow CCP and CEDR to improve the efficiency of their operations in the Cedar Falls area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham and Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed by January 6, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35563, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeremy M. Berman, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: December 23, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–33525 Filed 12–29–11; 8:45 am]

BILLING CODE 4915–01–P

[1] CEDR and CCP are indirect subsidiaries of Canadian National Railway Company.

[2] A redacted, executed trackage rights agreement between CEDR and CCP was filed with the notice of exemption. The unredacted version was filed under seal along with a motion for protective order, which will be addressed in a separate decision.

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2012, and ending on June 30, 2012, the prompt payment interest rate is 2 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Dorothy Dicks, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. A copy of this Notice is available at *http://www.treasurydirect.gov.*

DATES: Effective January 1, 2012, to June 30, 2012.

FOR FURTHER INFORMATION CONTACT: Brant McDaniel, Manager, Federal Borrowings Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 480–5114; Dorothy Dicks, Reporting Team Leader, Federal Borrowings Branch, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 480–5115; Paul Wolfteich, Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (202) 504–3705; or Brenda L. Hoffman, Attorney-Advisor, Office of the Chief Counsel, Bureau of the Public Debt, (202) 504–3706.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act of 1982, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under § 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of interest. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning January 1, 2012, and ending on June 30, 2012, is 2 per centum per annum.

Mark Reger,

Acting Fiscal Assistant Secretary.

[FR Doc. 2011–33528 Filed 12–29–11; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

Vol. 76 Friday,

No. 251 December 30, 2011

Part II

Federal Communications Commission

47 CFR Parts 1, 6, 7, *et al.*

Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 6, 7, and 14

[CG Docket No. 10–213; WT Docket No. 96–198; CG Docket No. 10–145; FCC 11–151]

Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules that implement provisions of section 104 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Public Law 111–260, the most significant accessibility legislation since the passage of the Americans with Disabilities Act (ADA) in 1990. A Proposed Rule relating to implementation of section 718 of the Communications Act of 1934, as enacted by the CVAA, is published elsewhere in this issue of the **Federal Register**. This proceeding amends the Commission's rules to ensure that people with disabilities have access to the incredible and innovative communications technologies of the 21st-century. These rules are significant and necessary steps towards ensuring that the 54 million Americans with disabilities are able to fully utilize and benefit from advanced communications services (ACS). People with disabilities often have not shared in the benefits of this rapid technological advancement. The CVAA implements steps in addressing this inequity by advancing the accessibility of ACS in a manner that is consistent with our objectives of promoting investment and innovation. This is consistent with the Commission's commitment to promote rapid deployment of and universal access to broadband services for all Americans.

DATES: Effective January 30, 2012, except 47 CFR 14.5, 14.20(d), 14.31, 14.32, and 14.34 through 14.52, which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Consumer and Governmental Affairs Bureau, at (202) 418–2075 or *rosaline.crawford@fcc.gov;* Brian Regan, Wireless Telecommunications Bureau, at (202) 418–2849 or *brian.regan@fcc.gov;* or Janet Sievert, Enforcement Bureau, at (202) 418–1362 or *janet.sievert@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 11–151, adopted and released on October 7, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachment/FCC-11-151A1doc.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau (202) 418–0530 (voice), (202) 418–0432 (TTY).

Final Paperwork Reduction of 1995 Analysis

This document contains new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in document FCC 11–151 as required by the PRA of 1995, Public Law 104–13. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

In this proceeding, we adopt new recordkeeping rules that provide clear guidance to covered entities on the records they must keep to demonstrate compliance with our new rules. We require covered entities to keep the three categories of records set forth in section 717(a)(5)(A) of the CVAA. We also require annual certification by a corporate officer that the company is keeping the required records. We have assessed the effects of these rules and find that any burden on small businesses will be minimal because we have adopted the minimum recordkeeping requirements that allow covered entities to keep records in any format they wish. This approach takes into account the variances in covered entities (*e.g.,* size, experience with the Commission), recordkeeping methods, and products and services covered by the CVAA. Furthermore, this approach provides the greatest flexibility to small businesses and minimizes the impact that the statutorily mandated requirements impose on small businesses. Correspondingly, we considered and rejected the alternative of imposing a specific format or one-size-fits-all system for recordkeeping that could potentially impose greater burdens on small businesses. Moreover, the certification requirement is possibly less burdensome on small businesses than large, as it merely requires certification from an officer that the necessary records were kept over the previous year; this is presumably a less resource intensive certification for smaller entities. Finally, we adopt a requirement that consumers must file a ''Request for Dispute Assistance'' with the Consumer and Governmental Affairs' Disability Rights Office as a prerequisite to filing an informal complaint with the Enforcement Bureau. This information request is beneficial because it will trigger Commission involvement before a complaint is filed and will benefit both consumers and industry by helping to clarify the accessibility needs of consumers. It will also encourage settlement discussions between the parties in an effort to resolve accessibility issues without the expenditure of time and resources in the informal complaint process. We also note that we have temporarily exempted small entities from the rules we have adopted herein while we consider, in the Accessibility *FNPRM,* whether we should grant a permanent exemption, and what criteria should be associated with such an exemption.

Synopsis

I. Executive Summary

1. In this *Report and Order,* we conclude that the accessibility requirements of section 716 of the Act apply to non-interconnected VoIP services, electronic messaging services,

and interoperable video conferencing services. We implement rules that hold entities that make or produce end user equipment, including tablets, laptops, and smartphones, responsible for the accessibility of the hardware and manufacturer-provided software used for email, SMS text messaging, and other ACS. We also hold these entities responsible for software upgrades made available by such manufacturers for download by users. Additionally, we conclude that, except for third-party accessibility solutions, there is no liability for a manufacturer of end user equipment for the accessibility of software that is independently selected and installed by the user, or that the user chooses to use in the cloud. We provide the flexibility to build-in accessibility or to use third-party solutions, if solutions are available at nominal cost (including set up and maintenance) to the consumer. We require covered entities choosing to use third-party accessibility solutions to support those solutions for the life of the ACS product or service or for a period of up to two years after the third-party solution is discontinued, whichever comes first. If the third-party solution is discontinued, however, another third-party accessibility solution must be made available by the covered entity at nominal cost to the consumer. If accessibility is not achievable either by building it in or by using third-party accessibility solutions, equipment or services must be compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless such compatibility is not achievable.

2. We also conclude that providers of advanced communications services include all entities that offer advanced communications services in or affecting interstate commerce, including resellers and aggregators. Such providers include entities that provide advanced communications services over their own networks, as well as providers of applications or services accessed (*i.e.,* downloaded and run) by users over other service providers' networks. Consistent with our approach for manufacturers of equipment, we find that a provider of advanced communications services is responsible for the accessibility of the underlying components of its service, including software applications, to the extent that doing so is achievable. A provider will not be responsible for the accessibility of components that it does not provide, except when the provider relies on a third-party solution to comply with its accessibility obligations.

3. We adopt rules identifying the four statutory factors that will be used to conduct an achievability analysis pursuant to section 716: (i) The nature and cost of the steps needed to meet the requirements of section 716 of the Act and this part with respect to the specific equipment or service in question; (ii) the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; (iii) the type of operations of the manufacturer or provider; and (iv) the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points. Pursuant to the fourth achievability factor, we conclude that covered entities do not have to consider what is achievable with respect to every product, if such entity offers consumers with the full range of disabilities products with varied functions, features, and prices. We also conclude that ACS providers have a duty not to install network features, functions, or capabilities that impede accessibility or usability.

4. We adopt rules pursuant to section 716(h)(1) to accommodate requests to waive the requirements of section 716 for ACS and ACS equipment. We conclude that we will grant waivers on a case-by-case basis and adopt two factors for determining the primary purpose for which equipment or a service is designed. We will consider whether the equipment or service is capable of accessing ACS and whether it was designed for multiple purposes but primarily for purposes other than using ACS. In determining whether the equipment or service is designed primarily for purposes other than using ACS, the Commission shall consider the following factors: (i) whether the product was designed to be used for ACS purposes by the general public; and (ii) whether the equipment or services are marketed for the ACS features and functions.

5. Our new accessibility rules further provide that we may also waive, on our own motion or in response to a petition, the requirements of section 716 for *classes* of services and equipment that meet the above statutory requirements and waiver criteria. To be deemed a class, members of a class must have the same kind of equipment or service and same kind of ACS features and functions.

6. We further conclude that the Commission has the discretion to place time limits on waivers. The waiver will generally be good for the life of the product or service model or version. However, if substantial upgrades are made to the product that may change the nature of the product or service, a new waiver request must be filed. Parties filing class waiver requests must explain in detail the expected lifecycle for the equipment or services that are part of the class. All products and services covered by a class waiver that are introduced into the market while the waiver is in effect will ordinarily be subject to the waiver for the duration of the life of those particular products and services. For products and services already under development at the time when a class waiver expires, the achievability analysis conducted may take into consideration the developmental stage of the product and the effort and expense needed to achieve accessibility at that point in the developmental stage. To the extent a class waiver petitioner seeks a waiver for multiple generations of similar equipment and services, we will examine the justification for the waiver extending through the lifecycle of each discrete generation.

7. We adopt a timeline for consideration of waiver requests similar to the Commission's timeline for consideration of applications for transfers or assignments of licenses or authorizations relating to complex mergers. We delegate to the Consumer and Governmental Affairs Bureau the authority to act upon all waiver requests, and urge the Bureau to act promptly with the goal of completing action on each waiver request within 180 days of public notice. In addition, we require that all public notices of waiver requests provide a minimum 30-day comment period. Finally, we note that these public notices will be posted and highlighted on a Web page designated for disability-related information in the Disability Rights Office section of the Commission's Web site.

8. The Commission has already received requests for class waivers for gaming equipment, services, and software, and TVs and Digital Video Players (''DVPs'') enabled for use with the Internet. While we conclude that the record is insufficient to grant waivers for gaming and IP-enabled TVs and DVPs, parties may re-file requests consistent with the new waiver rules.

9. We construe section 716(i) of the Act to provide a narrow exemption from

the accessibility requirements of section 716. Specifically, we conclude that equipment that is customized for the unique needs of a particular entity, and that is not offered directly to the public, is exempt from section 716. We conclude that this narrow exemption should be limited in scope to customized equipment and services offered to business and other enterprise customers only. We also conclude that equipment manufactured for the unique needs of public safety entities falls within this narrow exemption.

10. We find that the record does not contain sufficient support to adopt a permanent exemption for small entities. Nonetheless, we believe that relief is necessary for small entities that may lack the legal, technical, or financial ability to conduct an achievability analysis or comply with the recordkeeping and certification requirements under these rules. Therefore, we adopt a temporary exemption for ACS providers and ACS equipment manufacturers that qualify as small business concerns under the Small Business Administration's rules and small business size standards. The temporary exemption will expire on the earlier of (1) the effective date of small entity exemption rules adopted pursuant to the *Further Notice of Proposed Rulemaking released simultaneously with this order (''Accessibility FNPRM''),* or (2) October 8, 2013.

11. We adopt as general performance objectives the requirements that covered equipment and services be accessible, compatible, and usable. We defer consideration of more specific performance objectives to ensure the accessibility, usability, and compatibility of ACS and ACS equipment until the Access Board adopts Final Guidelines and the Emergency Access Advisory Committee (EAAC) provides recommendations to the Commission relating to the migration to IP-enabled networks. Additionally, consistent with the views of the majority of the commenters, we refrain from adopting any technical standards as safe harbors for covered entities. To facilitate the ability of covered entities to implement accessibility features early in product development cycles, we gradually phase in compliance requirements for accessibility, with full compliance required by October 8, 2013.

12. We also adopt new recordkeeping rules that provide clear guidance to covered entities on the records they must keep to demonstrate compliance with our new rules. We require covered entities to keep the three categories of records set forth in section 717(a)(5)(A). We remind covered entities that do not make their products or services accessible and claim as a defense that it is not achievable for them to do so, that they bear the burden of proof on this defense.

13. In an effort to encourage settlements, we adopt a requirement that consumers must file a ''Request for Dispute Assistance'' with the Consumer and Governmental Affairs' Disability Rights Office as a prerequisite to filing an informal complaint with the Enforcement Bureau. We also establish minimum requirements for information that must be contained in an informal complaint. While we also adopt formal complaint procedures, we decline to require complainants to file informal complaints prior to filing formal complaints.

II. Report and Order

1. Advanced Communications Services

a. General

14. Section 3(1) of the Act defines ''advanced communications services'' to mean (A) interconnected VoIP service; (B) non-interconnected VoIP service; (C) electronic messaging service; and (D) interoperable video conferencing service. We will adopt into our rules the statutory definition of ''advanced communications services.'' We thus agree with commenters that urge us to include all offerings of services that meet the statutory definitions as being within the scope of our rules. In doing so, we maintain the balance that Congress achieved in the CVAA between promoting accessibility through a broadly defined scope of covered services and equipment and ensuring industry flexibility and innovation through other provisions of the Act, including limitations on liability, waivers, and exemptions.

15. Some commenters asserted that the Commission should exclude from the definition of advanced communications services such services that are ''incidental'' components of a product. We reject this view. Were the Commission to adopt that approach, it would be rendering superfluous section 716's waiver provision, which allows the Commission to waive its requirements for services or equipment ''designed primarily for purposes other than using advanced communications service.'' Several parties also ask the Commission to read into the statutory definition of advanced communications services the phrase ''offered to the public.'' They argue that we should exclude from our definition advanced communications services those services that are provided on an ''incidental'' basis because such services are not affirmatively ''offered'' by the provider or equipment. There is nothing in the statute or the legislative history that supports this narrow reading. Section 3(1) of the Act clearly states that the enumerated services are themselves ''advanced communications services'' when provided, and does not limit the definition to the particular marketing focus of the manufacturers or service providers.

b. Interconnected VoIP Service

16. Section 3(25) of the Act, as added by the CVAA, provides that the term ''interconnected VoIP service'' has the meaning given in § 9.3 of the Commission's rules, as such section may be amended from time to time. Section 9.3, in turn, defines interconnected VoIP as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible CPE; and (4) permits users generally to receive calls that originate on the public switched telephone network (''PSTN'') and to terminate calls to the PSTN. As urged by commenters, we adopt the definition of ''interconnected VoIP service'' as having the same meaning as in § 9.3 of the Commission's rules, as such section may be amended from time to time. Given that this definition has broad reaching applicability beyond this proceeding, we find that any changes to this definition should be undertaken in a proceeding that considers the broader context and effects of any such change.

17. We confirm that section 716(f) means that section 255, and not section 716, applies to telecommunications and interconnected VoIP services and equipment offered as of October 7, 2010. Our proposed rule read, in part, that ''the requirements of this part shall not apply to any equipment or services * * * that were subject to the requirements of section 255 of the Act on October 7, 2010.'' We decline to amend our proposed rule by substituting the word ''were'' with the word ''are,'' as urged by NCTA. The statute makes clear that any equipment or service that was subject to section 255 on October 7, 2010, should continue to be subject to section 255, regardless of whether that equipment or service was offered before or after October 7, 2010. With respect to a new service (and equipment used for that service) that was not in existence on October 7, 2010, we believe we have the authority to classify the service as a service subject to either section 255 or section 716 (or

neither). In addition, Congress anticipated that the definition of interconnected VoIP service may change over time. In that event, it is possible, for example, that certain non-interconnected VoIP services that are currently subject to section 716 may meet a future definition of interconnected VoIP services and yet remain subject to section 716.

18. With respect to multipurpose devices, including devices used for both telecommunications and advanced communications services, we agree with the vast majority of commenters that argued that section 255 applies to telecommunications services and to services classified as interconnected VoIP as of October 7, 2010, as well as to equipment components used for those services, and section 716 applies to non-interconnected VoIP, electronic messaging, and interoperable video conferencing services, as well as equipment components used for those services. We reject the suggestion of some commenters that such multipurpose devices should be governed exclusively by section 255. Nothing in the statute or legislative history indicates that Congress sought to exclude from the requirements of section 716 a device used for advanced communications merely because it also has telecommunications or interconnected VoIP capability. Rather, both the House Report and the Senate Report state that smartphones represent a technology that Americans rely on daily and, at the same time, a technological advance that is often still not accessible to individuals with disabilities. If multipurpose devices such as smartphones were subject exclusively to section 255, then the advanced communications services components of smartphones, which are not subject to section 255, would not be covered by section 716. That is, there would be no requirement to make the advanced communications services components of multipurpose devices such as smartphones accessible to people with disabilities. Such an approach would, therefore, undermine the very purpose of the CVAA.

19. Due to the large number of multipurpose devices, including smartphones, tablets, laptops and desktops, that are on the market, if section 716(f) were interpreted to mean that section 716 applies only to equipment that is used exclusively for advanced communications services, and that section 255 applies only to equipment that is used exclusively for telecommunications and interconnected VoIP services, almost no devices would be covered by section 716 and only stand-alone telephones and VoIP phones would be covered by section 255. That reading would undercut Congress's clear aim in enacting the CVAA. Such a result is also contrary to how section 255 is currently applied to multipurpose equipment and services. Under Commission rules implementing section 255, ''multipurpose equipment * * * is covered by section 255 only to the extent that it provides a telecommunications function'' and not ''to all functions * * * whenever the equipment is capable of any telecommunications function.'' Similarly, ''[a]n entity that provides both telecommunications and non-telecommunications services * * * is subject to section 255 only to the extent that it provides a telecommunications service.'' We also disagree with commenters that suggest that such multipurpose devices should be governed exclusively by section 716. Such an interpretation would render section 716(f) meaningless.

20. We recognize that the application of section 255 and section 716 to such multipurpose devices means that manufacturers and service providers may be subject to two distinct requirements, but as discussed above, we believe any other interpretation would be inconsistent with Congressional intent. As a practical matter, we note that the nature of the service or equipment that is the subject of a complaint—depending on the type of communications involved—will determine whether section 255 or section 716, or both, apply in a given context.

c. Non-interconnected VoIP Service

21. Section 3(36) of the Act, as added by the CVAA, states that the term ''non-interconnected VoIP service'' means a service that ''(i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and (ii) requires Internet protocol compatible customer premises equipment'' and ''does not include any service that is an interconnected VoIP service.'' The IT and Telecom RERCs urge us to modify the statutory definition of non-interconnected VoIP to read ''any VoIP that is not interconnected VoIP.'' They are concerned that the language in section 3(36) which reads ''does not include any service that is an interconnected VoIP service'' could be interpreted to mean that if a service ''includes both interconnected and non-interconnected VoIP, then all the non-interconnected [VoIP] is exempt because it is bundled with an interconnected VoIP service.'' In response to these concerns, we clarify that a non-interconnected VoIP service is not exempt simply because it is bundled or provided along with an interconnected VoIP service. Accordingly, we agree with other commenters that it is unnecessary and not appropriate to change the statutory definition and hereby adopt the definition of ''non-interconnected VoIP service'' set forth in the Act.

d. Electronic Messaging Service

22. Section 3(19) of the Act, as added by the CVAA, states that the term ''electronic messaging service'' ''means a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.'' We adopt, as proposed, the definition of ''electronic messaging service'' contained in the Act. We agree with most commenters and find it consistent with the Senate and House Reports that electronic messaging service includes ''more traditional, two-way interactive services such as text messaging, instant messaging, and electronic mail, rather than * * * blog posts, online publishing, or messages posted on social networking Web sites.'' While some common features of social networking sites thus fall outside the definition of ''electronic messaging service,'' other features of these sites are covered by sections 716 and 717. The Wireless RERC asserts that, to the extent a social networking system provides electronic messaging services as defined in the Act, those services should be subject to sections 716 and 717. While the statute does not specifically reference the use of electronic messaging services as part of a social networking site, the comments referenced above in the Senate and House Reports suggest it was well aware that such aspects of social networking sites would fall under the Act. The reports specifically exclude ''messages posted on social networking Web sites,'' but do not exclude the two-way interactive services offered through such Web sites. We therefore conclude that to the extent such services are provided through a social networking or related site, they are subject to sections 716 and 717 of the Act.

23. We also find, as proposed in the *Accessibility NPRM,* that the phrase ''between individuals'' precludes the application of the accessibility requirements to communications in which no human is involved, such as automatic software updates or other device-to-device or machine-to-machine communications. Such exchanges between devices are also excluded from the definition of electronic messaging

service when they are not ''messages in text form.'' The definitional requirement that electronic messaging service be ''between individuals'' also excludes human-to-machine or machine-to-human communications.

24. We conclude that section 2(a) of the CVAA exempts entities, such as Internet service providers, from liability for violations of section 716 when they are acting only to transmit covered services or to provide an information location tool. Thus, service providers that merely provide access to an electronic messaging service, such as a broadband platform that provides an end user with access to a web-based email service, are excluded from the accessibility requirements of section 716.

e. Interoperable Video Conferencing Service

25. An ''interoperable video conferencing service'' is one of the enumerated ''advanced communications services'' in the CVAA. Such a service is defined by the CVAA as one ''that provides real-time video communications, including audio, to enable users to share information of the user's choosing.'' Many commenters argue that that the word ''interoperable'' cannot be read out of the statute, and we agree. Congress expressly included the term ''interoperable,'' and therefore the Commission must determine its meaning in the context of the statute. We find, however, that the record is insufficient to determine how exactly to define ''interoperable,'' and thus we seek further comment on this issue in the *Accessibility FNPRM.*

26. We also find that the inclusion of the word ''interoperable'' does not suggest that Congress sought to *require* interoperability, as some commenters have suggested. There simply is no language in the CVAA to support commenters' views that interoperability is required or should be required, or that that we may require video conferencing services to be interoperable because ''interoperability'' is a subset of ''accessibility,'' ''usability,'' and ''compatibility'' as required by section 716.

27. We reject CTIA's argument that personal computers, tablets, and smartphones should not be considered equipment used for interoperable video conferencing service, because these devices are not primarily designed for two-way video conferencing, and accessibility should be required only for equipment designed primarily or specifically for interoperable video conferencing service. Consumers get their advanced communications services primarily through multipurpose devices, including smartphones, tablets, laptops and desktops. If section 716 applies only to equipment that is used exclusively for advanced communications services, almost no devices would be covered by section 716, and therefore Congress's aims in enacting the statute would be undermined.

28. With respect to webinars and webcasts, we find that services and equipment that provide real-time video communications, including audio, *between two or more users,* are ''video conferencing services'' and equipment, even if they can also be used for video broadcasting purposes (*only from one user*). We disagree, however, with the IT and Telecom RERCs that providing interactive text messaging, chatting, voting, or hand-raising by or between two or more users, along with real-time video communications, including audio, *only from one user,* constitutes a ''video conferencing service.'' In this example of a system that provides multiple modes of communication simultaneously, providing text messaging between two or more users is an electronic messaging service. Similarly, telecommunications or VoIP services may be provided as part of a webinar or webcast. The provision of electronic messaging, VoIP, or other services, alongside real-time video communications, including audio, *only from one user,* does not convert the latter into a ''video conferencing service.''

29. Finally, we agree with commenters that non-real-time or near-real-time features or functions of a video conferencing service, such as video mail, do not meet the definition of ''real-time video communications.'' We defer consideration to the *Accessibility FNPRM* as to whether we should exercise our ancillary jurisdiction to require that a video mail service be accessible to individuals with disabilities when provided along with a video conferencing service. We also do not decide at this time whether our ancillary jurisdiction extends to require other features or functions provided along with a video conferencing service, such as recording and playing back video communications on demand, to be accessible.

2. Manufacturers of Equipment Used for Advanced Communications Services

30. Section 716(a)(1) states the following:

> A manufacturer of equipment used for advanced communications services, *including end user equipment, network equipment, and software,* shall ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

31. In the *Accessibility NPRM* the Commission proposed to find that developers of software that is used for advanced communications services and that is downloaded or installed by the user rather than by a manufacturer are covered by section 716(a). The IT and Telecom RERCs support that proposal on the grounds that coverage should not turn on how a manufacturer distributes ACS software (pre-installed on a device or installed by the user). Microsoft and the VON Coalition, on the other hand, argue that section 716(a) must be read as applying only to manufacturers of equipment, that ''software'' is not ''equipment,'' and that our proposal would impermissibly extend the Commission's authority beyond the limits set by Congress in the CVAA.

32. We find that, while the language of section 716(a)(1) is ambiguous, the better interpretation of section 716(a)(1) is that it does not impose independent regulatory obligations on providers of software that the end user acquires separately from equipment used for advanced communications services.

33. Section 716(a)(1) can be read in at least two ways. Under one reading, the italicized phrase ''including end user equipment, network equipment, and software'' defines the full range of equipment manufacturers covered by the Act. Under this construction, manufacturers of end user equipment used for ACS, manufacturers of network equipment used for ACS, and manufacturers of software used for ACS, would all independently be subject to the accessibility obligations of section 716(a)(1), and to the enforcement regime of section 717. ''Equipment,'' as used in the phrase ''a manufacturer of equipment used for advanced communications services'' would thus refer both to physical machines or devices and to software that is acquired by the user separately from any machine or device, and software would be understood to be a type of equipment. This first reading is the interpretation on which we sought comment in the *Accessibility NPRM.*

34. Under a second possible reading, the phrase ''manufacturer of equipment'' would be given its common meaning as referring to makers of physical machines or devices. If such equipment is used for advanced communications services, then the equipment manufacturer is responsible for making it accessible. Under this

reading, the phrase ''including end user equipment, network equipment, and software'' makes clear that both end user equipment and network equipment, as well as the software included by the manufacturer in such equipment, must be consistent with the CVAA's accessibility mandate. We have modified the definitions of ''end user equipment'' and ''network equipment'' that are proposed in the *Accessibility NPRM* to make clear that such equipment may include both hardware and software components. Thus, to the extent that equipment used for advanced communications services include software components—for example, operating systems or email clients—the manufacturer of the equipment is responsible for making sure that both ''the equipment *and* software that such manufacturer offers for sale or otherwise distributes in interstate commerce'' is accessible.

35. The text of the CVAA does not compel either of these inconsistent readings. The first, more expansive, reading accords more easily with the use of commas surrounding and within the phrase '', including end user equipment, network equipment, and software,'' but it requires giving the term ''equipment'' a meaning that is far broader than its ordinary usage. In addition, if ''equipment'' means ''software'' as well as hardware, then there was no need for Congress to say in the same sentence that ''the equipment *and software*'' that a manufacturer offers must be made accessible. The second, narrower, reading gives a more natural meaning to the word ''equipment'' and explains why it was necessary for Congress to say that the manufacturer of equipment used for ACS must make both ''equipment and software'' accessible. The second reading is thus more consistent with the interpretive canon that all words in a statute should if possible be given meaning and not deemed to be surplusage (as ''software'' would be in this phrase under the first reading).

36. Looking to other provisions of the CVAA, the language of section 716(j) is more consistent with the second, narrower understanding of section 716(a)(1). Section 716(j) establishes a rule of construction to govern our implementation of the Act, stating that section 716 shall not be construed to require a manufacturer of equipment used for ACS or a provider of ACS ''to make every feature and function of every *device or service* accessible for every disability.'' The word ''device'' refers to a physical object and cannot reasonably be construed to also refer to separately-acquired software. If, as in the broader interpretation of section 716(a)(1), ''manufacturer of equipment'' includes manufacturers of separately acquired software, then Congress created a rule of construction for section 716 as a whole that applies to only some of the equipment that is subject to section 716(a). The narrower interpretation of section 716(a)(1) produces a more logical result, in that section 716(j), as it applies to manufacturers of equipment, has the same scope as section 716(a).

37. Examining the legislative history of the CVAA, we find no indication in either the Senate Report or the House Report that Congress intended to instruct the Commission to regulate directly software developers that are neither manufacturers of equipment nor providers of advanced communications services—a class of businesses that the Commission historically has not regulated. There is, on the other hand, evidence that Congress had makers of physical objects in mind when it made ''manufacturers of equipment'' responsible for accessibility. For example, the Senate Report states that the Act requires manufacturers of equipment used for ACS and providers of ACS to ''make any such equipment, which they design, develop, *and fabricate,* accessible to individuals with disabilities, if doing so is achievable.'' The Senate Report further says that sections 716(a) and 716(b) ''require that manufacturers and service providers, respectively, make their devices and services accessible to people with disabilities.'' Likewise, the House Report states that sections 716(a) and 716(b) ''give manufacturers and service providers a choice regarding how accessibility will be incorporated into a device or service.'' Software is not fabricated, nor are software programs or applications referred to as devices. Particularly in light of this legislative history, we are doubtful that Congress would have significantly expanded the Commission's traditional jurisdiction to reach software developers, without any clear statement of such intent.

38. We disagree with commenters that suggest that the Commission's interpretation of CPE in the *Section 255 Report and Order* compels us to find that software developers that are neither manufacturers of ACS equipment nor providers of ACS are covered under section 716(a). First, in the *Section 255 Report and Order,* the Commission found that CPE ''includes software integral to the operation of the telecommunications function of the equipment, whether sold separately or not.'' Although the statutory definition of CPE did not reference software, the Commission found that it should construe CPE similarly to how it construed ''telecommunications equipment'' in the Act, which Congress explicitly defined to include ''software integral to such equipment (including upgrades).'' The Commission did not in the *Section 255 Report and Order* reach the issue of whether any entity that was not a manufacturer of the end user equipment or provider of telecommunications services had separate responsibilities under the Act.

39. Second, in the CVAA, Congress gave no indication that it intended the Commission to incorporate, when defining the scope of ''equipment and software'' for purposes of section 716(a)(1), the definitions we have established for the different, but analogous, terms (''telecommunications equipment'' and ''customer premises equipment'') used in section 255. Here, we interpret the statutory language to include all software, including upgrades, that is used for ACS and that is a component of the end user equipment, network equipment, or of the ACS service—and do not limit software to meaning only software that is integral to the network equipment or end user equipment. As we discuss further in paragraph 58, *infra,* if software gives the consumer the ability to engage in advanced communications, the provider of that software is a covered entity, regardless of whether the software is downloaded to the consumer's equipment or accessed in the cloud.

40. The purpose of sections 716 through 718 of the CVAA—to ensure access to advanced communications services for people with disabilities—is fully served by the narrower interpretation of section 716(a) that we describe above because that interpretation focuses our regulatory efforts where they will be the most productive.

41. Advanced communications services are delivered within a complex and evolving ecosystem. Communications devices are often general-purpose computers or devices incorporating aspects of general-purpose computers, such as smartphones, tablets, and entertainment devices. In the *Accessibility NPRM* the Commission observed that such systems are commonly described as having five components or layers: (1) Hardware (commonly referred to as the ''device''); (2) operating system; (3) user interface layer; (4) application; and (5) network services. We agree with ITI that three additional components in the architecture play a role in ensuring the

accessibility of ACS: (1) Assistive technology (''AT'') utilized by the end user; (2) the accessibility application programming interface (''API''); and (3) the web browser.

42. For individuals with disabilities to use an advanced communications service, *all* of these components may have to support accessibility features and capabilities. It is clear, however, that Congress did not give us the task of directly regulating the manufacturers, developers, and providers all of these components. Rather, Congress chose to focus our regulatory and enforcement efforts on the equipment manufacturers and the ACS providers.

43. We believe that end user equipment manufacturers, in collaboration with the developers of the software components of the equipment and related service providers, are best equipped to be ultimately responsible for ensuring that all of the components that the end user equipment manufacturer provides are accessible to and usable by individuals with disabilities. Manufacturers are responsible for the software components of their equipment whether they pre-install the software, provide the software to the consumer on a physical medium such as a CD, or require the consumer to download the software. The manufacturer is the one that purchases those components and is therefore in a position to require that each of those components supports accessibility. Similarly, as we discuss further below, the provider of an advanced communications service is the entity in the best position to make sure that the components (hardware, software on end user devices, components that reside on the web) it provides and that make up its service all support accessibility.

44. We believe these conclusions will foster industry collaboration between manufacturers of end user equipment, software manufacturers, and service providers and agree with TWC that this collaboration must be a central tenet in the efforts to implement the CVAA. For example, as Microsoft states, ''a laptop manufacturer that builds ACS into its device will need to consult with the developer of the operating system to develop this functionality, and in that way the operating system provider will be deeply involved in solving these problems and promoting innovations in accessibility, such as making an accessibility API available to the manufacturer.'' The consumer, who is not a party to any arrangements or agreements, contractual or otherwise, between an end user equipment manufacturer and a software developer, will not be put in the position of having to divine which entity is ultimately responsible for the accessibility of end user equipment used for advanced communications services.

45. We recognize that consumers are able to change many of the software components of the equipment they use for advanced communications services, including, for some kinds of equipment, the operating systems, email clients, and other installed software used for ACS. We believe that, as a practical matter, operating systems and other software that are incorporated by manufacturers into their equipment will also be accessible when made separately available because it will not be efficient or economical for developers of software used to provide ACS to make accessible versions of their products for equipment manufacturers that pre-install the software and non-accessible freestanding versions of the same products. Therefore, we believe that we do not need to adopt an expansive interpretation of the scope of section 716(a) to ensure that consumers receive the benefits intended by Congress.

46. Section 717(b)(1) of the Act requires us to report to Congress every two years, beginning in 2012. We are required, among other things, to report on the extent to which accessibility barriers still exist with respect to new communications technologies. We intend to pay particular attention in these reports to the question of whether entities that are not directly subject to our regulations, including software developers, are causing such barriers to persist.

47. Finally, the narrower interpretation of the scope of section 716(a) that we adopt herein makes this statutory program more cost-effective than would the more expansive interpretation. Covered entities are subject not only to the substantive requirement that they make their products accessible, if achievable, but also to an enforcement mechanism that includes recordkeeping and certification requirements. This type of enforcement program imposes costs on both industry and the government. Congress made a determination, which we endorse and enforce, that these costs are well justified to realize the accessibility benefits that the CVAA will bring about. But the costs of extending design, recordkeeping, and certification requirements to software developers would be justified only if they were outweighed by substantial additional accessibility benefits.

48. As explained above, it appears that the benefits of accessibility, as envisioned by Congress and supporters of the CVAA, can be largely (and perhaps entirely) realized under the narrower, less costly interpretation of section 716(a)(1). Furthermore, the biennial review requirement of section 717(b)(1) ensures that, if our prediction proves incorrect, the Commission will have an occasion to examine whether application of the CVAA's requirements directly to developers of consumer-installed software is warranted, and make any necessary adjustments to our rules to achieve accessibility in accordance with the intent of the CVAA. This biennial review process gives us additional confidence that applying the statute more narrowly and cautiously in our initial rules is the most appropriate policy at this time.

49. With respect to the definition of ''manufacturer,'' consistent with the Commission's approach in the *Section 255 Report and Order* and in the *Accessibility NPRM,* we define ''manufacturer'' as ''an entity that makes or produces a product.'' As the Commission noted in the *Section 255 Report and Order,* ''[t]his definition puts responsibility on those who have direct control over the products produced, and provides a ready point of contact for consumers and the Commission in getting answers to accessibility questions and resolving complaints.'' We believe this definition encompasses entities that are ''extensively involved in the manufacturing process—for example, by providing product specifications.'' We also believe this definition includes entities that contract with other entities to make or produce a product; a manufacturer need not own a production facility or handle raw materials to be a manufacturer.

50. TechAmerica argues that section 716(a) should apply only to equipment with a ''primary purpose'' of offering ACS. We reject this interpretation. As discussed above, consumers commonly access advanced communications services through general purpose devices. The CVAA covers equipment ''used for ACS,'' and we interpret this to include general purpose hardware with included software that provides users with access to advanced communications services.

51. Commenters also expressed concerns about the impact of software upgrades on accessibility. The IT and Telecom RERCs state that ''[u]pgrades can be used to increase accessibility * * * or they can take accessibility away, as has, unfortunately occurred on numerous occasions.'' Wireless RERC urges that ''[e]nd-users who buy an accessible device expect manufacturer-provided updates and upgrades to continue to be accessible.'' We agree

that the purposes of the CVAA would be undermined if it permitted equipment or services that are originally required to be accessible to become inaccessible due to software upgrades. In accordance with our interpretation of section 716(a)(1) above, just as a manufacturer of a device is responsible for the accessibility of included software, that manufacturer is also responsible for ensuring that the software developer maintains accessibility if and when it provides upgrades. However, we agree with CTIA that a manufacturer cannot be responsible for software upgrades ''that it does not control and that it has no knowledge the user may select and download.''

52. Indeed, we recognize more generally, as ITI urges, that manufacturers of equipment are not responsible for the components over which they have no control. Thus, manufacturers are not responsible for software that is independently selected and installed by users, or for software that users choose to access in the cloud. Furthermore, we generally agree with commenters that a manufacturer is not responsible for optional software offered as a convenience to subscribers at the time of purchase and that carriers are not liable for third-party applications that customers download onto mobile devices—even if software is available on a carrier's Web site or application store.

53. A manufacturer, however, has a responsibility to consider how the components in the architecture work together when it is making a determination about what accessibility is achievable for its product. If, for example, a manufacturer decides to rely on a third-party software accessibility solution, even though a built-in solution is achievable, it cannot later claim that it is not responsible for the accessibility of the third-party solution. A manufacturer of end-user equipment is also responsible for the accessibility of software offered to subscribers if the manufacturer requires or incentivizes a purchaser to use a particular third-party application to access all the features of or obtain all the benefits of a device or service, or markets its device in conjunction with a third-party add-on.

54. Because we did not receive a full record on the unique challenges associated with implementing section 718, we will solicit further input in the *Accessibility FNPRM* on how we should proceed. In particular, we seek comment on the unique technical challenges associated with developing non-visual accessibility solutions for web browsers in a mobile phone and the steps that we can take to ensure that covered entities will be able to comply with these requirements on October 8, 2013, the date on which section 718 becomes effective. Section 718 requires a mobile phone manufacturer that includes a browser, or a mobile phone service provider that arranges for a browser to be included on a mobile phone, to ensure that the browser functions are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. In the *Accessibility FNPRM,* we also seek to develop a record on whether Internet browsers should be considered software generally subject to the requirements of section 716. Specifically, we seek to clarify the relationship between sections 716 and 718 and solicit comment on the appropriate regulatory approach for Internet browsers that are not built into mobile phones.

3. Providers of Advanced Communications Services

55. Section 716(b)(1) of the Act provides that, with respect to service providers, after the effective date of applicable regulations established by the Commission and subject to those regulations, a ''provider of advanced communications services shall ensure that such services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities,'' unless these requirements are ''not achievable.''

56. Consistent with the proposal in the *Accessibility NPRM,* we agree with commenters that state that we should interpret the term ''providers'' broadly and include all entities that make available advanced communications in whatever manner. Such providers include, for example, those that make web-based email services available to consumers; those that provide non-interconnected VoIP services through applications that consumers download to their devices; and those that provide texting services over a cellular network.

57. As is the case with manufacturers, providers of ACS are responsible for ensuring the accessibility of the underlying components of the service, to the extent that doing so is achievable. For example, a provider of a web-based email service could meet its obligations by ensuring its services are coded to web accessibility standards (such as the Web Content Accessibility Guidelines (WCAG)), if achievable. For services downloaded onto the OS of a desktop or mobile device, service providers could meet their obligations by ensuring, if achievable, that their services are coded so they can work with the Accessibility API for the OS of the device. Accessibility APIs are specialized interfaces developed by platform owners, which software applications use to communicate accessibility information about user interfaces to assistive technologies. Those that provide texting services over a cellular network, for example, must ensure that there is nothing in the network that would thwart the accessibility of the service, if achievable.

58. COAT raises the concern that some software used for ACS may be neither a component of the end user equipment nor a component of a service and thus would not be covered under the statute. Specifically, COAT argues that H.323 video and audio communication is peer-to-peer and does not require a service provider at all. Similarly, it argues that it is possible to have large-scale examples of peer-to-peer systems without service providers and that models used in the non-ACS context could be expanded to be used for ACS. We believe that COAT construes the meaning of ''provider of advanced communications services'' too narrowly. If software gives the consumer the ability to send and receive email, send and receive text messages, make non-interconnected VoIP calls, or otherwise engage in advanced communications, then provision of that software is provision of ACS. On the other hand, provision of client software such as Microsoft Outlook is not provision of ACS. While consumers use such client software to manage their ACS, the client software standing alone does not provide ACS. The provider of that software would be a covered entity, and the service, including any provided through a small-scale or large-scale peer-to-peer system, would be subject to the requirements of the statute. We also disagree with COAT's suggestion that ACS used with an online directory would not be covered. While online directories are excluded from coverage under the limited liability provisions in section 2(a)(2) of the CVAA, the ACS used with such directories are covered. This is true regardless of whether the software is downloaded to the consumer's equipment or accessed in the cloud.

59. We disagree with Verizon's assertion that the requirement in section 716(e)(1)(C) that the Commission shall ''determine the obligations *under this section* of manufacturers, service providers, and providers of applications or services accessed over service provider networks'' compels the conclusion that developers of applications have their own independent accessibility obligations. We note that the regulations that the

Commission must promulgate pursuant to section 716(e) relate to the substantive requirements of the Act found in sections 716(a)-(d) encompassing accessibility (sections 716(a) and 716(b)); compatibility (section 716(c)); and network features, functions, and capabilities (section 716(d)). Each of these obligations applies to manufacturers of ACS equipment and/or providers of ACS. There are no independent substantive requirements in these sections that apply to ''providers of applications or services accessed over service provider networks.'' We believe the most logical interpretation of this phrase is the one proposed in the *NPRM:* that providers of advanced communications services include entities that provide advanced communications services over their own networks as well as providers of applications or services accessed (*i.e.,* downloaded and run) by users over other service providers' networks. We adopt this interpretation, which we believe comports with our analysis above that providers of ACS are responsible for ensuring the accessibility of the underlying components of the service, including the software applications, to the extent that doing so is achievable.

60. We find, however, that a provider of advanced communications services is not responsible for the accessibility of third-party applications and services that are not components of its service and that the limitations on liability in section 2(a) of the CVAA generally preclude such service provider liability. This approach is consistent with commenters that argue that service providers and manufacturers should be responsible only for those services and applications that they provide to consumers. They explain that they have no control over third party applications that consumers add on their own and that such third party applications have the potential to significantly alter the functionality of devices. Notwithstanding that conclusion and consistent with section 2(b) of the CVAA, we also agree with commenters that the limitation on liability under section 2(a) does not apply in situations where a provider of advanced communications services relies on a third-party application or service to comply with the accessibility requirements of section 716.

61. We also confirm that providers of advanced communications services may include resellers and aggregators, which is consistent with the approach the Commission adopted in the *Section 255 Report and Order.* Several commenters support that conclusion. We disagree with Verizon's suggestion that, to the extent that a carrier is strictly reselling an advanced communications service as is (without alteration), the sole control of the features and functions rests with the underlying service provider, not the reseller, and the reseller should not have independent compliance obligations. To the extent that the underlying service provider makes those services accessible to and usable by individuals with disabilities in accordance with the CVAA mandates, those services should remain accessible and usable when resold as is (without alteration). Resellers offer services to consumers who may or may not be aware of the identity of the underlying service provider. It is both logical and in keeping with the purposes of the CVAA for consumers to be able to complain against the provider from whom they obtain a service, should that service be inaccessible. While a reseller may not control the features of the underlying service, it does have control over its decision to resell that service. Its obligation, like that of any other ACS provider, is to ensure that the services it provides are accessible, unless that is not achievable.

62. Because the networks used for advanced communications services are interstate in nature, and the utilization of equipment, applications and services on those networks are also interstate in nature, we conclude that the phrase ''in or affecting interstate commerce'' should be interpreted broadly. Nonetheless, the IT and Telecom RERCs suggest that an entity that has its own network ''completely off the grid, that it creates and maintains, and that does not at any time connect to another grid'' would not be covered. We agree that advanced communication services that are available only on a private communications network that is not connected to the Internet, the public switched telephone network (''PSTN''), or any other communications network generally available to the public may not be covered when such services are not ''offered in or affecting interstate commerce.'' An example of a private communications network is a company internal communications network. Nonetheless, where such providers of advanced communications services are not covered by section 716, they may have accessibility obligations under other disability related statutes, such as section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990.

4. General Obligations

63. Section 716(e)(1)(C) of the Act requires the Commission to ''determine the obligations * * * of manufacturers, service providers, and providers of applications or services accessed over service provider networks.'' Below, we discuss the obligations of manufacturers and service providers, including the obligations of providers of applications or services accessed over service provider networks.

a. Manufacturers and Service Providers

64. As set forth below, we adopt into our rules the general obligations contained in sections 716(a)–(e). As the Commission did in the *Section 255 Report and Order,* we find that a functional approach will provide clear guidance to covered entities regarding what they must do to ensure accessibility and usability. Consistent with AFB's comments, we modify our rules as proposed to make clear that any third party accessibility solution that a covered entity uses to meet its accessibility obligations must be ''available to the consumer at nominal cost and that individuals with disabilities can access.''

- With respect to equipment manufactured after the effective date of the regulations, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, must ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless such requirements are not achievable.
- With respect to services provided after the effective date of the regulations, a provider of advanced communications services must ensure that services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities, unless such requirements are not achievable.
- If accessibility is not achievable either by building it into a device or service or by using third-party accessibility solutions available to the consumer at nominal cost and that individuals with disabilities can access, then a manufacturer or service provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless such compatibility is not achievable.
- Providers of advanced communications services shall not install network features, functions, or capabilities that impede accessibility or usability.

• Advanced communications services and the equipment and networks used to provide such services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment, or networks.

65. We further adopt in our rules the following key requirements, supported by the IT and Telecom RERCs, with some non-substantive modifications to clarify the rules proposed in the *Accessibility NPRM.* These requirements are similar to §§ 6.7–6.11 of our section 255 rules but are modified to reflect the statutory requirements of section 716:

• Manufacturers and service providers must consider performance objectives at the design stage as early and as consistently as possible and must implement such evaluation to the extent that it is achievable.

• Manufacturers and service providers must identify barriers to accessibility and usability as part of such evaluation.

• Equipment used for advanced communications services must pass through cross-manufacturer, nonproprietary, industry-standard codes, translation protocols, formats, or other information necessary to provide advanced communications services in an accessible format, if achievable. Signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

• Manufacturers and service providers must ensure access by individuals with disabilities to information and documentation it provides to its customers, if achievable. Such information and documentation includes user guides, bills, installation guides for end user devices, and product support communications, in alternate formats, as needed. The requirement to provide access to information also includes ensuring that individuals with disabilities can access, at no extra cost, call centers and customer support regarding both the product generally and the accessibility features of the product.

The IT and Telecom RERCs urge that all information provided with or for a product be available online in accessible form. Although we will not require manufacturers and service providers to build Web sites, to the extent that they provide customer support online, such Web sites must be accessible, if achievable.

b. Providers of Applications or Services Accessed Over Service Provider Networks

66. Section 716(e)(1)(C) requires the Commission to ''determine the obligations under * * * section [716] of manufacturers, service providers, and providers of applications or services accessed over service provider networks.'' As noted previously, to the extent they provide advanced communications services, ''providers of applications or services accessed over service provider networks'' are ''providers of advanced communications services'' and have the same obligations when those services are accessed over the service provider's own network or over the network of another service provider. No party suggested that any additional obligations apply to this subset of providers of ACS, and we do not adopt any herein.

c. Network Features

67. According to section 716(d) of the Act, ''[e]ach provider of advanced communications services has the duty not to install network features, functions, or capabilities that impede accessibility or usability.'' As proposed in the *Accessibility NPRM,* we adopt rules that include the requirements set forth in section 716(d), just as our section 255 rules reflect the language in section 251(a)(2). Commenters generally agree that the duty not to impede accessibility is comparable to the duty set forth in section 251(a)(2) of the Act.

68. As stated above, this obligation applies when the accessibility or usability of ACS is incorporated in accordance with recognized industry standards. We agree with industry and consumer commenters that suggest that stakeholder working groups should be involved in developing new accessibility standards. As explained in the next section, we believe that there are several potential mechanisms to develop these standards. Accordingly, we recommend that stakeholders either use existing working groups or establish new ones to develop standards that will ensure accessibility as the industry applies network management practices, takes digital rights management measures, and engages in other passive or active activities that may impede accessibility. We do not agree, however, that we should wait to require compliance with our rules governing network features until an industry working group ''formulates and offers such standards for the industry.'' We agree with ACB that ''existing standards and expertise will ensure that manufacturers have sufficient functional approaches'' on which to base accessibility and that ''[f]urther experience and products will improve this process.'' We believe this approach provides certainty through the use of recognized industry standards while at the same time recognizing the importance of not unnecessarily delaying the development of accessibility solutions.

d. Accessibility of Information Content

69. As proposed in the *Accessibility NPRM,* we adopt a rule providing that ''advanced communications services and the equipment and networks used with these services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks.'' This rule incorporates the text of section 716(e)(1)(B) and is also consistent with the Commission's approach in the *Section 255 Report and Order.* We believe that this rule is broad enough to disapprove of accessibility information being ''stripped off when information is transitioned from one medium to another'' and thus find it unnecessary to add this specific language in the rule itself, as originally suggested by the IT and Telecom RERCs.

70. The legislative history of the CVAA makes clear that the requirement not to impair or impede the accessibility of information content applies ''where the accessibility of such content has been incorporated in accordance with recognized industry standards.'' We agree with the IT and Telecom RERCs that sources of industry standards include: (1) International standards from an international standards body; (2) standards created by other commonly recognized standards groups that are widely used by industry; (3) de-facto standards created by one company, a group of companies, or industry consortia that are widely used in the industry. We believe that these examples illustrate the wide range of recognized industry standards available that can provide guidance to industry without being overly broad or requiring covered entities to engineer for proprietary networks. We therefore decline to adopt CEA's proposal that ''recognized industry standards are only those developed in consensus-based, industry-led, open processes that comply with American Standards Institute (''ANSI'') Essential Requirements.''

71. At this time, we are unable to incorporate any aspects of the Access Board criteria or the WCAG into our

rules relating to accessibility of information content. The WCAG are technical specifications developed by industry, disability, and government stakeholders for those who develop web content, web authoring tools, and web accessibility evaluation tools. As such, we believe it may be appropriate to consider the WCAG an ''industry recognized standard'' for purposes of applying our rule (*i.e.,* the requirements of our rule would apply where the accessibility of the content has been incorporated consistent with WCAG specifications), rather than incorporating aspects of the WCAG into our rules. Because the Access Board's process for developing guidelines is still not complete, we believe that it would be premature and inefficient to adopt them at this juncture. We acknowledge, however, that the IT and Telecom RERCs support the WCAG developed by the W3C and argue that ''these web standards in the proposed Access Board revisions to [sections] 508 and 255 * * * should definitely be incorporated in the rules.'' Because technology is changing so quickly, we encourage stakeholders to use existing or form new working groups to develop voluntary industry-wide standards, including on issues such as encryption and other security measures. We will monitor industry progress on these issues and evaluate the Access Board guidelines when they are finalized to determine whether any amendments to our rule might be appropriate.

72. Finally, we agree with CEA and the IT and Telecom RERCs that, consistent with the CVAA's liability limitations, manufacturers and service providers are not liable for content or embedded accessibility content (such as captioning or video description) that they do not create or control.

5. Phased in Implementation

73. The responsibilities of manufacturers and service providers begin on the effective date of this *Report and Order* and are both prospective and continuing. First, the regulations we set forth herein will be effective 30 days after publication in the **Federal Register**, except for those rules related to recordkeeping and certification. Next, the rules governing recordkeeping and certification will become effective after OMB approval, but, as discussed above, no earlier than one year after the effective date of our regulations implementing section 716.

74. As several commenters recommend, we are phasing in the requirements created by the CVAA for covered entities. Beginning on the effective date of these regulations, we expect covered entities to take accessibility into consideration during the design or redesign process for new equipment and services. Covered entities' recordkeeping obligations become effective one year from the effective date of the rules adopted herein. By October 8, 2013, covered entities must be in compliance with all of the rules adopted herein. We find that phasing in these obligations is appropriate due to the need for covered entities to implement accessibility features early in product development cycles, the complexity of these regulations, and our regulations' effects on previously unregulated entities. As CEA and ITI have stated, we have utilized phase-in periods previously in similarly complex rulemakings. Below, we discuss details of the phase-in process.

75. Beginning on the effective date of these regulations, we expect covered entities to take accessibility into consideration as early as possible during the design or redesign process for new and existing equipment and services and to begin taking steps to ''ensure that [equipment and services] shall be accessible to and usable by individuals with disabilities, unless * * * not achievable [as determined by the four achievability factors.]'' As part of this evaluation, manufacturers and service providers must identify barriers to accessibility and usability.

76. Beginning one year after the effective date of these regulations, covered entities recordkeeping obligations will become effective. We note that certain information collection requirements related to recordkeeping adopted herein are subject to the Paperwork Reduction Act and will be submitted to the OMB for review. Those requirements will become effective after OMB approval but no earlier than one year after the effective date of rules promulgated pursuant to section 716(e). After OMB approval is obtained, the Consumer and Governmental Affairs Bureau will issue a public notice instructing covered entities when and how to file their annual certification that records are being maintained in accordance with the statute and the rules adopted herein. As we further explain below, we require covered entities to keep and maintain records in the ordinary course of business that demonstrate that the advanced communications products and services they sell or otherwise distribute are accessible to and usable by individuals with disabilities or demonstrate that it was not achievable for them to make their products or services accessible.

77. Beginning on October 8, 2013, products or services offered in interstate commerce must be accessible, unless not achievable, as defined by our rules. Several commenters have called for at least a two-year phase-in period for these regulations. By October 8, 2013, we expect that manufacturers and service providers will be incorporating accessibility features deep within many of their most complex offerings, instead of patching together ad-hoc solutions shortly before enforcement begins. Some commenters are concerned that a long phase-in period will leave individuals with disabilities waiting for access to new technologies. Although AAPD is correct that many covered entities have been aware of the existence of this rulemaking, the specific rules were not in place until now. The Commission is also cognizant of the fact that our new implementing regulations will touch entities not traditionally regulated by this Commission. A phase-in date of October 8, 2013 will give all covered entities the time to incorporate their new obligations into their development processes. We believe two years to be consistent with complex consumer electronics development cycles. A two-year phase-in period is also consistent with the Commission's approach in other complex rulemakings.

78. Also, beginning October 8, 2013, the requirements we discuss elsewhere regarding peripheral device compatibility and pass-through of industry standard codes and protocols come into effect. The obligation not to impair or impede accessibility or the transmission of accessibility information content through the installation of network, features, functions, or capabilities as clarified above in Network Features, and Accessibility of Information Content, also begins October 8, 2013. We also expect covered entities to provide information and documentation about their products and services in accessible formats, as explained earlier, beginning October 8, 2013.

79. In addition, on October 8, 2013, consumers may begin filing complaints. Prior to that date, the Commission will issue a public notice describing how consumers may file a request for dispute assistance with the CGB Disability Rights Office and informal complaints with the Enforcement Bureau. Formal complaints must be filed in accordance with the rules adopted in this *Report and Order.* While the CVAA complaint process will not be available to consumers until 2013, we remind industry that it has a current obligation to ensure that telecommunications services and equipment are accessible to

and usable by individuals with disabilities. Consumers may file complaints at any time under our existing informal complaint procedures alleging violations of the accessibility requirements for telecommunications manufacturers and service providers under section 255 of the Communications Act. Furthermore, separate from the complaint process, the Disability Rights Office in CGB will be available to assist consumers, manufacturers, service providers and others in resolving concerns about the accessibility and usability of advanced communications services and equipment as of the effective date of our rules (*i.e.,* October 8, 2013).

80. Since ACS manufacturers and service providers must take accessibility into account early in the ACS product development cycle beginning on the effective date of our rules, we anticipate that many ACS products and services with relatively short development cycles will reach the market with accessibility features well before October 8, 2013.

B. Nature of Statutory Requirements

1. Achievable Standard

a. Definitions

(i) Accessible to and Usable by

81. Given that commenters generally agree that the Commission's definitions of ''accessible'' and ''usable'' in §§ 6.3(a) and 6.3(l), respectively, are ''well established,'' we will continue to define ''accessible to and usable by'' as the Commission did with regard to implementation of section 255. We agree with the Wireless RERC that this approach will ''reduce both the potential for misunderstanding as well as the regulatory cost of compliance'' and promote ''the objective of consistency.'' We also plan to draw from the Access Board's guidelines once they finalize them.

82. While we note that there is a great deal of overlap between section 255's definition of ''accessible'' and the criteria outlined in the Access Board Draft Guidelines, at this time, we are unable to incorporate the Access Board's draft definitions of ''accessible'' or ''usable'' into both our section 255 rules and our section 716 rules because the Access Board's process for developing guidelines is not complete. Once the Access Board Draft Guidelines are complete, the Commission may revisit its definitions of ''accessible'' and ''usable'' and harmonize them with the Access Board's final definitions, to the extent there are differences.

(ii) Disability

83. Section 3(18) of the Act states that the term ''disability'' has the meaning given such term under section 3 of the ADA. The ADA defines ''disability'' as with respect to an individual: ''(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment * * * '' Having received only one comment on this issue and finding that our current rules incorporate the definition of ''disability'' from section 3 of the ADA, we adopt this definition, as proposed, in our section 716 rules as well. To provide additional guidance to manufacturers and service providers, as the Commission did in the *Section 255 Report and Order,* we note that the statutory reference to ''individuals with disabilities'' includes people with hearing, vision, movement, manipulative, speech, and cognitive disabilities. The definition of ''disability,'' however, is not limited to these specific groups. Determinations of whether an individual has a disability are decided on a case-by-case basis.

b. General Approach

84. As provided in the CVAA and its legislative history, we adopt the Commission's proposal in the *Accessibility NPRM* to limit our consideration of achievability to the four factors specified in section 716 and to weigh each factor equally when considering whether accessibility is not achievable. We agree with AFB that the CVAA requires covered entities to make their products accessible unless it is ''not achievable'' to do so and that the section 716 standard is different from the section 255 ''readily achievable'' standard. ACB suggests adding seven more factors to the achievability analysis. These proposed factors, which address the commitment of the manufacturer or service provider to achieving accessibility, include (1) engagement of upper level executives; (2) the budgeting process for accessibility as compared to the overall budget; (3) consideration of accessibility early in the planning process; (4) covered entity devotion of personnel during planning stages to achieving accessibility; (5) inclusion of people with disabilities in testing; (6) devotion of resources to the needs of people with disabilities; and (7) record of delivering accessible products and services. While we do not adopt these as additional achievability factors, we do believe they are useful guidance that will help covered entities meet their obligations under the statute.

85. We will be applying the four achievability factors in the complaint process in those cases in which a covered entity asserts that it was ''not achievable'' to make its equipment or service accessible. Thus, as proposed by AT&T and supported by many of the commenters, we will be taking a flexible, case-by-case approach to the determination of achievability. We reject the suggestion by Words+ and Compusult that the Commission should evaluate products and services on a category-by-category basis. Words+ and Compusult are concerned that the Commission will not be able to evaluate the many products that are introduced each year. This will not be necessary, since the Commission will be evaluating only those products that are the subject of a complaint. The approach suggested by Words+ and Compusult would not be consistent with the four factors mandated by Congress. We also share the concerns expressed by NFB and supported by the Consumer Groups that flexibility should not be so paramount that accessibility is never achieved.

86. We note that nothing in the statute limits the consideration of the achievability of accessibility to the design and development stage. While we believe in many instances, accessibility is more likely to be achievable if covered entities consider accessibility issues early in the development cycle, there may be other ''natural opportunities'' for consideration of accessibility. Natural opportunities to assess or reassess the achievability of accessibility features may include, for example, the redesign of a product model or service, new versions of software, upgrades to existing features or functionalities, significant rebundling or unbundling of product and service packages, or any other significant modification that may require redesign. If, however, a covered entity is required by the Commission to make the next generation of a product or service accessible as a result of an enforcement proceeding, an achievability analysis may not be used for the purpose of determining that such accessibility is not achievable. We agree with Consumer Groups that new versions of software or services or new models of equipment must be made accessible unless not achievable and ''that this burden is not discharged merely by having shown that accessibility is not achievable for a previous version or model.''

87. We expect that accessibility will be considered throughout the design and development process and that

during this time ''technological advances or market changes'' may ''reduce the effort and/or expense needed to achieve accessibility.'' We reject CTIA's argument that requiring manufacturers and service providers to reassess the accessibility of products and services at key development stages would result in companies refraining from issuing new versions of their products. Beyond this conclusory statement, nothing in the record supports this contention. We note that no party has asserted that the identical requirement in the section 255 context hampered innovation and competition, and there appears to be no reason to believe that it will have such an impact here.

88. Consistent with both the *Section 255 Report and Order* and the legislative history of the CVAA, section 716 does not require manufacturers of equipment to recall or retrofit equipment already in their inventories or in the field. In addition, consistent with our section 255 implementation, cosmetic changes to a product or service may not trigger a manufacturer or service providers' reassessment.

c. Specific Factors

(i) Nature and Cost of Steps Needed With Respect to Specific Equipment or Service

89. Consistent with the House Report, we find that if the inclusion of an accessibility feature in a product or service results in a fundamental alteration of that product or service, then it is *per se* not achievable to include that accessibility function. We find that the most appropriate definition of ''fundamental alteration'' can be found in the *Section 255 Report and Order,* where the Commission defined it to mean ''reduce substantially the functionality of the product, to render some features inoperable, to impede substantially or deter use of the product by individuals without the specific disability the feature is designed to address, or to alter substantially and materially the shape, size or weight of the product.'' We caution, however, that in many cases, features such as voice output can be added in ways that do not fundamentally alter the product, even if earlier versions of the product did not have that capability. Since all accessibility enhancements in one sense require an alteration to the design of a product or service, not all changes to a product or service will be considered fundamental alterations. Rather, the alteration to the product or service must be *fundamental* for the accessibility feature to be considered *per se* not achievable. As we explained in the *Section 255 Report and Order,* ''the 'fundamental alteration' doctrine is a high standard and * * * the burden of proof rests with the party claiming the defense.''

90. We disagree with those commenters that argue that we should not consider whether accessibility has been achieved by competing products in determining whether accessibility is achievable under this achievability factor. Rather, if an accessibility feature has been implemented for competing products or services, we find that such implementation may serve as evidence that implementation of the accessibility feature is achievable. To ignore such evidence would deprive the Commission of a key element of determining whether achievability is possible. We note, however, that a covered entity may rebut such evidence by demonstrating that the circumstances of the product or service offered by that particular entity renders the feature not achievable. We will consider all relevant evidence when considering the nature and cost of the steps necessary to achieve accessibility for the particular device or service for the particular covered entity.

91. We also reject CEA's assertion that this factor requires us to consider ''the entire cost of implementing the required accessibility functionality relative to the production cost of the product.'' Under the first factor, the Commission is required to consider the *cost* of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question. The first factor, however, does not provide that the costs should be compared to the production cost of the product; indeed, the factor does not provide for a comparison of the costs at all. As explained further below, this inquiry more directly fits under the second factor, which examines directly the economic impact of the cost of the accessibility features.

(ii) Technical and Economic Impact on the Operation

92. The second factor in determining whether compliance with section 716 is ''achievable'' requires the Commission to consider the ''technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies.'' We find that to determine the ''economic impact of making a product or service accessible on the operation of the manufacturer or provider,'' it will be necessary to consider both the costs of making a product or service accessible and an entity's total gross revenues.

Consistent with the *Section 255 Report and Order,* we will consider the total gross revenues of the entire enterprise and will not limit our consideration to the gross revenues of the particular subsidiary providing the product or service. CEA argues that the Commission should not be able to consider an entity's entire budget in evaluating the cost of accessibility because Congress dropped from the final version of the statute a fifth achievability factor which specifically considered ''the financial resources of the manufacturer or provider.'' We disagree. CEA does not suggest a reason why Congress eliminated this language and does not address the possibility that Congress may have found the factor to be redundant in light of the fact that under the second factor we consider the ''economic impact on the operation of the manufacturer or provider.''

93. We agree with TIA that some new entrants may not initially have the resources to incorporate particular accessibility features into their products immediately. All covered entities should examine the technical and economic impact on their operations of achieving accessibility, as stated in the language of section 716(g)(2). The need to provide an accessibility feature, however, can have a greater impact on a smaller entity than a larger one. In other words, the provision of a particular feature may have negligible impact on a large company but may not be achievable with reasonable effort or expense for a small business. For example, a small start up manufacturer may not have the resources to evaluate all the design considerations that must be considered to make a potential product accessible, even though a larger manufacturer might have the resources to do so as a matter of course. A smaller service provider looking for accessible customer premises equipment to provide to its customers may find that the models with accessibility features are available only to larger service providers, or if they are available to the smaller provider, the acquisition price is considerably higher than the price for a larger carrier, thereby rendering such devices cost prohibitive for the smaller provider. Similarly, while a larger service provider may perform as a matter of course a network upgrade that would include the addition of accessibility features, it may not be achievable with reasonable effort or expense for a smaller service provider to perform a similar network upgrade, either because the upgrade is not yet

available to the smaller provider or it is cost-prohibitive to the company at that time.

94. Some commenters argue that the Commission should consider the cost of implementing accessibility relative to the production cost of the product. CEA suggests that if the cost of accessibility significantly raises the cost of a particular device, it may result in overpricing the device for consumers, which could result in fewer devices being purchased. Similarly, TechAmerica argues that if the cost of an accessibility feature exceeds the cost of having the product in the marketplace, then that accessibility feature is *per se* not achievable. We decline to adopt this *per se* approach. The Commission does recognize, however, that if the nature and cost of the steps needed for accessibility would have a substantial negative technical or economic impact on the ability to produce a product or service, that fact may be taken into consideration when conducting the overall achievability analysis. To completely ignore this fact altogether could discourage manufacturers and service providers from introducing new and innovative products that, for some reason, would require extremely costly accessibility features relative to the cost of the product. Congress's balanced approach in the statute, including its desire to refrain from hampering innovation and investment in technology, require us to consider the cost of accessibility relative to the cost of producing a product in certain situations.

95. In its comments, ITI proposes that manufacturers and service providers should be given the flexibility to make necessary adjustments during the testing stage prior to fully incorporating accessibility technology. According to ITI, to do otherwise would result in one set of accessibility features for the beta version of a product, and then a second, different set of accessibility features for the final version. The VON Coalition argues that manufacturers of devices used for ACS and providers of ACS should not be subject to the CVAA with respect to products they are testing. We find that, if a covered entity is testing accessibility features along with the other functions of the product or service, to the extent the beta testing reveals that the accessibility features need modification to work properly, then under such circumstances, accessibility would not be fully achievable at the beta stage but would be considered achievable once the modifications are implemented for the final product design. We will not take enforcement action against a manufacturer or service provider in regard to the accessibility of products and services that are being beta tested. We will, however, carefully examine any claim that a product or service is in beta. If it appears that a covered entity is keeping a product or service in beta testing status and/or making it available to the general public for extended periods of time as a means of avoiding accessibility obligations, we will enforce section 716 with respect to that product or service.

(iii) Type of Operations

96. The third factor in determining whether compliance with section 716 is ''achievable'' requires the Commission to consider ''[t]he type of operations of the manufacturer or provider.'' Consistent with the legislative history, we will take into consideration whether a covered entity has experience in the advanced communications services market or related markets when conducting an achievability analysis. We disagree with Words+ and Compusult's argument that this factor will necessarily provide a competitive advantage to a new entrant. All companies that do not qualify for the small business exemption, whether new entrants or incumbents, must engage in an achievability analysis. All companies are required to provide accessibility unless it cannot be done ''with reasonable effort or expense.'' Given the multitude of factors that affect a company's prospects in the marketplace, we do not see much of a competitive advantage arising from the ability of a new entrant to assert this third factor as a defense to a complaint.

97. The degree to which this factor affects a finding of achievability will depend upon a number of considerations. We agree with CEA that the Commission should give little weight to whether a new entrant has experience in other unrelated markets. In this regard, we consider the various telecommunications and information technology markets to be related. We agree with T-Mobile that because each service provider has different technical, financial, and personnel resources, with different business models and distinct technology configurations and platforms, this factor requires that we look at each company individually when we consider the impact on the operation of the covered entity of providing the accessibility feature.

98. In addition, as suggested by the IT and Telecom RERCs and ACB, when applying this factor, we will take into consideration the size of the company. We agree that a small start-up company, which may need time to develop its financial resources and learn the field and its requirements, should be treated differently than a larger company with the resources available to more rapidly achieve accessibility features. While we reject TIA's suggestion that the size of the company should not matter when applying this factor, we agree with TIA that a company's size alone is not a proxy for determining whether accessibility can be achieved. Consistent with the legislative history, we find that the existence of substantial financial resources does not, by itself, trigger a finding of achievability.

(iv) Extent to Which Accessible Services or Equipment Are Offered With Varying Functionality, Features, and Prices

99. The fourth factor in determining whether compliance with section 716 is ''achievable'' requires the Commission to consider ''[t]he extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.'' To satisfy the fourth achievability standard, a covered entity is required by the CVAA to offer people with each type of disability (this includes people with multiple disabilities) accessibility features within a line of products that includes the full range of functionality within the product line as well as a full range of prices within the product line, if achievable. We interpret the plain language of the statute and legislative history to mean that covered entities generally need not consider what is achievable with respect to every product, if the entity offers consumers with the full range of disabilities meaningful choices through a range of accessible products with varying degrees of functionality and features, at differing price points. Although a range of accessible products with varying degrees of functionality and features, at differing price points must be offered across a product line for people with the full range of disabilities if achievable, in the context of a complaint proceeding, only the facts of the complaint will be considered. In other words, a complaint proceeding will not consider the accessibility of a product for types of disabilities that are not the subject of the complaint.

100. Furthermore, to satisfy this factor, offering the full range of accessible products with varying degrees of functionality and features at different price points must be done effectively. We acknowledge the concern expressed by the IT and Telecom RERCs in their comments that company-chosen sets of devices to be

made accessible may not provide good representation of the range of products offered by the company, and as a result, accessible versions may not always appear in stores, may not always be available as part of bundles, may be more expensive and difficult to obtain than the comparable non-accessible products, may not always represent the full range of features and prices available to everyone else, may not always be supported by employers and their information technology departments, and may not always be available in certain parts of the country.

101. Because section 716(g)(4) specifically calls for ''varying degrees of functionality and features, and offered at differing price points,'' we emphasize that accessibility features must be made available within a line of products that includes the full range of functionality and prices for that line of products. In other words, if a line of products includes low-end products, it is just as important that low-end products and services be accessible as high-end products and services if achievable.

102. We decline to mandate ACB's proposal that, for the purpose of making available a range of devices that fit various price ranges along with corresponding accessible features, the devices may be divided into classes, making certain that each class has at least one option that is fully accessible. We agree with CEA that mandating such a proposal would be unworkable for some manufacturers and service providers, given that technology and consumer preferences are constantly evolving.

103. We also share the concern expressed by Words+ and Compusult that the fourth achievability factor not be interpreted in a way that would result in people with disabilities needing to purchase multiple devices to obtain all the disability features that they require. We find that a reasonable interpretation of sections 716(g)(4) and 716(j) calls for the bundling of features within a single device to serve a particular type of disability, if achievable. For example, if a series of features, such as a screen reader and a voice interactive menu, were required to be bundled into the same device to render the device accessible to people who are blind, then a common sense interpretation of the statute would require that these features be bundled together if achievable under the four factors.

104. We find that ITI misunderstands sections 716(g)(4) and 716(j) when it asserts that covered entities are compliant ''so long as some reasonable subset of features and services are accessible,'' because such an approach could result in lack of accessibility over the full range of functionality and prices. After carefully considering section 716(j), we find a more reasonable interpretation to be that there may be some devices with accessibility features for people with one type of disability, different devices with accessibility features for people with other types of disabilities, and yet other devices that are not accessible because accessibility is not achievable for those particular devices or because the entity offers a full range of accessible products with varying degrees of functionality and features, at differing price points to discharge its responsibility under section 716. In other words, section 716(j) provides a rule of reason when interpreting section 716(g).

105. We decline at this time to designate a list of accessibility features that are easy to achieve. Not only would such a list become outdated very quickly, but it is impossible to assume that any given accessibility feature would be easy to achieve for every device or service. Nevertheless, we strongly encourage, but do not require, all covered entities to offer accessibility features that are easy to achieve with every product. By way of example, AFB suggests that audible output of menu functions and on-screen text is easy to achieve. Although the record is insufficient to determine whether AFB's assertion is accurate, if a covered entity finds during the course of its achievability analysis that audible output of menu functions and on-screen text is easy to achieve in all of its products, we would encourage the covered entity to install audible output of menu functions and on-screen text in those products. Voluntary universal deployment of accessibility features that are easy to achieve as products evolve will further enable the maximum number of people with disabilities to enjoy access to products that people without disabilities take for granted.

2. Industry Flexibility

106. Sections 716(a)(2) and (b)(2) of the Act provide manufacturers and service providers flexibility on how to ensure compliance with the accessibility requirements of the CVAA. As urged by several commenters, we confirm that section 716 allows covered entities the flexibility to provide accessibility through either built-in solutions or third-party solutions, so long as the third-party solutions are available at nominal cost to consumers. As suggested by TIA, we find that manufacturers and service providers should be able to rely on a wide range of third-party accessibility solutions and whether such solutions meet the accessibility requirements should be decided on a case-by-case basis. Moreover, by putting the decision in the hands of the manufacturers and service providers—those who are in the best position to determine the most economical manner of compliance—we ensure that the aims of the statute will be met in the most cost-effective manner. At the same time, we encourage such manufacturers and service providers who wish to use third party accessibility solutions, to consult with people with disabilities about their accessibility needs because these individuals will be best equipped to provide guidance on which third-party accessibility solutions will be able to meet those needs. Consultation with the disability community will best achieve effective and economical accessibility solutions.

107. The Commission acknowledged in the *Accessibility NPRM* that ''universal design,'' which is ''a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies), and products and services that are interoperable with assistive technologies,'' will continue to play an important role in providing accessibility for people with disabilities. At the same time, the Commission acknowledged that, while section 255 had relied primarily on universal design principles, the industry flexibility provisions of the CVAA reflect that there are new ways to meet the needs of people with disabilities that were not envisioned when Congress passed section 255. We agree with Consumer Groups that new and innovative technologies may now be able to more efficiently and effectively meet individual needs by personalizing services and products, than services and products built to perform in the same way for every person. Accordingly, as supported by several commenters, we affirm that the Commission should afford manufacturers and service providers as much flexibility to achieve compliance as possible, so long as each does everything that is achievable in accordance with the achievability factors.

108. As supported by several commenters, we adopt the Commission's proposal in the *Accessibility NPRM* that ''any fee for third-party software or hardware accessibility solutions be 'small enough

so as to generally not be a factor in the consumer's decision to acquire a product or service that the consumer otherwise desires.' '' We will apply this definition in accordance with the proposal submitted by AFB that in considering whether the cost to the consumer is nominal, we must look at the initial purchase price, including installation, plus the ongoing costs to the consumer to keep the third-party solution up to date and in good working order, and that the total cost to the consumer must be nominal as perceived by the consumer. We believe that this approach, which emphasizes the definition of nominal cost as perceived by the consumer, addresses the IT and Telecom RERCs' concerns that our proposed definition of nominal cost provides insufficient guidance and does not take into account that many people with disabilities are poor and already face greater costs for nearly every aspect of their lives. In other words, the definition of nominal cost as perceived by the consumer will take into account the financial circumstances generally faced by people with disabilities.

109. As suggested by several commenters, we will not adopt a fixed percentage definition for nominal cost. We are mindful of T-Mobile's concern that we should not interpret the term nominal cost so narrowly as to negate the opportunity for third-party accessibility solutions. As supported by several commenters, we will therefore determine whether the cost of a third-party solution is nominal on a case-by-case basis, taking into consideration the nature of the service or product, including its total lifetime cost.

110. Several commenters also express concerns about the Commission's proposal in the *Accessibility NPRM* that a third-party solution not be more burdensome to a consumer than a built-in solution would be, arguing that this test would not be workable because it would result in no third-party solutions. In response to these concerns, we clarify how we intend to interpret those requirements to ensure their workability. Because adaptive communications solutions are often not available with mainstream products and finding these solutions often has been difficult for people with disabilities in the past, we agree with those commenters that assert that a manufacturer or service provider that chooses to use a third-party accessibility solution has the responsibility to identify, notify consumers of, find, and arrange to install and support the third-party technology along with the covered entity's product to facilitate consumer access to third-party solutions. Although we will not adopt the testing requirements proposed by the IT and Telecom RERCs because we believe that the other requirements we adopt herein with respect to third-party solutions will ensure accessibility of ACS products and services to consumers with disabilities, we nevertheless encourage covered entities to test third-party accessibility solutions with people with disabilities to ensure that such third-party solutions work as intended. We find that the covered entity must support the third-party solution for the life of the ACS product or service or for a period of up to two years after the third-party solution is discontinued, whichever comes first, provided that another third-party accessibility solution is made available by the covered entity at nominal cost to the consumer. In other words, to ensure accessibility of products and services covered by the CVAA, if another third-party solution is not made available by the covered entity at nominal cost to the consumer, then the covered entity may not discontinue support for the original third-party solution. We believe that the requirement to provide support for a replacement third-party accessibility solution addresses the concern expressed by the IT and Telecom RERCs.

111. We agree with those commenters that suggest that we should not impose a requirement to bundle third-party solutions with ACS products and services, because a bundling requirement would provide industry with less flexibility than Congress intended. Therefore, third-party solutions can be made available after-market, rather than at the point of purchase, provided that such third-party solutions are made available around the same time as when the product or service is purchased. This will ensure that the consumer has access to the product near the time of purchase, allow for additional implementation steps that may be needed, and promote innovation by reducing the likelihood of being locked into the accessibility solutions available at the time the product was offered for sale.

112. As explained in the preceding paragraphs, the total cost to the consumer of the third-party solution, including set-up and maintenance, must be nominal. We expect the set-up and maintenance for a third-party accessibility solution to be no more difficult than the set-up and maintenance for other applications used by consumers. If the third-party solution by its nature requires technical assistance with set-up or maintenance, we find that the covered entity must either provide those functions, including personnel with specialized skills if needed, or arrange for a third party to provide them.

113. We reject Verizon's argument that manufacturers and service providers should not be required to provide support for the third-party solutions, because such a requirement would effectively require a contractual relationship, including intricate knowledge of the third party's proprietary solution, where none may exist. Verizon's theory would conflict with the plain meaning of sections 716(a)(2) and (b)(2), which afford manufacturers and service providers the option to rely on third-party solutions to ensure that their products and services are accessible if achievable. If the covered entities elect to offer third-party solutions to achieve accessibility but do not support such third-party solutions, they would be undermining the availability of such solutions.

3. Compatibility

114. We adopt the definition of ''peripheral devices'' proposed in the *Accessibility NPRM.* We agree with the vast majority of commenters that peripheral devices can include mainstream devices and software, as long as they can be used to ''translate, enhance, or otherwise transform advanced communications services into a form accessible to individuals with disabilities'' and the devices and software are ''commonly used by individuals with disabilities to achieve access.'' We did not receive comments on the IT and Telecom RERCs proposal to expand our definition of peripheral devices and decline to adopt their proposal at this time. However, we seek further comment in the *Accessibility FNPRM* on its proposal.

115. We also adopt the same definition of specialized CPE as is used in our section 255 rules and proposed in the *Accessibility NPRM.* The Commission has traditionally interpreted CPE broadly to include wireless devices such as cellular telephone handsets, and we retain the flexibility to construe the scope of specialized CPE consistent with Commission precedent. Therefore, changing the regulatory definition of CPE, as the IT and Telecom RERCs suggest, to explicitly include mobile devices carried by the user is unnecessary. We also note that a mobile device could meet the definition of a peripheral device to the extent that it is used to ''translate, enhance, or otherwise transform advanced communications services into a form accessible to people with disabilities.''

116. Consistent with the Commission's decision in the *Section 255 Report and Order,* we will require manufacturers and service providers to exercise due diligence to identify the types of peripheral devices and specialized CPE ''commonly used'' by people with disabilities with which their products and services should be made compatible. We also find that when determining whether a particular device is commonly used by individuals with disabilities, a manufacturer or provider should look at the use of that device among persons with a particular disability. In addition, we agree with AFB that for compatibility to be achieved, a third party add-on must be an available solution that the consumer can access to make the underlying product or service accessible. Compliance is not satisfied because a device's software architecture might someday allow a third party to write an accessibility application. We agree with ITI, however, that ''a manufacturer or service provider need not make its equipment or service compatible with every peripheral device or piece of customer equipment used to achieve access.'' Covered entities are also not required to test compatibility with every assistive technology device in the market.

117. Consistent with the *Section 255 Report and Order,* we decline to maintain a list of peripheral devices and specialized CPE commonly used by individuals with disabilities or to define how covered entities should test devices which are ''commonly used'' by people with disabilities, given how quickly technology is evolving. For the same reason, we agree with the IT and Telecom RERCs that covered entities do not have a duty to maintain a list of all peripheral devices and specialized CPE used by people with disabilities. At this time, we also decline to limit the definition of ''existing'' peripheral devices and specialized customer premises equipment to those that are currently sold, as ITI proposes. As discussed above, we believe that ''existing'' peripheral devices and specialized customer premises equipment include those which continue to be ''commonly used'' by people with disabilities. For example, a particular screen reader may no longer be manufactured, but could still be ''commonly used.'' We do note, however, that peripheral devices and specialized customer premises equipment that are no longer sold will eventually cease being ''commonly used.'' We also believe that covered entities have an ongoing duty to consider how to make their products compatible with the software and hardware components and devices that people with disabilities use to achieve access and to include this information in their records required under section 717(a)(5).

118. In declining to limit the definition of ''existing'' peripheral devices and specialized customer premises equipment to those that are currently sold, we recognize that we may be imposing an additional burden on industry resources. We are open to any idea that could facilitate transition without consumers having to bear the costs. In reaching this decision, we acknowledge this additional burden against the benefits of maintaining access for consumers with disabilities to ''commonly used'' peripheral devices and specialized customer premises equipment. We believe that ensuring that people with disabilities continue to have access to ''commonly used'' technologies that facilitate their ongoing participation in economic and civic activities outweighs the burden on industry and furthers the statute's overriding objective ''[t]o increase the access of persons with disabilities to modern communications.''

119. Finding that the four criteria used in our section 255 rules for determining compatibility remain relevant in the context of advanced communications services, we adopt the following factors for determining compatibility: (i) External access to all information and control mechanisms; (ii) existence of a connection point for external audio processing devices; (iii) TTY connectability; and (iv) TTY signal compatibility. The Commission declines, at this time, to eliminate or modify (iii) and (iv) of this criteria. The Commission agrees with Consumer Groups that at this time, ''[a] forced phase-out of TTY would impose considerable hardship on a large segment of the population the CVAA is intended to protect.'' Therefore, we shall maintain the existing rules for TTY compatibility until alternative forms of communication, such as real-time text, are in place. Until a real time text standard is adopted, we believe that it would be premature to modify the third and fourth criteria as the IT and Telecom RERCs suggest. The provision of real-time text as communications technologies, including those used for 9–1–1 emergency services by people with disabilities, transition from the PSTN to an IP-based environment is being examined by the EAAC.

120. At this time, the Commission will not incorporate criteria related to APIs or software development kits (SDKs) into our definition of compatibility. We do agree with commenters, however, that APIs ''can facilitate both accessibility (via third-party solutions) as well as compatibility'' and ''reduce the work needed by both mainstream and assistive technology (AT) developers.'' We encourage stakeholders to use existing working groups—or form new ones—to develop and distribute voluntary industry-wide standards, since this approach will offer the industry flexibility in advancing the goals of compatibility articulated in sections 716 and 255.

121. Several commenters generally support the Access Board's proposed definition of ''compatibility'' and the VON Coalition suggests that the Commission should defer to the Access Board's determination of ''compatibility'' under section 508, thereby creating consistency between the CVAA and section 508. Because the Access Board has not yet completed its guidelines process, we will not adopt the Access Board's proposed definition of ''compatibility'' at this time but may revisit this decision after the Access Board completes its guidelines process.

C. Waivers and Exemptions

1. Customized Equipment or Services

122. Section 716(i) states that the accessibility requirements of section 716 ''shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.'' We hereby find that section 716(i) sets forth a narrow exemption that should be limited in scope to customized equipment and services offered to business and other enterprise customers only. Our decision is consistent with the legislative history of the CVAA, which demonstrates that Congress intended for section 716(i) to be a narrow exemption limited to specialized and innovative equipment or services built to the unique specifications of businesses:

> The Committee recognizes that some equipment and services are customized to the unique specifications requested by an enterprise customer. The Committee believes this narrow exemption will encourage technological innovation by permitting manufacturers and service providers to respond to requests from businesses that require specialized and sometimes innovative equipment to provide their services efficiently. This provision is not intended to create an exemption for equipment and services designed for and used by members of the general public.

123. We also conclude that section 716's accessibility requirements do not extend to public safety communications networks and devices, because such networks and devices are ''equipment and services that are not offered directly to the public.'' As Motorola points out, this conclusion is consistent with the Commission's recent proposal not to apply its hearing aid compatibility requirements to public safety equipment. In that proceeding, the Commission proposed to find that insofar as public safety communications networks have different technical, operational, and economic demands than consumer networks, the burdens of compliance would outweigh the public benefits. For the same reasons, we find that section 716 should not be imposed on public safety equipment.

124. We disagree with commenters such as Consumer Groups, and Words+ and Compusult who posit that public safety networks and devices should not be exempt from section 716 because their employees should be covered like the general population. These commenters argue that exempting public safety networks will create barriers to employment for people with disabilities employed in the public safety sector. We note, however, that employers, including public safety employers, are subject to accessibility obligations imposed under the ADA. Because employees of public safety institutions are protected by the ADA, and because the equipment we exempt is customized for the unique needs of the public safety community, we conclude that imposing the accessibility requirements of section 716 on such equipment would create an unnecessary burden on the development of public safety equipment without any concomitant benefit for employees with disabilities. Nonetheless, we agree with CSD that ''to the extent possible, public safety systems should be designed to accommodate the needs of deaf [and] hard-of-hearing employees and employees with other disabilities.''

125. We agree with CEA that products customized by a manufacturer for an enterprise that are not offered directly to the general public are exempt, even if such products are ''used by members of the general public.'' We also agree with the IT and Telecom RERCs that if a customized product built to an enterprise customer's unique specifications is later made directly available to the public, it then becomes subject to the CVAA. Although the legislative history specifies that the exemption set forth in section 716(i) encompasses equipment/services customized to the ''unique specifications requested by an enterprise customer,'' we find that where a customized product is subsequently offered directly to the public by the originating manufacturer or service provider, that product is then not serving the unique needs of an enterprise customer and thus should not be exempt from the accessibility requirements of section 716.

126. We disagree with commenters such as Consumer Groups, the IT and Telecom RERCs, and Words+ and Compusult who advocate that we expand the definition of ''public'' as used in section 716(i), to include government agencies, educational organizations, and public institutions. While Congress clearly meant to draw a distinction between equipment or a service that has been ''customized to the unique specifications requested by an enterprise customer'' from ''equipment and services designed for and used by members of the general public'' in enacting the exemption in section 716(i), there is no support for the proposition that the use of the term ''public'' in the foregoing phrase was meant to extend to public institutions. Furthermore, there are many instances where public institutions, acting as enterprise customers, order customized equipment, such as library cataloging systems, whereby such systems would never be designed for, sold to, and used directly by members of the general public. Under Consumer Groups' approach, a public institution could never be considered an enterprise customer, even when procuring specialized equipment that would not be offered to the public or even other enterprise customers. There is nothing in the statute demonstrating that Congress intended to treat public institutions differently from other enterprise customers who are in need of customized or specialized equipment. Therefore, we decline to expand the definition of the word ''public'' as used in section 716(i) to public institutions. Equipment, such as general purpose computers, that are used by libraries and schools without customization, and are offered to the general public—*i.e.,* library visitors and students, would not fall within the exemption and must meet the accessibility requirements of section 716.

127. We further conclude that customizations to communications devices that are merely cosmetic or do not significantly change the functionalities of the device or service should not be exempt from section 716. We agree with Words+ and Compusult that the section 716(i) exemption should be narrowly construed, and further agree with Consumer Groups that manufacturers and service providers should not be able to avoid the requirements of the CVAA through customizations that are ''merely cosmetic'' or have ''insignificant change to functionality'' of the product/service. We note that the majority of commenters support the conclusion that this exemption should not extend to equipment or services that have been customized in ''minor ways'' or ''that are made available to the public.''

128. Beyond the narrow exemption that we carve out for public safety communications, we refrain from identifying any other particular class of service or product as falling within the section 716(i) exemption. We disagree with NetCoalition that the exemption should apply to ACS manufacturers or service providers who offer their products to a ''discrete industry segment'' and only a ''relatively small number of individuals.'' The exemption is not based on the characteristics of the manufacturer or the provider, but rather, on whether the particular equipment or service in question is unique and narrowly tailored to the specific needs of a business or enterprise.

129. The customized equipment exemption will be self-executing. That is, manufacturers and providers need not formally seek an exemption from the Commission, but will be able to raise section 716(i) as a defense in an enforcement proceeding.

2. Waivers for Services or Equipment Designed Primarily for Purposes Other Than Using ACS

130. Section 716(h)(1) of the Act grants the Commission the authority to waive the requirements of section 716. We adopt the Commission's proposal to focus our waiver inquiry on whether a multipurpose equipment or service has a feature or function that is capable of accessing ACS but is nonetheless designed primarily for purposes other than using ACS. This approach is founded in the statutory language. We disagree with the IT and Telecom RERCs' assertion that our waiver analysis should focus on whether the *features or functions* are designed primarily for purposes other than using ACS. The statute specifically anticipates waivers for multipurpose *equipment and services* or classes of such equipment and services with ACS features or functions. As the House and Senate Reports explain, ''a device designed for a purpose unrelated to accessing advanced communications might also provide, on an incidental basis, access to such services. In this case, the Commission may find that to

promote technological innovation the accessibility requirements need not apply.''

131. We will exercise the authority granted under section 716(h)(1) to waive the requirements of section 716 (a waiver of the obligations of section 716 also consequently relieves the waived entity from the recordkeeping and annual certification obligations of section 717) through a case-by-case, fact-based analysis on our own motion, or upon petition of a manufacturer of ACS equipment, a provider of ACS, or any interested party. AT&T and CEA generally support this approach. As we discuss in more detail below, the rule we adopt provides specific guidance on the two factors that we will use to determine whether equipment or service is designed primarily for purposes other than using ACS.

132. We will examine whether the equipment or service was designed to be used for advanced communications service purposes by the general public. We agree that the language of the statute requires an examination of the purpose or purposes for which the manufacturer or service provider designed the product or service and that consumer use patterns may not always accurately reflect design. Therefore, this is not an examination of post-design uses that consumers may find for a product; but rather, an analysis of the facts available to the manufacturer or provider and their intent during the design phase. We may, for example, consider the manufacturer or provider's market research, the usage trends of similar equipment or services, and other information to determine whether a manufacturer or provider designed the equipment or service primarily for purposes other than ACS.

133. We note that equipment and services may have multiple primary, or co-primary purposes, and in such cases a waiver may be unwarranted. Convergence results in multipurpose equipment and services that may be equally designed for multiple purposes, none of which are the exclusive primary use or design purpose. For instance, many smartphones appear to be designed for several purposes, including voice communications, text messaging, and email, as well as web browsing, two-way video chat, digital photography, digital video recording, high-definition video output, access to applications, and mobile hotspot connectivity. The CVAA would have little meaning if we were to consider waiving section 716 with respect to the email and text messaging features of a smartphone on the grounds that the phone was designed in part for voice communications.

134. We will also examine whether the equipment or service is marketed for the ACS features or functions. We agree with many commenters who suggest that how equipment or a service is marketed is relevant to determining the primary purpose for which it is designed. We will examine how and to what extent the ACS functionality or feature is advertised, announced, or marketed and whether the ACS functionality or feature is suggested to consumers as a reason for purchasing, installing, downloading, or accessing the equipment or service. We believe the best way to address the IT and Telecom RERCs' concern that a covered entity's assessment of how a product is marketed may be ''subjective and potentially self-serving'' is to examine this factor on a case-by-case basis and to solicit public comment on waiver requests, as discussed below.

135. Several commenters suggest additional factors that we should consider when examining the primary purpose for which equipment or service is designed. While some of these factors may be valuable in some cases, we decline to incorporate these factors directly into our rules. However, these factors may help a petitioner illustrate the purpose for which its equipment or service is primarily designed. For instance ESA suggests we examine ''[w]hether the ACS functionality intends to enhance another feature or purpose.'' Microsoft similarly suggests we examine ''[w]hether the offering is designed for a 'specific class of users who are using the ACS features in support of another task' or as the primary task.'' Whether the ACS functionality is designed to be operable outside of other functions, or rather aides other functions, may support a determination that the equipment or service was or was not designed primarily for purposes other than ACS. Similarly, an examination of the impact of the removal of the ACS feature or function on a primary purpose for which the equipment or service is claimed to be designed may be relevant to a demonstration of the primary purpose for which the equipment or service is designed. Further, ESA suggests we examine ''[w]hether there are similar offerings that already have been deemed eligible for a * * * waiver.'' An examination of waivers for similar products or services, while not dispositive for a similar product or service, may be relevant to whether a waiver should be granted for a subsequent similar product or service. These and other factors may be relevant for a waiver petitioner, as determined on a case-by-case basis.

136. Conversely, we believe there is little value in examining other suggested factors on the record. We do not believe that the ''processing power or bandwidth used to deliver ACS vis-à-vis other features'' is relevant. No evidence provided supports the notion that there is a direct relationship between the primary purpose for which equipment or service is designed and the processing power or bandwidth allocated to that purpose. For example, text messaging on a wireless handset likely consumes less bandwidth than voice telephony, but both could be co-primary purposes of a wireless handset. Further, we do not believe that an examination of whether equipment or service ''provides a meaningful substitute for more traditional communications devices'' adds significantly to the waiver analysis. The waiver analysis requires an examination of whether the equipment or service is designed primarily for purposes other than using ACS. The inquiry therefore is about the design of the multipurpose service or equipment, not the nature of the ACS component.

137. In addition to the above factors we build into our rules and others that petitioners may demonstrate, we intend to utilize our general waiver standard, which requires good cause to waive the rules, and a showing that particular facts make compliance inconsistent with the public interest. CEA agrees with this approach. The CVAA grants the Commission authority to waive the requirements of section 716 in its discretion, and we intend to exercise that discretion consistent with the general waiver requirements under our rules.

138. We decline to adopt the waiver analysis proffered by AFB and supported by ACB. AFB urges us to use the four achievability factors to examine waiver petitions. We find that the achievability factors are inappropriate to consider in the context of a waiver. A waiver relieves an entity of the obligations under section 716, including the obligation to conduct an achievability analysis. It would be counter to the purpose of a waiver to condition its grant on an entity's ability to meet the obligations for which it seeks a waiver. As discussed above, our waiver analysis will examine the primary purpose or purposes for which the equipment or service is designed, consistent with the statutory language.

139. The factors we establish here will promote regulatory certainty and predictability for providers of ACS, manufacturers of ACS equipment, and

consumers. We intend for these factors to provide clear and objective guidance to those who may seek a waiver and those potentially affected by a waiver. Providers of ACS and ACS equipment manufacturers have the flexibility to seek waivers for services and equipment they believe meet the waiver requirements. While a provider or manufacturer will expend some level of resources to seek a waiver, the provider or manufacturer subsequently will have certainty regarding its obligations under the Act whether or not a waiver is granted. A manufacturer or provider that receives a waiver will avoid the cost of compliance. A manufacturer or provider that is not granted a waiver can determine its obligations under the Act following an achievability analysis. The opportunity cost to seek a waiver is low since the alternative is compliance with the Act. If a waiver is warranted, the provider or manufacturer can then efficiently allocate resources to other uses.

140. We encourage equipment manufacturers and service providers to petition for waivers during the design phase of the product lifecycle, but we decline to adopt the proposal proffered by AFB to require petitioners to seek a waiver prior to product introduction. The design phase is the ideal time to seek a waiver, but we will not foreclose the ability of a manufacturer or provider to seek a waiver after product introduction. AFB correctly observes: ''If inaccessible equipment or services are first deployed in the marketplace, and the subsequently-filed waiver petition is not granted, the company would remain at tremendous risk of being found in violation of the CVAA's access requirements and exposed to potential penalties.'' This reality should encourage equipment and service providers to seek waivers during the design phase without necessitating a mandate.

141. The Commission will entertain waivers for equipment and services individually or as a class. With respect to any waiver, the Commission may decide to limit the time of its coverage, with or without a provision for renewal. Individual waiver requests must be specific to an individual product or service offering. This does not preclude combining multiple specific products with common attributes in the same waiver request. New or different products, including substantial upgrades that change the nature of the product or service, require new waivers. For example, a petitioner that manufactures many similar types of products—similar products of varying design, or similarly designed products with different product numbers—the petitioner must seek a waiver for each discrete product individually. This is analogous to rules implementing section 255, which require entities to consider ''whether it is readily achievable to install any accessibility features in a specific product whenever a natural opportunity to review the design of a service or product arises.'' Individual waiver petitioners must explain the anticipated lifecycle for the product or service for which the petitioner seeks a waiver. Individual waivers will ordinarily be granted for the life of the product or service. However, the Commission retains the authority to limit the waiver for a shorter duration if the record suggests the waiver should be so limited.

142. We will exercise our authority to grant class waivers in instances in which classes are carefully defined and when doing so would promote greater predictability and certainty for all stakeholders. For the purpose of these rules, a class waiver is one that applies to more than one piece of equipment or more than one service where the equipment or services share common defining characteristics. For the Commission to grant a class waiver, we will examine whether petitioners have defined with specificity the class of common equipment or services with common advanced communications features and functions for which they seek a waiver, including whether petitioners have demonstrated the similarity of the equipment or service in the class and the similarity of the ACS features or functions. We distinguish class waivers from categorical waivers. Several commenters urge us to adopt rules that waive the requirements of section 716 for whole categories of equipment or services. We decline to adopt waivers for broad categories of equipment or services because we believe that the facts specific to each product or product type within a category may differ such that the ACS feature or function may be a primary purpose for which equipment or service within the category is primarily designed. We will utilize a fact-specific, case-by-case determination of all waiver requests.

143. In addition, we will examine whether petitioners have explained in detail the expected lifecycle for the equipment or services that are part of the class. Thus, the definition of the class should include the product lifecycle. All products and services covered by a class waiver that are introduced into the market while the waiver is in effect will ordinarily be subject to the waiver for the duration of the life of those particular products and services. As with ordinarily granting individual waiver requests for the life of the product or service, the Commission retains the authority to limit a class waiver for a shorter duration if the record suggests the waiver should be so limited. For products and services already under development at the time when a class waiver expires, the achievability analysis conducted at that time may take into consideration the developmental stage of the product and the effort and expense needed to achieve accessibility at that point in the developmental stage.

144. To the extent a class waiver petitioner seeks a waiver for multiple generations of similar equipment and services, we will examine the justification for the waiver extending through the lifecycle of each discrete generation. For example, if a petitioner seeks a waiver for a class of devices with an ACS feature and a two-year product lifecycle, and the petitioner wishes to cover multiple generations of the product, we will examine the explanation for why each generation should be included in the class. If granted, the definition of the class will then include the multiple generations of the covered products or services in the class.

145. While many commenters agree that we should consider class waivers, we note that others are concerned that class waivers might lead to a ''class of inaccessible products and services'' well beyond the time that a waiver should be applicable. We believe this concern is addressed through our fact-specific, case-by-case analysis of waiver petitions and the specific duration for which we will grant each class waiver.

146. Several commenters urge us to adopt a time period within which the Commission must automatically grant waiver petitions if it has not taken action on them. We decline to do so. As the Commission noted in the *Accessibility NPRM,* in contrast to other statutory schemes, the CVAA does not specifically contemplate a ''deemed granted'' process. Nonetheless, we recognize the importance of expeditious consideration of waiver petitions to avoid delaying the development and release of products and services. We hereby delegate to the Consumer and Governmental Affairs Bureau (''Bureau'') the authority to decide all waiver requests filed pursuant to section 716(h)(1) and direct the Bureau to take all steps necessary to do so efficiently and effectively. Recognizing the need to provide certainty to all stakeholders with respect to waivers, we urge the Bureau to act promptly to place waiver

requests on public notice and to give waiver requests full consideration and resolve them without delay. The Commission also hereby adopts, similar to its timeline for consideration of applications for transfers or assignments of licenses or authorizations relating to complex mergers, a timeline for consideration of applications for waiver of the rules we adopt herein. This timeline represents the Commission's goal to complete action on such waiver applications within 180 days of public notice. This 180-day timeline for action is especially important in this context, given the need to provide certainty to both the innovators investing risk capital to develop new products and services, as well as to the stakeholders with an interest in this area. Therefore, it is the Commission's policy to decide all such waiver applications as expeditiously as possible, and the Commission will endeavor to meet its 180-day goal in all cases. Finally, although delay is unlikely, we note that delay beyond the 180-day period in a particular case would not be indicative of how the Commission would resolve an application for waiver.

147. We emphasize that a critical part of this process is to ensure a sufficient opportunity for public input on all waiver requests. Accordingly, our rules provide that all waiver requests must be put on public notice, with a minimum of a 30-day period for comments and oppositions. In addition, public notices seeking comment on waiver requests will be posted on a Web page designated for disability-related waivers and exemptions in the Disability Rights Office section of the Commission's Web site, where the public can also access the accessibility clearinghouse and other accessibility-related information. We will also include in our biennial report to Congress that is required under section 717(b)(1) a discussion of the status and disposition of all waiver requests.

148. We recognize that confidentiality may be important for waiver petitioners. Petitioners may seek confidential treatment of information pursuant to § 0.459 of the Commission's rules. Several commenters agree with this approach. Third parties may request inspection of confidential information under § 0.461 of the Commission's rules. We anticipate that confidentiality may be less important for class waiver petitions due to the generic nature of the request; a class waiver petition can cover many devices, applications, or services across many covered entities and will therefore not likely include specific confidential design or strategic information of any covered entity.

149. ESA urges the Commission to exclude from final rules the class ''video game offerings,'' which it defines to include video game consoles, operating systems, and games. CEA seeks a waiver for ''[t]elevision sets that are enabled for use with the Internet,'' and ''[d]igital video players that are enabled for use with the Internet.'' We decline to adopt or grant these requests at this time. Instead, we believe that petitioners will benefit from the opportunity to re-file these waiver requests consistent with the requirements of this *Report and Order.* Because of the phase-in period for implementation of these rules, petitioners will have flexibility to seek a waiver subsequent to this *Report and Order* without incurring unreasonable compliance expense. We encourage petitioners to seek a waiver for their respective classes of equipment and services consistent with the rules we adopt herein. For example, a petition for a waiver of equipment and services may need to seek a waiver for each as individual classes, although they may file for them in the same petition. We will specify in our biennial Report to Congress any waiver requests granted during the previous two years.

3. Exemptions for Small Entities—Temporary Exemption of Section 716 Requirements

150. Section 716(h)(2) states that ''[t]he Commission may exempt small entities from the requirements of this section.'' We do not have before us a sufficient record upon which to grant a permanent exemption for small entities. The record also lacks sufficient information on the criteria to be used to determine which small entities to exempt. We therefore seek comment on such an exemption in the *Accessibility FNPRM.* To avoid the possibility of unreasonably burdening ''small and entrepreneurial innovators and the significant value that they add to the economy,'' we exercise our authority under the Act to temporarily exempt from the obligations of section 716, and by effect section 717, all manufacturers of ACS equipment and all providers of ACS that qualify as small business concerns under the SBA's rules and size standards, pending development of a record to determine whether small entities should be permanently exempted and, if so, what criteria should be used to define small entities. We find that good cause exists for this temporary exemption.

151. Despite the lack of a meaningful substantive record on which to adopt a permanent exemption, without a temporary exemption we run the risk of imposing an unreasonable burden upon small entities and negatively impacting the value they add to the economy. At the same time, the absence of meaningful comments on any exemption criteria prohibits us from conclusively determining their impact on consumers and businesses. This temporary exemption will enable us to provide relief to those entities that may possibly lack legal, financial, or technical capability to comply with the Act until we further develop the record to determine whether small entities should be subject to a permanent exemption and, if so, the criteria to be used for defining which small entities should be subject to such permanent exemption.

152. We temporarily exempt entities that manufacture ACS equipment or provide ACS that, along with any affiliates, meet the criteria for a small business concern for their primary industry under SBA's rules and size standards. A small business concern, as defined by the SBA, is an ''entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' Entities are affiliated under the SBA's rules when an entity has the power to control another entity, or a third party has the power to control both entities, as determined by factors including ''ownership, management, previous relationships with or ties to another concern, and contractual relationships.'' A concern's primary industry is determined by the ''distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year,'' and other factors including ''distribution of patents, contract awards, and assets.''

153. The SBA has established maximum size standards used to determine whether a business concern qualifies as a small business concern in its primary industry. The SBA has generally adopted size standards based on the maximum number of employees or maximum annual receipts of a business concern. The SBA categorizes industries for its size standards using the North American Industry Classification System (''NAICS''), a ''system for classifying establishments by type of economic activity.''

154. This temporary exemption is self-executing. Entities must determine whether they qualify for the exemption based upon their ability to meet the SBA's rules and the size standard for the

relevant NAICS industry category for the industry in which they are primarily engaged. Entities that manufacture ACS equipment or provide ACS may raise this temporary exemption as a defense in an enforcement proceeding. Entities claiming the exemption must be able to demonstrate that they met the exemption criteria during the estimated start of the design phase of the lifecycle of the product or service that is the subject of the complaint. If an entity no longer meets the exemption criteria, it must comply with section 716 and section 717 for all subsequent products or services or substantial upgrades of products or services that are in the development phase of the product or service lifecycle, or any earlier stages of development, at the time they no longer meet the criteria.

155. The temporary exemption will begin on the effective date of the rules adopted in this *Report and Order.* The temporary exemption will expire on the earlier of (1) the effective date of small entity exemption rules adopted pursuant to the *Accessibility FNPRM;* or (2) October 8, 2013.

D. Additional Industry Requirements and Guidance

1. Performance Objectives

156. As proposed in the *Accessibility NPRM,* we adopt as general performance objectives the requirements that covered equipment and services be accessible, compatible and usable. We incorporate into these general performance objectives the outcome-oriented definitions of accessible, compatibility and usable, contained in §§ 6.3 and 7.3 of the Commission's rules. Most commenters in the record support this approach. The IT and Telecom RERCs, however, disagree and propose that we reframe our Part 6 requirements as goals and testable performance criteria. Because the IT and Telecom RERCs filed their proposal in their Reply Comments, we seek comment in the accompanying *Accessibility FNPRM* on the IT and Telecom RERCs' general approach and on specific testable performance criteria.

157. We do not adopt specific performance objectives at this time. As we discuss in greater detail in the *Accessibility FNPRM,* we will defer consideration of specific performance criteria until the Access Board adopts Final Guidelines. As proposed in the *Accessibility NPRM,* we will wait until after the EAAC provides its recommendations on issues relating to the migration to IP-enabled networks, including the adoption of a real-time text standard, to the Commission in December 2011 to update our performance objectives, as appropriate.

2. Safe Harbors

158. We decline, at this time, to adopt any technical standards as safe harbors. The majority of commenters either oppose the Commission adopting technical standards as safe harbors or only support the adoption of safe harbors subject to important limitations and qualifications. CEA, for example, argues that safe harbors should only be used in limited circumstances and warns that the Commission should not lock in outdated technologies or impose implicit mandates. The IT and Telecom RERCs assert that APIs should be encouraged, but should not be a safe harbor. ITI, however, argues that we should adopt safe harbors as a ''reliable and sustainable method to achieve interoperability between'' all of the components necessary to make ACS accessible. AFB and Words+ and Compusult argue that it is still too early in the implementation of the CVAA to make informed judgments about whether safe harbor technical standards should be established. We do not have enough of a record at this time to evaluate ITI's proposal or to decline to adopt a safe harbor, and seek further comment on this issue in the *Accessibility FNPRM.*

3. Prospective Guidelines

159. Section 716(e)(2) of the Act requires the Commission to issue prospective guidelines concerning the new accessibility requirements. We generally agree with CEA that because the Access Board's draft guidelines ''may still change significantly,'' we should allow the Access Board to complete its review and issue Final Guidelines before we adopt prospective guidelines in accordance with section 716(e)(2) of the Act. We agree with the IT and Telecom RERCs that the Commission does not need to create a separate advisory group to generate prospective guidelines. We believe that the Access Board will take into account the ''needs of specific disability groups, such as those with moderate to severe mobility and speech disorders.'' Accordingly, we will conduct further rulemaking to develop the required prospective guidelines after the Access Board issues its Final Guidelines.

E. Section 717 Recordkeeping and Enforcement

1. Recordkeeping

160. In this *Report and Order,* we adopt rules to implement Congress's directive that manufacturers and service providers maintain ''records of the efforts taken by such manufacturer or provider to implement sections 255, 716, and 718.'' Specifically, we require covered entities to keep the three sets of records specified in the statute. However, we remind covered entities that do not make their products or services accessible and claim as a defense that it is not achievable for them to do so, that they bear the burden of proof on this defense. As a result, while we do not require manufacturers and service providers that intend to make such a claim to create and maintain any particular records relating to that claim, they must be prepared to carry their burden of proof. Conclusory and unsupported claims are insufficient and will cause the Commission to rule in favor of complainants that establish a *prima facie* case that a product or service is inaccessible and against manufacturers or service providers that assert, without proper support, that it was not achievable for them to make their product or service accessible.

161. In this regard, manufacturers and service providers claiming as a defense that it is not achievable must be prepared to produce sufficient records demonstrating:

- The nature and cost of the steps needed to make equipment and services accessible in the design, development, testing, and deployment process to make a piece of equipment or software in the case of a manufacturer, or service in the case of a service provider, usable by individuals with disabilities. Expert affidavits, attesting that accessibility for a product or service was not achievable, created after a complaint is filed or the Commission launches its own investigation would not satisfy this burden. Samuelson-Glushko TLPC argues that ''[u]ser testing requirements are vital to ensure usable and viable technology access to citizens with disabilities.'' While we will not impose specific user testing requirements, we support the practice of user testing and agree with Samuelson-Glushko that user testing benefits individuals with a wide range of disabilities. While we do not define here what cost records a covered entity should keep, in reviewing a defense of not achievable, we will expect such entities to produce records that will assist the Commission in identifying the incremental costs associated with designing, developing, testing, and deploying a particular piece of equipment or service with accessibility functionality versus the same equipment or service without accessibility functionality. Additionally, with respect to services, covered entities should be prepared to produce records that identify the average and marginal

costs over the expected life of such service. Records that front load costs to demonstrate that accessibility was not achievable will be given little weight.

- The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;
- The type of operations of the manufacturer or service provider; and,
- The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

162. Likewise, equipment manufacturers and service providers that elect to satisfy the accessibility requirements using third-party applications, peripheral devices, software, hardware, or customer premises equipment must be prepared to produce relevant documentation.

163. We will not mandate any one form for keeping records (*i.e.,* we adopt a flexible approach to recordkeeping). While we establish uniform recordkeeping and enforcement procedures for entities subject to sections 255, 716, and 718, we believe that covered entities should not be required to maintain records in a specific format. Allowing covered entities the flexibility to implement individual recordkeeping procedures takes into account the variances in covered entities (*e.g.,* size, experience with the Commission), recordkeeping methods, and products and services covered by the provisions. While we are not requiring that records and documents be kept in any specific format, we exercise our authority and discretion under sections 403, 4(i), 4(j), 208 and other provisions of the Act and Commission and court precedent to require production of records and documents in an informal and formal complaint process or in connection with investigations we initiate on our own motion in any form that is conducive to the dispatch of our obligation under the Act, including electronic form and formatted for specific documents review software products such as Summation, as well as paper copies. In addition, we require that all records filed with the Commission be in the English language. Where records are in a language other than English, we require the records to be filed in the native language format accompanied by a certified English translation. We adopt our proposal in the *Accessibility NPRM* that if a record that a covered entity must produce ''is not readily available, the covered entity must provide it no later than the date of its response to the complaint.''

164. While we are not requiring entities to adopt a standard approach to recordkeeping, we fully expect that entities will establish and sustain effective internal procedures for creating and maintaining records that demonstrate compliance efforts and allow for prompt response to complaints and inquiries. As noted in the *Section 255 Report and Order,* if we determine that covered entities are not maintaining sufficient records to respond to Commission or consumer inquiries, we will revisit this decision.

165. The statute requires manufacturers and service providers to preserve records for a ''reasonable time period.'' Pursuant to this requirement, we adopt a rule that requires a covered entity to retain records for a period of two years from the date the covered entity ceases to offer or in anyway distribute (through a third party or reseller) the product or service to the public. In determining what constitutes a reasonable time period, we believe that records should at a minimum be retained during the time period that manufacturers and providers are offering the applicable products and services to the public. We also believe that a reasonable time period should be linked to the life cycle of the product or service and that covered entities should retain records for a reasonable period after they cease to offer a product or service (or otherwise distribute a product or service through a reseller or other third party). In this regard, based on our experience with other enforcement issues, we note that purchasers of products or services might not file a complaint for up to a year after they have purchased such products or services and that the statute places no limitation preventing consumers from doing this. In addition, some consumers might purchase a product or service from another party one year after the covered entity has ceased making and offering the covered product or service. These ''resale'' consumers in turn might take up to an additional year to file an accessibility complaint. At the same time, as discussed further in our Enforcement section below, the Commission may initiate an enforcement investigation into an alleged violation of section 255, 716, or 718 based on information that a consumer, at any time, brings to the Commission's attention. These documents would thus be relevant to a Commission-initiated investigation. For these reasons, we find that covered entities must retain records for two years after they cease offering (or in any way distributing) a covered product or service to the public.

166. This will enable consumers to file complaints and the Commission to initiate its own investigations to ensure that, even if the product or service at issue in the complaint is not compliant, the next generation or iteration of the product or service is compliant. Because covered entities must comply with sections 255, 716, and 718, we find that this two-year document retention rule imposes a minimal burden on covered entities because it ensures that they have the necessary documentation to prove that they have satisfied their legal obligations in response to any complaint filed. Covered entities are reminded, however, that, even upon the expiration of the mandatory two-year document retention rule, it is incumbent on them to prove accessibility or that accessibility was not achievable in the event that a complaint is received. Thus, covered entities should use discretion in setting their record retention policies applicable to the post-two-year mandatory record retention period.

167. The statute requires that an officer of a manufacturer or service provider annually submit to the Commission a certification that records required to be maintained are being kept in accordance with the statute. We adopt a rule requiring manufacturers and service providers to have an authorized officer sign and file with the Commission the annual certification required pursuant to section 717(a)(5)(B) and our rules. If the manufacturer or service provider is an individual, the individual must sign. In the case of a partnership, one of the partners must sign on behalf of the partnership and by a member with authority to sign in cases where the manufacturer or service provider is, for example, an unincorporated association or other legal entity that does not have an officer or partner, or its equivalent. The certification must state that the manufacturer or service provider, as applicable, is keeping the records required in compliance with section 717(a)(5)(A) and § 14.31 of our new rules and be supported with an affidavit or declaration under penalty of perjury, signed and dated by the authorized officer of the company with personal knowledge of the representations provided in the company's certification, verifying the truth and accuracy of the information therein. All such declarations must comply with § 1.16 of our rules and be substantially in the form set forth therein. We also require the certification to identify the name and contact details of the person or

persons within the company that are authorized to resolve complaints alleging violations of our accessibility rules and sections 255, 716, and 718 of the Act, and the name and contact details of the person in the company for purposes of serving complaints under part 14, subpart D of our new rules. The contact details required for purposes of complaints and service must be the U.S. agent for service for the covered entity. This information will be posted on the FCC's Web site. Finally, the annual certification must be filed with the Commission on or before April 1st each year for records pertaining to the previous calendar year. CGB will issue a public notice to provide filing instructions prior to the first annual certification, which may be required on or before April 1, 2013. For the first certification filing, manufacturers and service providers must certify that, since the effective date of the rules, records have been kept in accordance with the Commission's rules. CGB will establish a system for online filing of annual certifications. When this system is available, CGB will release a public notice announcing this fact and providing instructions on its use. CGB will also update the Disability Rights Office section of the Commission's Web site to describe how annual certifications may be filed.

168. Section 717(a)(5)(C) requires the Commission to keep confidential only those records that are: (1) Filed by a covered entity at the request of the Commission in response to a complaint; (2) created or maintained by the covered entity pursuant to the rules we adopt herein; and (3) directly relevant to the equipment or service that is the subject of the complaint. Section 717(a)(5)(C) does not require all records that the Commission may request a covered entity file in response to a complaint be kept confidential—only those records that the covered entity is required to keep pursuant to our rules adopted herein *and* are directly relevant to the equipment or service at issue. Section 717(a)(5)(C) also does not protect any additional materials such as supporting data or other information that proves the covered entity's case, nor does it protect records that covered entities are required to keep when responding to a Commission investigation initiated on our own motion.

169. While we recognize the limited scope of the confidentiality protection of section 717(a)(5)(C), we also recognize that some of the documents falling outside that protection may also qualify for confidentiality under our rules. For those documents submitted in response to a complaint or an investigation, covered entities should follow our existing rules and procedures for protecting confidentiality of records. Accordingly, when a covered entity responds to a complaint alleging a violation of section 255, 716, or 718 or responds to a Commission inquiry, the covered entity may request confidential treatment of the documentation, information, and records that it files with the Commission under § 0.459 of our rules. When covered entities file records that fall within the limited scope of section 717(a)(5)(C), they may assert the statutory exemption from disclosure under § 0.457(c) of the Commission's rules. In all other cases, covered entities must comply with § 0.459 when seeking protection of their records. We remind covered entities that our rules require such entities to file a redacted copy of their response to a complaint or investigation. We do not believe it serves the public interest of the parties in a complaint process for the Commission to try to determine in the first instance what documents and records the filing party wishes be kept confidential. The party filing documents with the Commission is best suited to make that initial determination. We note that our informal complaint rules require the responding covered entity to serve a non-confidential summary of its complaint answer to the complainant.

170. Finally, as discussed earlier in this *Report and Order,* products or services offered in interstate commerce shall be accessible, unless not achievable, beginning on October 8, 2013. Pursuant to the statute, one year after the effective date of these regulations, covered entities' recordkeeping obligations become effective.

2. Enforcement

a. Overview

171. Section 717 of the Act requires the Commission to adopt rules that facilitate the filing of formal and informal complaints alleging non-compliance with section 255, 716, or 718 and to establish procedures for enforcement actions by the Commission with respect to such violations, within one year of enactment of the law. In crafting rules to implement the CVAA's enforcement requirements, our goal is to create an enforcement process that is accessible and fair and that allows for timely determinations, while allowing and encouraging parties to resolve matters informally to the extent possible.

b. General Requirements

172. Several commenters suggest that a type of pre-filing notice to potential defendants may facilitate the speedy settlement of consumer disputes, which, they say, would save consumers and industry time and money and preserve Commission resources that would otherwise be expended in the informal complaint process. These commenters urge the Commission to require potential complainants to notify covered entities of their intent to file an informal complaint generally 30 days before they intend to file such a complaint. Others, however, have reported that consumers would experience frustration if required to pre-notify a covered entity directly. We recognize the potential benefits of allowing companies an opportunity to respond directly to the concerns of consumers before a complaint is filed. At the same time, we are cognizant of the difficulties that consumers may have in achieving resolution of their issues on their own. For example, consumers may not always be able to figure out, in multi-component products that use communications services, which entity is responsible for failing to provide access. Therefore, to facilitate settlements, as well as to assist consumers with bringing their concerns to the companies against which they might have a complaint, we adopt a compromise pre-filing requirement that is designed to reap the benefits of informal dispute resolution efforts, but that does not impose an unreasonable burden on consumers by requiring them to approach companies on their own.

173. We will require consumers to file a ''Request for Dispute Assistance'' (''Request'') with CGB, rather than with a covered entity, prior to filing an informal complaint with the Commission. A Request for Dispute Assistance may be sent to CGB in the same manner as an informal complaint, as discussed below, but filers should use the email address *dro@fcc.gov* if sending their complaint by email. Parties with questions regarding these requests should call CGB at (202) 418–2517 (voice), (202) 418–2922 (TTY), or visit the Commission's Disability Rights Office web site at *http://transition.fcc.gov/cgb/dro.* CGB will establish a system for online filing of requests for dispute assistance. When this system is available, CGB will release a public notice announcing this fact and providing instructions on its use. CGB will also update the Disability Rights Office section of the Commission's Web site to describe how requests for dispute assistance may be filed. This requirement to file a Request

is a prerequisite to the filing of informal complaints only. It is not a prerequisite to the filing of a formal complaint, as the complainant and the respondent to a formal complaint proceeding are both required to certify in their pleadings that, prior to the filing of the formal complaint, both parties, ''in good faith, discussed or attempted to discuss the possibility of settlement.''

174. This Request should contain: (1) The name, address, email address, and telephone number of the consumer and the manufacturer or service provider against whom the complaint will be made; (2) an explanation of why the consumer believes the manufacturer or provider is in violation of section 255, 716, or 718 of the Commission's implementing rules, including details regarding the service or equipment and the relief requested and any documentation that supports the complainant's contention; (3) the approximate date or dates on which the consumer either purchased, acquired, or used (or attempted to purchase, acquire, or use) the equipment or service in question; (4) the consumer's preferred format or method of response to the complaint by the Commission and defendant (*e.g.,* letter, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that will best accommodate the consumer's disability); and (5) any other information that may be helpful to CGB and the defendant to understand the nature of the complaint.

175. CGB will forward a copy of the request to the named manufacturer or service provider in a timely manner. As discussed in the Recordkeeping section above, we require covered entities to include their contact information in their annual certifications filed with the Commission. If a covered entity has not filed a certification that includes its contact information (failure to file a certification is a violation of the Commission's rules), CGB shall forward the request to the covered entity based on publicly available information, and the covered entity may not argue that it did not have a sufficient opportunity to settle a potential complaint during the dispute assistance process. If, in the course of the CGB dispute assistance process, CGB or the parties learn that the Requester has identified the wrong entity or there is more than one covered entity that should be included in the settlement process, then CGB will assist the parties in ascertaining and locating the correct covered entity or entities for the dispute at issue. In this case, the 30-day period will be extended for a reasonable time period, so that the correct covered entities have notice and an opportunity to remedy any failure to make a product or service achievable or to settle the dispute in another manner.

176. Once the covered entity receives the Request, CGB will then assist the consumer and the covered entity in reaching a settlement of the dispute with the covered entity. After 30 days, if a settlement has not been reached, the consumer may then file an informal complaint with the Commission. However, if the consumer wishes to continue using CGB as a settlement resource beyond the 30-day period, the consumer and the covered entity may mutually agree to extend the CGB dispute assistance process for an additional 30 days and in 30-day increments thereafter. Once a consumer files an informal complaint with the Enforcement Bureau, as discussed below, the Commission will deem the CGB dispute assistance process concluded.

177. In the course of assisting parties to resolve a section 716 dispute, CGB may discover that the named manufacturer or service provider is exempt from section 716 obligations under a waiver or the temporary small business exemption. In such cases, CGB will inform the consumer why the named covered entity has no responsibility to make its service or product accessible, and the dispute assistance process will terminate.

178. We believe that this dispute assistance process provides an appropriate amount of time to facilitate settlements and provide assistance to consumers to rapidly and efficiently resolve accessibility issues with covered entities. We also believe that this approach will lessen the hesitation of some consumers to approach companies about their concerns or complaints by themselves. Commission involvement before a complaint is filed will benefit both consumers and industry by helping to clarify the accessibility needs of consumers for the manufacturers or service providers against which they may be contemplating a complaint, encouraging settlement discussions between the parties, and resolving accessibility issues without the expenditure of time and resources in the informal complaint process.

179. No parties opposed the Commission's proposal not to adopt a standing requirement or its proposal to continue taking *sua sponte* enforcement actions. The language of the statute supports no standing requirement, stating that ''[a]ny person alleging a violation * * * may file a formal or informal complaint with the Commission.'' We believe that any person should be able to identify noncompliance by covered entities and anticipate that informal or formal complaints will be filed by a wide range of complainants, including those with and without disabilities and by individuals and consumer groups. As noted in the *Accessibility NPRM,* there is no standing requirement under sections 255, 716, and 718 or under section 208 of the Act and our existing rules. Therefore, we find no reason to establish a standing requirement and adopt the *Accessibility NPRM's* proposal on standing to file. We also find no reason to modify existing procedures for initiating, on our own motion, Commission and staff investigations, inquiries, and proceedings for violations of our rules and the Act. Irrespective of whether a consumer has sought dispute assistance or filed a complaint on a particular issue, we intend to continue using all our investigatory and enforcement tools whenever necessary to ensure compliance with the Act and our rules.

c. Informal Complaints

180. In crafting rules to govern informal accessibility complaints, we have first examined the requirements of the CVAA, especially our obligation to undertake an investigation to determine whether a manufacturer or service provider has violated core accessibility requirements. While the investigation is pending, the CVAA also encourages private settlement of informal complaints, which may terminate the investigation. When a complaint is not resolved independently between the parties, however, the Commission must issue an order to set forth and fully explain the determination as to whether a violation has occurred. Further, if the Commission finds that a violation has occurred, a defendant manufacturer or service provider may be directed to institute broad remedial measures that have implications and effects far beyond an individual complainant's particular situation, as in an order by the Commission to make accessible the service or the next generation of equipment. Finally, the CVAA requires that the Commission hold as confidential certain materials generated by manufacturers and service providers who may be defendants in informal complaint cases. In addition to these statutory imperatives, we have also carefully considered the comments filed in this proceeding as well as our existing rules that apply to a variety of informal complaints.

181. Taking these factors into account, together with the complexity of issues and highly technical nature of the potential disputes that we are likely to

encounter in resolving complaints, the rules we adopt here attempt to balance the interests of both industry and consumers. In this regard, we seek, as much as possible, to minimize the costs and burdens imposed on these parties while both encouraging the non-adversarial resolution of disputes and ensuring that the Commission is able to obtain the information necessary to resolve a complaint in a timely fashion. We discuss these priorities more fully below and set forth both our pleading requirements and the factors that we believe are crucial to our resolution of informal accessibility complaints.

182. We find the public interest would be served by adopting the minimum requirements identified by the Commission in the *Accessibility NPRM* for informal complaints. Specifically, the rules we adopt will require informal complaints to contain, at a minimum: (1) The name, address, email address, and telephone number of the complainant, and the manufacturer or service provider defendant against whom the complaint is made; (2) a complete statement of facts explaining why the complainant contends that the defendant manufacturer or provider is in violation of section 255, 716, or 718, including details regarding the service or equipment and the relief requested and all documentation that supports the complainant's contention; (3) the date or dates on which the complainant or person on whose behalf the complaint is being filed either purchased, acquired, or used (or attempted to purchase, acquire, or use) the equipment or service about which the complaint is being made; (4) a certification that the complainant submitted to the Commission a Request for Dispute Assistance no less than 30 days before the complaint is filed and the date that the Request was filed; (5) the complainant's preferred format or method of response to the complaint by the Commission and defendant (*e.g.,* letter, facsimile transmission, telephone (voice/TRS/TTY), email, audio-cassette recording, Braille, or some other method that will best accommodate the complainant's disability, if any); and (6) any other information that is required by the Commission's accessibility complaint form.

183. The minimum requirements we adopt for informal complaints are aligned with our existing informal complaint rules and the existing rules governing section 255 complaints and take into account our statutory obligations under the CVAA. They will allow us to identify the parties to be served, the specific issues forming the subject matter of the complaint, and the statutory provisions of the alleged violation, as well as to collect information to investigate the allegations and make a timely accessibility achievability determination. Further, we believe that these requirements create a simple mechanism for parties to bring legitimate accessibility complaints before the Commission while deterring potential complainants from filing frivolous, incomplete, or inaccurate complaints. Accordingly, we decline to relax or expand the threshold requirements for informal accessibility complaints as advocated by some commenters.

184. As the Commission noted in the *Accessibility NPRM,* complaints that do not satisfy the pleading requirements will be dismissed without prejudice to re-file. We disagree with AFB that the Commission should work with a complainant to correct any errors before dismissing a defective complaint. Under the statute and the rules we adopt herein, the complainant in an informal complaint process is a party to the proceeding. The informal complaint proceeding is triggered by the filing of the informal complaint. Once the proceeding is initiated, the Commission's role is one of impartial adjudicator—not of an advocate for either the complainant or the manufacturer or service provider that is the subject of the complaint. While we will dismiss defective complaints once filed, we agree with commenters that consumers may need some assistance *before* filing their complaints. One commenter suggests that it may be difficult for consumers to obtain addresses for potential defendants as required by our rules. All manufacturers and service providers subject to sections 255, 716, and 718 are required to file with the Commission, and regularly update their business address and other contact information. Consumers, therefore, should have a simple means of obtaining this required information. Finally, the Commission may modify content requirements when necessary to accommodate a complainant whose disability may prevent him from providing information required under our rules. Toward that end, consumers may contact the Commission's Disability Rights Office by sending an email to *dro@fcc.gov*; calling (202) 418–2517 (voice) or (202) 418–2922 (TTY), or visiting its Web site at *http://transition.fcc.gov/cgb/dro* with any questions regarding where to find contact information for manufacturers and service providers, how to file an informal complaint, and what the complaint should contain.

185. By making the Commission's Disability Rights Office available to consumers with questions, and by carefully crafting the dispute assistance process, we believe that we have minimized any potential minimal burdens that an informal complaint's content requirements may impose on consumers. After a consumer has undertaken the dispute assistance process, CGB and the parties should have identified the correct manufacturer or service provider that the consumer will name in the informal complaint. Indeed, by the conclusion of the dispute assistance process, a consumer should have obtained all the information necessary to satisfy the minimal requirements of an informal complaint.

186. We decline to adopt a requirement suggested by some commenters that consumers be either encouraged or compelled to disclose the nature of their disability in an informal complaint. Nothing in the statute or the rules we adopt herein limits the filing of informal complaints to persons with disabilities or would prevent an advocacy organization, a person without disabilities, or other legal entity from filing a complaint. Thus, not every informal accessibility complaint will necessarily be filed by an individual with a disability. Further, imposing or even suggesting such a disclosure could have privacy implications and discourage some persons from filing otherwise legitimate complaints. To the extent that a particular disability is relevant to the alleged inaccessibility of a product or service, the complainant is free to choose whether to disclose his or her disability in the statement of facts explaining why the complainant believes the manufacturer or service provider is in violation of section 255, 716, or 718.

187. We also decline to permit consumers to assert anonymity when filing informal accessibility complaints. One commenter suggests that such a procedure should be made available to complainants who may be concerned about retaliation. Anonymity would preclude the complainant from playing an active role in the adjudicatory process and prevent informal contacts and negotiated settlement between parties to resolve an informal complaint filed with the Commission—a possibility clearly favored by the CVAA. We recognize, however, that some consumers who wish to remain anonymous may have valuable information that could prompt the Commission to investigate, on its own motion, a particular entity's compliance

with section 255, 716, or 718. We wish to encourage those consumers who do not want to file a complaint with the Commission, for fear of retaliation or other reasons, to provide the Commission with information about non-compliance with section 255, 716, or 718. To do so, consumers may anonymously apprise the Commission of possible unlawful conduct by manufacturers or service providers with respect to accessibility and compliance with section 255, 716, or 718. The Commission will issue a public notice that will provide a Commission email address and voice and TTY number for the receipt of information from members of the public relating to possible section 255, 716, and 718 statutory and rule violations. Consumers may provide such information anonymously. The Commission may use this information to launch its own investigation on its own motion. This process should satisfy the IT and Telecom RERCs' concern that some consumer may wish to provide information but remain anonymous. This may trigger an investigation by the Commission on its own initiative, but supplying such information is not tantamount to filing an informal complaint subject to the procedures we adopt herein.

188. We also decline to establish deadlines for filing an informal accessibility complaint as requested by one party. Specifically, CTIA contends that complaints should be limited to a specified filing window that is tied to either the initial purchase of the equipment or service or the first instance of perceived inaccessibility. As a preliminary matter, the statute does not impose a ''filing window'' or ''statute of limitations'' on the filing of complaints, and we see no reason to adopt such a limit at this time. Further, we have no information beyond conjecture to suggest that consumers would be likely to use the informal complaint process to bring stale accessibility issues before the Commission. The timeliness with which a complaint is brought may, however, have a bearing on its outcome. Complaints that are brought against products or services that are no longer being offered to the public, for example, may be less likely to bring about results that would be beneficial to complainants.

189. Finally, we do not believe that it is necessary to apply more stringent content requirements to informal complaints. We find unpersuasive the contention that complainants should be required to provide some evidentiary showing of a violation beyond the narrative required by new § 14.34(b) of our new rules. In fact, the primary evidence necessary to assess whether a violation has occurred resides with manufacturers and service providers, not with consumers who use their products and services. While a consumer should be prepared to fully explain the manner in which a product or service is inaccessible, inaccessibility alone does not establish a violation. Specifically, a violation exists only if the covered product or service is inaccessible and accessibility was, in fact, achievable. To require that a complaint include evidentiary documentation or analysis demonstrating a violation has occurred would place the complainant in the untenable position of being expected to conduct a complex achievability analysis without the benefit of the data necessary for such an analysis simply in order to initiate the informal complaint process. It is the covered entity that will have the information necessary to conduct such an analysis, not the complainant.

190. While no parties specifically commented on how the Commission should establish separate and identifiable electronic, telephonic, and physical receptacles for the receipt of informal complaints, the Commission has established a process that allows consumers flexibility in the manner in which they choose to file an informal complaint. CGB will establish a system for online filing of informal complaints. When this system is available, CGB will release a public notice announcing this fact and providing instructions on its use. CGB will also update the Disability Rights Office section of the Commission's Web site to describe how requests for dispute assistance may be filed. Formal complaints must be filed in accordance with §§ 14.38–14.52 of our new rules. Informal complaints alleging a violation of section 255, 716, or 718 may be transmitted to the Commission via any reasonable means, including by the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or email. The Commission will issue a public notice announcing the establishment of an Enforcement Bureau email address that will accept informal complaints alleging violations of section 255, 716 or 718 or the Commission's rules. We encourage parties to use the Commission's online filing system, because of its ease of use. Informal complaints filed using a method other than the Commission's online system (the Commission will issue a public notice as soon as its online system is established for filing informal complaints alleging violations of the rules adopted in this *Report and Order*) should include a cover letter that references section 255, 716, or 718 and should be addressed to the Enforcement Bureau. Any party with a question about information that should be included in a complaint alleging a violation of section 255, 716, or 718 should contact the Commission's Disability Rights Office via email at *dro@fcc.gov* or by calling (202) 418–2517 (voice), (202) 418–2922 (TTY).

191. Once we receive a complaint, we will forward those complaints meeting the filing requirements, discussed above, to the manufacturer or service provider named in the complaint. To facilitate service of the complaints on the manufacturer or service provider named in the complaint, we adopt the Commission's proposal to require such entities to disclose points of contact for complaints and inquiries under section 255, 716, or 718 in annual certifications. As discussed in greater detail in General Requirements, *supra,* failure to file a certification is a violation of our rules. We expect that the parties or the Commission will discover that a covered entity has not filed contact information during the dispute assistance process, that the violation will be remedied during that process, and that the complainant will have the contact information prior to filing a complaint.

192. We believe that requiring such points of contact will facilitate consumers' ability to communicate directly with manufacturers and service providers about accessibility issues or concerns and ensure prompt and effective service of complaints on defendant manufacturers and service providers by the Commission. The contact information must, at a minimum, include the name of the person or office whose principal function will be to ensure the manufacturer or service provider's prompt receipt and handling of accessibility concerns, telephone number (voice and TTY), fax number, and both mailing and email addresses. Covered entities must file their contact information with the Commission in accordance with our rules governing the filing of annual certifications. CGB will establish a system for online filing of contact information. When this system is available, CGB will release a public notice announcing this fact and providing instructions on its use. CGB will also update the Disability Rights Office section of the Commission's Web site to describe how contact information may be filed. We intend to make this information available on the Commission's Web site and also

encourage, but do not require, covered entities to clearly and prominently identify the designated points of contact for accessibility matters in, among other places, their company Web sites, directories, manuals, brochures, and other promotional materials. Providing such information on a company's Web site may assist consumers in contacting the companies directly and allow them to resolve their accessibility issues, eliminating any need to seek Commission assistance or file a complaint. Because the contact information is a crucial component of the informal complaint process (*i.e.,* service of the complaint on defendants which, in turn, provides defendants with notice and opportunity to respond), we require that the contact information be kept current. It is critical that the Commission have correct information for service. If the complaint is not served to the correct address, it could delay or prevent the applicable manufacturer or service provider from timely responding. Failure to timely respond to a complaint or order of the Commission could subject a party to sanction or other penalties. In this regard, whenever the information is no longer correct in any material respect, manufacturers and service providers shall file and update the information within 30 days of any change to the information on file with the Commission. Further, failure to file contact information or to keep such information current will be a violation of our rules warranting an upward adjustment of the applicable base forfeiture under section 1.80 of our rules for ''[e]gregious misconduct'' and ''[s]ubstantial harm.'' Likewise, the violation will be a ''continuous violation'' until cured.

193. The CVAA provides that the party that is the subject of the complaint be given a reasonable opportunity to respond to the allegations in the complaint before the Commission makes its determination regarding whether a violation occurred. It also allows the party to include in its answer any relevant information (*e.g.,* factors demonstrating that the equipment or advanced communications services, as applicable, are accessible to and usable by individuals with disabilities or that accessibility is not achievable under the standards set out in the CVAA and rules adopted herein). These provisions not only protect the due process rights of defendant manufacturers and service providers in informal complaint cases but also enable the Commission to compile a complete record to resolve a complaint and conduct the required investigation as to whether a violation of section 255, 716, or 718 has occurred.

194. To implement these provisions of the CVAA, we adopt the Commission's proposal in the *Accessibility NPRM* with one modification and require answers to informal complaints to: (1) Be filed with the Commission and served on the complainant within twenty days of service of the complaint, unless the Commission or its staff specifies another time period; (2) respond specifically to each material allegation in the complaint; (3) set forth the steps taken by the manufacturer or service provider to make the product or service accessible and usable; (4) set forth the procedures and processes used by the manufacturer or service provider to evaluate whether it was achievable to make the product or service accessible and usable; (5) set forth the manufacturer's or service provider's basis for determining that it was not achievable to make the product or service accessible and usable; (6) provide all documents supporting the manufacturer's or service provider's conclusion that it was not achievable to make the product or service accessible and usable; (7) include a declaration by an officer of the manufacturer or service provider attesting to the truth of the facts asserted in the answer; (8) set forth any claimed defenses; (9) set forth any remedial actions already taken or proposed alternative relief without any prejudice to any denials or defenses raised; (10) provide any other information or materials specified by the Commission as relevant to its consideration of the complaint; and (11) be prepared or formatted in the manner requested by the Commission and the complainant, unless otherwise permitted by the Commission for good cause shown. We also adopt the Commission's proposal to allow the complainant ten days, unless otherwise directed by the Commission, to file and serve a reply that is responsive to the matters contained in the answer without the addition of new matters. We do not anticipate accepting additional filings.

195. Defendants must file complete answers, including supporting records and documentation, with the Commission within the 20-day time period specified by the Commission. While we agree with those commenters that argue that a narrative answer or product design summary would be useful, we disagree that such a response, by itself, is sufficient to allow the Commission to fully investigate and make an accessibility or achievability determination as required by the Act. An answer must comply with all of the requirements listed in the paragraph above and include, where necessary, a discussion of how supporting documents, including confidential documents, support defenses asserted in the answer. We note that, because the CVAA requires that we keep certain of a defendant's documents confidential, we will not require a defendant to serve the complainant a confidential answer that incorporates, and argues the relevance of, confidential documents. Instead, we will require a defendant to file a non-confidential summary of its answer with the Commission and serve a copy on the complainant. The non-confidential summary must contain the essential elements of the answer, including any asserted defenses to the complaint, whether the defendant concedes that the product or service at issue was not accessible, and if so, the basis for its determination that accessibility was not achievable, and other material elements of its answer. The non-confidential summary should provide sufficient information to allow the complainant to file a reply, if he or she so chooses. Complainants may also request a copy of the public redacted version of a defendant's answer, as well as seek to obtain records filed by the defendant through a Freedom of Information Act (''FOIA'') filing. The Commission may also use the summary to give context to help guide its review of the detailed records filed by the defendant in its answer.

196. We are also adopting the Commission's proposal in the *Accessibility NPRM* to require that defendants include in their answers a declaration by an authorized officer of the manufacturer or service provider of the truth and accuracy of the defense. Such a declaration is not ''irrelevant'' to whether a manufacturer or service provider has properly concluded that accessibility was not achievable, as it establishes the good faith of the analysis and holds the company accountable for a conclusion that ultimately resulted in an inaccessible product or service. Consistent with requirements for declarations in other contexts, we specify that a declaration here must be made under penalty of perjury, signed and dated by the certifying officer.

197. We are not requiring answers to include the names, titles, and responsibilities of each decisionmaker involved in the process by which a manufacturer or service provider determined that accessibility of a particular offering was not achievable. We agree that such a requirement may be unduly burdensome, given the complexity of the product and service development process. We will, however, reserve our right under the Act to

request such information on a case-by-case basis if we determine during the course of an investigation initiated in response to a complaint or our own motion that such information may help uncover facts to support our determination and finding of compliance or non-compliance with the Act.

198. We decline to adopt CTIA's proposal to incorporate the CVAA's limitation on liability, safe harbor, prospective guidelines, and rule of construction provisions into our rules as affirmative defenses. CTIA proposes that we adopt a bifurcated approach to our informal complaint process in which the Commission would determine whether certain affirmative defenses were applicable before requiring the defendant to respond to the complaint in full. We believe that the approach we adopt here is more likely to maximize the efficient resolution of informal complaints than the approach that CTIA recommends. Our rules will afford a defendant ample opportunity to assert all defenses that the defendant deems germane to its case and assures that the Commission has a complete record to render its decision based on that record within the statutory 180-day timeframe. Because the Commission will be considering *all* applicable defenses as part of this process, we believe that singling out certain defenses to incorporate into our rules is unwarranted.

199. We also disagree with those commenters that express concern that the *Accessibility NPRM* did not appear to contemplate that some defendants may claim that their products or services are, in fact, accessible under section 255, 716, or 718. As noted above, the rules we adopt afford defendants ample opportunity to assert such a claim as an affirmative defense to a charge of non-compliance with our rules and to provide supporting documentation and evidence demonstrating that a particular product or service is accessible and usable either with or without third party applications, peripheral devices, software, hardware, or customer premises equipment. We recognize that different information and documentation will be required in an answer depending on the defense or defenses that are asserted. We expect defendants will file all necessary documents and information called for to respond to the complaint and any questions asked by the Commission when serving the complaint or in a letter of inquiry during the course of the investigation. Again, covered entities have the burden of proving that they have satisfied their legal obligations that a product or service is accessible and usable, or if it is not, that it was not achievable.

200. We also disagree with those commenters that contend that the answer requirements, particularly those related to achievability, are ''broad and onerous and may subject covered entities to undue burdens.''

201. According to these parties, defendants will be compelled to produce, within an unreasonably short timeframe, voluminous documents that may be of marginal value to complainants or the Commission in making determinations regarding accessibility and achievability of a particular product or service or in ensuring that an individual complainant obtains an accessible service or device as promptly as possible. We address these concerns below.

202. We disagree with commenters that the 20-day filing deadline for answers is too short and that we should liberally grant extensions of time within which to file. We believe that the 20-day filing window is reasonable given the 180-day mandatory schedule for resolving informal complaints. Furthermore, the dispute assistance process, described in General Requirements, *supra,* requires that consumers and manufacturers or service providers explore the possibilities for non-adversarial resolution of accessibility disputes before a consumer may file a complaint. Defendants will, therefore, have ample notice as to the issues in dispute even before an informal complaint is filed. In addition, all parties subject to sections 255, 716, and 718 should already have created documents for their defense due to our recordkeeping rules. As discussed above, this *Report and Order* places manufacturers and service providers on notice that they bear the burden of showing that they are in compliance with sections 255, 716, and 718 and our implementing rules by demonstrating that their products and services are accessible as required by the statutes and our rules or that they satisfy the defense that accessibility was not readily achievable under section 255 or achievable under the four factors specified in section 716. They should, therefore, routinely maintain any materials that they deem necessary to support their accessibility achievability conclusions and have them available to rebut a claim of non-compliance in an informal complaint or pursuant to an inquiry initiated by the Commission on its own motion.

203. Further, we do not believe additional time to file an answer or provide responsive material is warranted for all complaints based on the possibility that the documentation supporting a covered entity's claim may have been created in a language other than English. Our recordkeeping rules will require English translations of any records that are subject to our recordkeeping requirements to be produced in response to an informal complaint or a Commission inquiry. Parties may seek extensions of time to supplement their answers with translations of documents not subject to the mandatory recordkeeping requirements. We caution, however, that such requests will not be automatically granted, but will require a showing of good cause.

204. Only a covered entity will have control over documents that are necessary for us to comply with the Act's directive that we (1) ''investigate the allegations in an informal complaint'' and (2) ''issue an order concluding the investigation'' that ''shall include a determination whether any violation [of section 255, 716, or 718 has] occurred.'' We disagree with CEA that this statute grants us authority to *sua sponte* close a complaint proceeding without issuing a final determination whether a violation occurs. However, where the complaint on its face shows that the subject matter of the complaint has been resolved, we may dismiss the complaint as defective for failure to satisfy the pleading requirements as discussed above. In addition, where the allegations in an informal complaint allege a violation related to a particular piece of equipment or service that was the subject of a prior order in an informal or formal complaint proceeding, then the Commission may issue an order determining that the allegations of the instant complaint have already been resolved based on the findings and conclusions of the prior order and such other documents and information that bear on the issues presented in the complaint. We reject commenters' concerns that the documentation requirements focus too strongly on broad compliance investigations rather than on ensuring that an individual complainant is simply able to obtain an accessible product or service. Section 717(a)(1)(B)(i) specifically empowers us to go beyond the situation of the individual complainant and order that a service, or the next generation of equipment, be made accessible. Thus, our investigations with respect to informal complaints are directed to violations of the Act and our rules—not narrowly constrained to an individual complainant obtaining an accessible

product or service, as commenters suggest. The dispute assistance process, on the other hand, is designed to assist consumers, manufacturers, or service providers in solving individual issues before a complaint is filed. Covered entities will have ample opportunity, therefore, to address the accessibility needs of potential complainants.

205. Finally, we reject the suggestion that if a defendant chooses to provide a possible replacement product to the complainant, the Commission should automatically stay the answer period while the complainant evaluates the new product. First, we expect that in virtually all cases, any replacement products will have been provided and evaluated during the pre-complaint dispute assistance process. Moreover, while suspending pleading deadlines may relieve the parties from preparing answers or replies that would be unnecessary if the manufacturer or service provider is able to satisfy the complainant's accessibility concerns, it would also substantially delay compilation of a complete record and thereby impede our ability to resolve the complaint within the mandatory 180-day timeframe, should private settlement efforts fail. Accordingly, we decline to adopt any procedure by which pleading deadlines would be automatically or otherwise stayed. We emphasize, nonetheless, that the parties are free to jointly request dismissal of a complaint without prejudice for the purpose of pursuing an informal resolution of an accessibility complaint. In such cases, if informal efforts were unsuccessful in providing the complainant with an accessible product or service, the complainant could refile the informal complaint at any time and would not be required to use the dispute assistance process again for that particular complaint.

d. Formal Complaints

206. We require both complainants and defendants to: (1) Certify in their respective complaints and answers that they attempted in good faith to settle the dispute before the complaint was filed with the Commission; and (2) submit detailed factual and legal support, accompanied by affidavits and documentation, for their respective positions in the initial complaint and answer. The rules also place strict limits on the availability of discovery and subsequent pleading opportunities to present and defend against claims of misconduct.

207. We decline to adopt a rule requiring an informal complaint to be filed prior to the filing of a formal complaint. As with the informal complaint process, we do not want to place any unnecessary barriers in the way of those who choose to use the formal complaint process. In this regard, we agree with commenters that to require a party to file an informal complaint as a prerequisite for filing a formal complaint would create an unnecessary obstacle to complainants. Such a prerequisite is not required in any other Commission complaint process and is inconsistent with the CVAA. For these reasons, we decline to require that an informal complaint be filed prior to the filing of a formal complaint.

208. We disagree with commenters that argue that the formal complaint rules will impose a burden on consumers. Our rules follow the CVAA in providing complainants with two options for filing complaints alleging accessibility violations. We believe the formal complaint process we adopt herein is no more burdensome than necessary given the complexities inherent in litigation generally and is in line with our other formal complaint processes. Like the Commission's other formal complaint processes, the accessibility formal complaint rules allow parties an opportunity to establish their case through the filing of briefs, answers, replies, and supporting documentation; and allow access to useful information through discovery.

209. If a complainant feels that the formal complaint process is too burdensome or complex, the rules we adopt provide the option to file an informal complaint that is less complex, less costly, and is intended to be pursued without representation by counsel. For example, there is no filing fee associated with filing an informal complaint and the filing can be done by the average consumer. In contrast, there is a filing fee associated with the formal complaint process and, in general, parties are represented by counsel. While complainants may see advantages and disadvantages with either of the processes depending on the specifics of their circumstances, both options provide viable means for seeking redress for what a complainant believes is a violation of our rules. Moreover, we believe that potential complainants are in the best position to determine which complaint process and associated remedies (formal or informal) serve their particular needs.

210. We adopt the Commission's proposal in the *Accessibility NPRM* to no longer place formal accessibility complaints on the Accelerated Docket. Twelve years before the CVAA was enacted, in the *Section 255 Report and Order,* the Commission found that the Accelerated Docket rules were appropriate for handling expedited consideration of consumer section 255 formal complaints. In the CVAA, Congress mandated expedited consideration of informal complaints by requiring a Commission Order within 180 days after the date on which a complaint is filed. As discussed in Informal Complaints, *supra,* we have carefully designed an informal complaint process that will place a minimal burden on complainants, enable both parties to present their cases fully, and require a Commission order within 180 days. We believe that this consumer-friendly, informal complaint process addresses our concerns that consumer complaints be resolved in a timely manner and provides an adequate substitute for formal Accelerated Docket complaints. In addition, given the ''accelerated'' or 180-day resolution timeframe for informal complaints, we believe that retaining an ''Accelerated Docket'' for formal complaints is no longer necessary and, in fact, may impose an unnecessary restriction on the formal complaint process where, as discussed above, the process involves, among other things, filing of briefs, responses, replies, and discovery. Therefore we decline to adopt the Accelerated Docket rules for section 255, 716, and 718 formal complaints.

e. Remedies and Sanctions

211. We intend to adjudicate each informal and formal complaint on its merits and will employ the full range of sanctions and remedies available to us under the Act in enforcing section 255, 716, or 718. Thus, we agree with commenters that the Commission should craft targeted remedies on a case-by-case basis, depending on the record of the Commission's own investigation or a complaint proceeding. For this same reason, while we agree with consumer groups that the Commission should act quickly and that time periods should be as short as practicable to ensure that consumers obtain accessible equipment or services in a timely manner, without the particular facts of a product or service in front of us, we cannot at this time decide what a ''reasonable time'' for compliance should be. Nevertheless, as the Commission gains more familiarity with services, equipment, and devices through its own investigations and resolution of complaints, our enforcement orders will begin to establish precedent of consistent injunctive relief, periods of compliance, and other sanctions authorized by the Act.

212. We disagree with AT&T's contention that the *Accessibility NPRM's* proposed formal complaint rules exceed the authority granted the Commission under the CVAA. We further disagree with AT&T's specific argument that the Commission does not have authority to adopt proposed rule § 8.25, which provides that ''a complaint against a common carrier may seek *damages.*'' As discussed above, we designed the formal complaint rules to address potential violations of section 255, 716, or 718. In the *Section 255 Report and Order,* the Commission decided that a complainant could obtain damages for a section 255 violation from a common carrier under section 207. We agree, however, with AT&T that CVAA services that constitute information services and are not offered on a common carrier basis would not be subject to the damages provision of section 207.

213. Neither the CVAA nor the Act addresses permitting prevailing parties to recover attorney's fees and costs in formal or informal complaint proceedings. The Commission cannot award attorney's fees or costs in a section 208 formal complaint proceeding or in any other proceeding absent express statutory authority. We hope that a majority of consumer issues can be resolved through the dispute assistance process and thereby alleviate the need for consumers to file a complaint at all. We also note that consumers need not incur any attorney's fees by providing the Commission with information that allows the Commission to, on its own motion, launch its own independent investigation, including but not limited to a Letter of Inquiry, into potential violations by a covered entity. Any party that would like to provide the Commission with information indicating that a covered entity's product or service is not in compliance with the Commission's rules may do so, without filing a complaint, by emailing or telephoning the Enforcement Bureau.

III. Procedural Matters

Final Regulatory Flexibility Analysis

214. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was included in the *Accessibility NPRM* in CG Docket No. 10–213, WT Docket No. 96–198, and CG Docket No. 10–145. The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

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

215. The *Report and Order* implements Congress' mandate that people with disabilities have access to advanced communications services (''ACS'') and ACS equipment. Specifically, these rules implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the ''Twenty-First Century Communications and Video Accessibility Act of 2010'' (''CVAA'').

216. The *Report and Order* implements the requirements of section 716 of the Act, which requires providers of ACS and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Act, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716 and 718.

217. The *Report and Order* applies to ACS, which includes interconnected VoIP, non-interconnected VoIP, electronic messaging service, and interoperable video conferencing service. The *Report and Orders* requires manufacturers and service providers subject to section 716 to comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable.

218. The *Report and Order* holds entities that make or produce end user equipment, including tablets, laptops, and smartphones, responsible for the accessibility of the hardware and manufacturer-installed software used for email, SMS text messaging, and other ACS. The *Report and Order* also holds these entities responsible for software upgrades made available by such manufacturers for download by users. Additionally, the *Report and Order* concludes that, except for third party accessibility solutions, there is no liability for a manufacturer of end user equipment for the accessibility of software that is installed or downloaded by a user or made available for use in the cloud.

219. The *Report and Order* requires manufacturers and service providers to consider performance objectives at the design stage as early and consistently as possible and implement such evaluation to the extent that it is achievable. The *Report and Order* incorporates into the performance objectives the outcome-oriented definitions of ''accessible,'' ''compatibility,'' and ''usable'' contained in the rules regarding the accessibility of telecommunications services and equipment. The *Report and Order* adopts the four statutory factors to determine achievability. The *Report and Order* further expands on the fourth achievability factor—the extent to which an offering has varied functions, features, and prices—by allowing entities to not consider what is achievable with respect to every product, if such entity offers consumers with the full range of disabilities varied functions, features, and prices.

220. The *Report and Order* also establishes processes for providers of ACS and ACS equipment manufacturers to seek waivers of the section 716 obligations, both individual and class, for offerings which are designed for multiple purposes but are designed primarily for purposes other than using ACS. The *Report and Order* clarifies what constitutes ''customized equipment or services'' for purposes of an exclusion of the section 716 requirements. Pointing to an insufficient record upon which to grant a permanent exemption for small entities, the *Report and Order* also temporarily exempts all manufacturers of ACS equipment and all providers of ACS from the obligations of section 716 if they qualify as small business concerns under the Small Business Administration's (''SBA'') rules and size standards for the industry in which they are primarily engaged.

221. Specifically, the *Report and Order* adopted for this temporary exemption the SBA's maximum size standards that are used to determine whether a business concern qualifies as a small business concern in its primary industry. These size standards are based on the maximum number of employees or maximum annual receipts of a business concern. The SBA categorizes industries for its size standards using the North American Industry Classification System (''NAICS''), a ''system for classifying establishments by type of economic activity.'' The *Report and Order* identified some NAICS codes for possible primary

industry classifications of ACS equipment manufacturers and ACS providers and the relevant SBA size standards associated with the codes. This is not a comprehensive list of the primary industries and associated SBA size standards of every possible manufacturer of ACS equipment or provider of ACS. This list is merely representative of some primary industries in which entities that manufacture ACS equipment or provide ACS may be primarily engaged. It is ultimately up to an entity seeking the temporary exemption to make a determination regarding their primary industry, and justify such determination in any enforcement proceeding.

NAICS classification	NAICS code	SBA size standard
Services		
Wired Telecommunications Carriers	517110	1,500 or fewer employees.
Wireless Telecommunications Carriers (except satellites)	517210	1,500 or fewer employees.
Telecommunications Resellers	517911	1,500 or fewer employees.
All Other Telecommunications	517919	$25 million or less in annual receipts.
Software Publishers	511210	$25 million or less in annual receipts.
Internet Publishing and Broadcasting and Web Search Portals	519130	500 or fewer employees.
Data Processing, Hosting, and Related Services	518210	$25 million or less in annual receipts.
Equipment		
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.	334220	750 or fewer employees.
Electronic Computer Manufacturing	334111	1,000 or fewer employees.
Telephone Apparatus Manufacturing	334210	1,000 or fewer employees.
Other Communications Equipment Manufacturing	334290	750 or fewer employees.
Software Publishers	511210	$25 million or less in annual receipts.
Internet Publishing and Broadcasting and Web Search Portals	519130	500 or fewer employees.

222. As stated above, the *Report and Order* indicated that this temporary exemption is self-executing. Under this approach, covered entities must determine whether they qualify for the exemption based upon their ability to meet the SBA's rules and the size standard for the relevant NAICS industry category for the industry in which they are primarily engaged. Entities that manufacture ACS equipment or provide ACS may raise this temporary exemption as a defense in an enforcement proceeding. Entities claiming the exemption must be able to demonstrate that they met the exemption criteria during the estimated start of the design phase of the lifecycle of the product or service that is the subject of the complaint.

223. The *Report and Order* indicated that such an exemption was necessary to avoid the possibility of unreasonably burdening ''small and entrepreneurial innovators and the significant value that they add to the economy. The *Report and Order* states that the temporary exemption enables us to provide relief to those entities that may possibly lack legal, financial, or technical capability to comply with the Act until we further develop the record to determine whether small entities should be subject to a permanent exemption and, if so, the criteria to be used for defining which small entities should be subject to such permanent exemption. The temporary exemption will begin on the effective date of the rules adopted in the *Report and Order* and will expire the earlier of the effective date of small entity exemption rules adopted pursuant to the *Further Notice of Proposed Rulemaking* (''*Accessibility FNPRM*'') or October 8, 2013.

224. The *Report and Order* reminds covered entities that, while the Commission does not require them to create and maintain any particular records to claim a defense that it is not achievable for them to make their products or services accessible, they bear the burden of proof on this defense.

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA and Summary of the Assessment of the Agency of Such Issues

225. In response to the *Accessibility NPRM,* one commenter addressed the proposed rules and policies implicated in the IRFA. NTCA requests that the Commission adopt an exemption for small entities from the obligations of section 716 and the Commission's rules implementing section 716 for small telecommunications carriers as defined by the SBA. Alternatively, NTCA requests a waiver process for small entities to seek and qualify for a waiver. NTCA argues that small telecommunications companies ''lack the size and resources to influence the design or features of equipment . * * * [and] the purchasing power to enable them to buy equipment in bulk for a reduced price, or to compel sufficient production to ensure that compliant equipment 'trickles down' to smaller purchasers within a specific timeframe.''

226. As explained in the *Report and Order,* we lack a sufficient record upon which to base a permanent exemption for small entities. However, we believe that some relief is necessary for entities that may be unreasonably burdened by conducting an achievability analysis and complying with the recordkeeping and certification requirements as necessary under the Act and in accordance with the *Report and Order.* Therefore, we exercise our discretion under the Act to temporarily exempt from the obligations of section 716 providers of ACS and manufacturers of ACS equipment that qualify as small business concerns under the applicable SBA rules and size standards, and seek further comment on whether to exercise our authority to grant a permanent small entity exemption in the *Accessibility FNPRM,* and if so, what criteria we should apply for defining which small entities should be subject to such permanent exemption. As such, the *Report and Order* extends temporary relief to all small business concerns that would otherwise have to comply with the Act.

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

227. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that face possible

significant economic impact by the adoption of proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

228. The following entities have been identified as entities in which a majority of businesses in each category are estimated to be small. NAICS codes are provided where applicable.

- *24 GHz—Incumbent Licensees* (517210)
- *24 GHz—Future Licensees* (517210)
- *39 GHz Service* (517210)
- *218–219 MHz Service* (517210)
- *220 MHz Radio Service—Phase I Licensees* (517210)
- *220 MHz Radio Service—Phase II Licensees* (517210)
- *700 MHz Band Licenses (Upper)* (517210)
- *700 MHz Band Licenses (Lower)* (517210)
- *700 MHz Guard Band Licenses* (517210)
- *800 and 800–Like Service Subscribers* (517911)
- *800 MHz and 900 MHz Specialized Mobile Radio Licenses* (517210)
- *Air-Ground Radiotelephone Service* (517210)
- *All Other Information Services* (519190)
- *All Other Telecommunications* (including provide interoperable video conferencing services) (517919)
- *Aviation and Marine Radio Services* (517210)
- *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3))* (517210)
- *Broadband Personal Communications Service* (517210)
- *Cable and Other Program Distributors* (517110)
- *Cable Companies and Systems*
- *Cable System Operators*
- *Cellular Licensees* (517210)
- Certain Equipment Manufacturers and Stores
- *Common Carrier Paging* (517210)
- *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers* (517110)
- *Data Processing, Hosting, and Related Services* (518210)
- Electronic Computer Manufacturing (334111)
- *Fixed Microwave Services* (517210)
- *Government Transfer Bands* (517210)
- *Incumbent Local Exchange Carriers (Incumbent LECs)* (517110)
- *Interexchange Carriers* (517110)
- *Internet Publishing and Broadcasting and Web Search Portals* (519130)
- *Internet Service Providers, Web Portals and Other Information Services* (519130)
- *Local Resellers* (517911)
- *Narrowband Personal Communications Services* (517210)
- *Offshore Radiotelephone Service* (517210)
- *Open Video Services* (517110)
- *Operator Service Providers (OSPs)* (517110)
- *Other Communications Equipment Manufacturing* (Manufacturers of Equipment Used to Provide Interoperable Video Conferencing Services) (334290)
- *Part 15 Handset Manufacturers* (334220)
- *Payphone Service Providers (PSPs)* (517110)
- *Prepaid Calling Card Providers* (517110)
- *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing* (334220)
- *Radio, Television, and Other Electronics Stores* (443112)
- *Rural Radiotelephone Service* (517210)
- *Satellite Telecommunications Providers* (517410)
- *Specialized Mobile Radio* (517210)
- *Telephone Apparatus Manufacturing* (334210)
- *Toll Resellers* (517911)
- *Wired Telecommunications Carriers* (including providers of interconnected or non-interconnected VoIP) (517110)
- *Wireless Cable Systems* (*Broadband Radio Service and Educational Broadband Service)* (517210)
- *Wireless Communications Services* (517210)
- *Wireless Telecommunications Carriers (except Satellite)* (517210)
- *Wireless Telephony* (517210)

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

229. We summarize below the recordkeeping and certification obligations of the *Report and Order.* Additional information on each of these requirements can be found in the *Report and Order.* Again, the *Report and Order* temporarily exempts all providers of ACS and manufacturers of ACS equipment that qualify as small business concerns under the SBA's rules and size standards for the industry in which they are primarily engaged.

230. *Recordkeeping.* The *Report and Order* requires, beginning one year after the effective date of the *Report and Order,* that each manufacturer of equipment used to provide ACS and each provider of such services subject to sections 255, 716, and 718 not otherwise exempt under the *Report and Order,* maintain certain records. These records document the efforts taken by a manufacturer or service provider to implement sections 255, 716, and 718. The *Report and Order* adopts the recordkeeping requirements of the CVAA, which specifically include: (1) Information about the manufacturer's or provider's efforts to consult with individuals with disabilities; (2) descriptions of the accessibility features of its products and services; and (3) information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access. Additionally, while manufacturers and providers are not required to keep records of their consideration of the four achievability factors, they must be prepared to carry their burden of proof, which requires greater than conclusory or unsupported claims. Similarly, entities that rely on third party solutions to achieve accessibility must be prepared to produce relevant documentation.

231. These recordkeeping requirements are necessary to facilitate enforcement of the rules adopted in the *Report and Order.* The *Report and Order* builds flexibility into the recordkeeping obligations by allowing covered entities to keep records in any format, recognizing the unique recordkeeping methods of individual entities. Because complaints regarding accessibility of a product or service may not occur for years after the release of the product or service, the *Report and Order* requires covered entities to keep records for two years from the date the product ceases to be manufactured or a service is offered to the public.

232. *Annual Certification Obligations.* The CVAA and the *Report and Order* require an officer of providers of ACS and ACS equipment to submit to the Commission an annual certificate that records are kept in accordance with the above recordkeeping requirements, unless such manufacturer or provider is exempt from compliance with section 716 under applicable rules. The

certification must be supported with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the entity with personal knowledge of the representations provided in the company's certification, verifying the truth and accuracy of the information. The certification must be filed with the Consumer and Governmental Affairs Bureau on or before April 1 each year for records pertaining to the previous calendar year.

233. *Costs of Compliance.* There is an upward limit on the cost of compliance for covered entities. Under the CVAA and *Report and Order* accessibility is required unless it is not achievable. Under two of the four achievability factors from the Act and adopted in the *Report and Order,* covered entities may demonstrate that accessibility is not achievable based on the nature and cost of steps needed or the technical and economic impact on the entity's operation. Entities that are not otherwise exempt or excluded under the *Report and Order* must nonetheless be able to demonstrate that they conducted an achievability analysis, which necessarily requires the retention of some records.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

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

235. For rules adopted that impose some burden on small entities, the Commission considered alternatives where possible, as directed by the RFA. Most significantly, the Commission considered and adopted a temporary exemption for all small entities that qualify as small business concerns under the SBA's rules and size standards. All entities may avoid compliance if accessibility is not achievable, may seek a waiver for products or services that are not designed primarily for ACS, and may keep records in any format.

236. The rules require covered entities to ensure that products and services are accessible, unless not achievable. This is a statutory requirement, therefore no alternatives were considered. However, this requirement has built-in flexibility. All entities may demonstrate that accessibility is unachievable either through building accessibility features into the product or service or by utilizing third party solutions. Achievability is determined through a four factor analysis that examines: The nature and cost of the steps needed to meet the requirements of section 716(g) with respect to the specific equipment or service in question; the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies; the type of operations of the manufacturer or provider; the extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

237. We note that two of the four factors look at factors that are particularly relevant to small entities: the nature and cost of the steps needed to meet the section 716 requirements and the technical and economic impact on the entity's operations. Therefore, as explained further below, this achievability analysis provides a statutorily based means of minimizing the economic impact of the CVAA's requirements on small entities. Further, when accessibility is not achievable, covered entities must ensure that their products and services are compatible, unless not achievable. This again is a statutory requirement with built-in flexibility through the achievability analysis.

238. The rules require covered entities to consider performance objectives at the design stage as early and consistently as possible. This requirement is necessary to ensure that accessibility is considered at the point where it is logically best to incorporate accessibility. The CVAA and the *Report and Order* are naturally performance-driven. The CVAA and *Report and Order* avoid mandating particular designs and instead focus on an entity's compliance with the accessibility requirements through whatever means the entity finds necessary to make its product or service accessible, unless not achievable. This provides flexibility by allowing all entities, including small entities, to meet their obligations through the best means for a given entity instead of the Commission explicitly mandating a rigid requirement.

239. With respect to recordkeeping and certification requirements, these requirements are necessary in order to demonstrate compliance with the requirements of the *Report and Order* and CVAA and to facilitate an effective and efficient complaint process. As described above, we adopt flexible requirements that allow covered entities to keep records in any format they wish. In the *Report and Order,* we found that this approach took into account the variances in covered entities (*e.g.,* size, experience with the Commission), recordkeeping methods, and products and services covered by the CVAA. Moreover, we found that it also provided the greatest flexibility to small businesses and minimized the impact that the statutorily mandated requirements impose on small businesses. Correspondingly, we considered and rejected the alternative of imposing a specific format or one-size-fits-all system for recordkeeping that could potentially impose greater burdens on small businesses. Furthermore, the certification requirement is possibly less burdensome on small businesses than large, as it merely requires certification from an officer that the necessary records were kept over the previous year; this is presumably a less resource intensive certification for smaller entities.

240. While ensuring accessibility and keeping records may impose some burdens, as discussed, the *Report and Order* includes significant flexibility for small entities. First, the achievability factors in the CVAA may mitigate adverse impacts and reduce burdens on small entities. Under the achievability factors as discussed above, an otherwise covered entity can demonstrate that accessibility is unachievable and therefore avoid compliance. The first and second factors are particularly relevant to small entities and the special circumstances they face. The first factor considers the nature and cost of the steps needed to meet the requirements with respect to the specific equipment or service in question, and the second considers the technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question. If achievability is overly expensive or has some significant negative technical or economic impact on a covered entity, the entity can show that accessibility was not achievable as a defense to a complaint.

241. The *Report and Order* also includes significant relief for small and other entities including a temporary exemption from the obligations of section 716 and section 717 for qualifying small entities, waiver criteria under which all covered entities may seek a waiver of the obligations of section 716, and an exemption for customized equipment. Under the *Report and Order,* customized equipment offered to businesses and other enterprise customers is expressly exempt. Additionally, all providers and manufacturers, or classes of providers and manufacturers, are able to seek a waiver for equipment or services that are capable of accessing ACS. These two provisions allow any entity, including small entities, to avoid the burden of compliance with the accessibility and recordkeeping requirements if they meet the requirements for either provision.

242. Further, while we could have opted to not exercise our discretionary authority to exempt small entities, we found that even in the absence of meaningful comments regarding whether to grant a permanent small entity exemption, there was good cause to provide temporary relief and avoid imposing an unreasonable burden upon small entities and negatively impacting the value they add to the economy. In the *Report and Order,* we therefore decided some exemption is necessary to provide relief to those entities for which even conducting an achievability analysis would consume an unreasonable amount of resources. Finding good cause for granting such relief, the *Report and Order* temporarily exempts ACS providers and ACS equipment manufacturers that qualify as small business concerns under the SBA's rules and size standards.

243. Specifically, the *Report and Order* temporarily exempts entities that manufacture ACS equipment or provide ACS that, along with any affiliates, meet the criteria for a small business concern for their primary industry under SBA's rules and size standards. A small business concern, as defined by the SBA, is an ''entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' The *Report and Order* stated that if an entity no longer meets the exemption criteria, it must comply with section 716 and section 717 for all subsequent products or services or substantial upgrades of products or services that are in the development phase of the product or service lifecycle, or any earlier stages of development, at the time they no longer meet the criteria. The temporary exemption will begin on the effective date of the rules adopted in the *Report and Order* and will expire the earlier of the effective date of small entity exemption rules adopted pursuant to the *Accessibility FNPRM* or October 8, 2013.

F. Federal Rules That May Duplicate, Overlap, or Conflict With Proposed Rules

Section 255(e) of the Act, as amended, directs the United States Access Board (''Access Board'') to develop equipment accessibility guidelines ''in conjunction with'' the Commission, and periodically to review and update those guidelines. We view the Access Board's current guidelines as well as its draft guidelines as starting points for our interpretation and implementation of sections 716 and 717 of the Act, as well as section 255, but because they do not currently cover ACS or equipment used to provide or access ACS, we must necessarily adapt these guidelines in our comprehensive implementation scheme. As such, our rules do not overlap, duplicate, or conflict with either Access Board Final Rules, or (if later adopted) the Access Board Draft Guidelines. Where obligations under section 255 and section 716 overlap, for instance for accessibility requirements for interconnected VoIP, we clarify in the *Report and Order* which rules govern the entities' obligations.

Ordering Clauses

244. Accordingly, it is ordered that pursuant to sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619, this *Report and Order* is hereby adopted.

245. It is further ordered that parts 1, 6 and 7 of the Commission's rules, 47 CFR parts 1, 6, and 7, are amended, and new part 14 of the Commission's rules, 47 CFR part 14 is added effective January 30, 2012.

246. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

247. It is further ordered that the Commission shall send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Individuals with disabilities, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

47 CFR Parts 6 and 7

Communications equipment, Individuals with disabilities, Telecommunications.

47 CFR Part 14

Advanced communications services equipment, Manufacturers of equipment used for advanced communications services, Providers of advanced communications services, Individuals with disabilities, Recordkeeping and enforcement requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 6 and 7 and adds new part 14 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154, 160, 201, 225, 303, 617 and 618.

■ 2. Amend § 1.80 by redesignating paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) as paragraphs (b)(4), (b)(5), (b)(6), and (b)(7) and by adding new paragraph (b)(3) and revising newly redesignated paragraph (b)(5) to read as follows:

§ 1.80 Forfeiture Proceedings.

* * * * *

(b) * * *

(3) If the violator is a manufacturer or service provider subject to the requirements of section 255, 716 or 718 of the Communications Act, and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than $100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act.

* * * * *

(5) In any case not covered in paragraphs (b)(1) through (b)(4) of this section, the amount of any forfeiture penalty determined under this section

shall not exceed $16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $112,500 for any single act or failure to act described in paragraph (a) of this section.

* * * * *

PART 6—ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

■ 3. The authority citation for part 6 continues to read as follows:

Authority: 47 U.S.C. 151–154, 251, 255, 303(r), 617, 618.

■ 4. Revise § 6.15 to read as follows:

§ 6.15 Generally.

(a) All manufacturers of telecommunications equipment or customer premises equipment and all providers of telecommunications services, as defined under this subpart are subject to the enforcement provisions specified in the Act and the Commission's rules.

(b) For purposes of §§ 6.15 through 6.23, the term ''manufacturers'' shall denote manufacturers of telecommunications equipment or customer premises equipment and the term ''providers'' shall denote providers of telecommunications services.

■ 5. Revise § 6.16 to read as follows:

§ 6.16 Informal or formal complaints.

Sections 6.17 through 6.23 of this subpart shall sunset on October 8, 2013. On October 8, 2013, any person may file either a formal or informal complaint against a manufacturer or provider alleging violations of section 255 or this part subject to the enforcement requirements set forth in §§ 14.30 through 14.52 of this chapter.

PART 7—ACCESS TO VOICEMAIL AND INTERACTIVE MENU SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 208, 255, 617, 618.

■ 7. Section 7.15 is amended by revising paragraph (b) to read as follows:

§ 7.15 Generally.

* * * * *

(b) All manufacturers of telecommunications equipment or customer premises equipment and all providers of voicemail and interactive menu services, as defined under this subpart, are subject to the enforcement provisions specified in the Act and the Commission's rules.

* * * * *

■ 8. Revise § 7.16 to read as follows:

§ 7.16 Informal or formal complaints.

Sections 7.17 through 7.23 of this subpart shall sunset on October 8, 2013. On October 8, 2013, any person may file either a formal or informal complaint against a manufacturer or provider alleging violations of section 255 or this part subject to the enforcement requirements set forth in §§ 14.30 through 14.52 of this chapter.

■ 9. Add part 14 to read as follows:

PART 14—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

Subpart A—Scope

Sec.
14.1 Applicability.
14.2 Limitations.
14.3 Exemption for Customized Equipment or Services.
14.4 Exemption for Small Entities.
14.5 Waivers—Multi-purpose Services and Equipment.

Subpart B—Definitions

14.10 Definitions.

Subpart C—Implementation Requirements—What Must Covered Entities Do?

14.20 Obligations.
14.21 Performance Objectives.

Subpart D—Recordkeeping, Consumer Dispute Assistance, and Enforcement

14.30 Generally.
14.31 Recordkeeping.
14.32 Consumer Dispute Assistance.
14.33 Informal or formal complaints.
14.34 Informal complaints; form, filing, content, and consumer assistance.
14.35 Procedure; designation of agents for service.
14.36 Answers and Replies to informal complaints.
14.37 Review and disposition of informal complaints.
14.38 Formal Complaints; General pleading requirements.
14.39 Format and content of formal complaints.
14.40 Damages.
14.41 Joinder of complainants and causes of action.
14.42 Answers.
14.43 Cross-complaints and counterclaims.
14.44 Replies.
14.45 Motions.
14.46 Formal complaints not stating a cause of action; defective pleadings.
14.47 Discovery.
14.48 Confidentiality of information produced or exchanged by the parties.
14.49 Other required written submissions.
14.50 Status conference.
14.51 Specifications as to pleadings, briefs, and other documents; subscription.
14.52 Copies; service; separate filings against multiple defendants.

Authority: 47 U.S.C. 151–154, 255, 303, 403, 503, 617, 618 unless otherwise noted.

Subpart A—Scope

§ 14.1 Applicability.

Except as provided in §§ 14.2, 14.3, 14.4 and 14.5 of this chapter, the rules in this part apply to:

(a) Any manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, that such manufacturer offers for sale or otherwise distributes in interstate commerce;

(b) Any provider of advanced communications services that such provider offers in or affecting interstate commerce.

§ 14.2 Limitations.

(a) Except as provided in paragraph (b) of this section no person shall be liable for a violation of the requirements of the rules in this part with respect to advanced communications services or equipment used to provide or access advanced communications services to the extent such person—

(1) Transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of advanced communications services by a third party; or

(2) Provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access to such advanced communications services or equipment used to provide or access advanced communications services.

(b) The limitation on liability under paragraph (a) of this section shall not apply to any person who relies on third party applications, services, software, hardware, or equipment to comply with the requirements of the rules in this part with respect to advanced communications services or equipment used to provide or access advanced communications services.

(c) The requirements of this part shall not apply to any equipment or services, including interconnected VoIP service, that were subject to the requirements of Section 255 of the Act on October 7, 2010, which remain subject to Section 255 of the Act, as amended, and subject to the rules in parts 6 and 7 of this chapter, as amended.

§ 14.3 Exemption for Customized Equipment or Services.

(a) The rules in this part shall not apply to customized equipment or services that are not offered directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(b) A provider of advanced communications services or manufacturer of equipment used for advanced communications services may claim the exemption in paragraph (a) of this section as a defense in an enforcement proceeding pursuant to subpart D of this part, but is not otherwise required to seek such an affirmative determination from the Commission.

§ 14.4 Exemption for Small Entities.

(a) A provider of advanced communications services or a manufacturer of equipment used for advanced communications services to which this part applies is exempt from the obligations of this part if such provider or manufacturer, at the start of the design of a product or service:

(1) Qualifies as a business concern under 13 CFR 121.105; and

(2) Together with its affiliates, as determined by 13 CFR 121.103, meets the relevant small business size standard established in 13 CFR 121.201 for the primary industry in which it is engaged as determined by 13 CFR 121.107.

(b) A provider or manufacturer may claim this exemption as a defense in an enforcement proceeding pursuant to subpart D of this part, but is not otherwise required to seek such an affirmative determination from the Commission.

(c) This exemption will expire no later than October 8, 2013.

§ 14.5 Waivers—Multipurpose Services and Equipment.

(a) *Waiver.* (1) On its own motion or in response to a petition by a provider of advanced communications services, a manufacturer of equipment used for advanced communications services, or by any interested party, the Commission may waive the requirements of this part for any feature or function of equipment used to provide or access advanced communications services, or for any class of such equipment, for any provider of advanced communications services, or for any class of such services, that—

(i) Is capable of accessing an advanced communications service; and

(ii) Is designed for multiple purposes, but is designed primarily for purposes other than using advanced communications services.

(2) For any waiver petition under this section, the Commission will examine on a case-by-case basis—

(i) Whether the equipment or service is designed to be used for advanced communications purposes by the general public; and

(ii) Whether and how the advanced communications functions or features are advertised, announced, or marketed.

(b) *Class Waiver.* For any petition for a waiver of more than one advanced communications service or one piece of equipment used for advanced communications services where the service or equipment share common defining characteristics, in addition to the requirements of §§ 14.5(a)(1) and (2), the Commission will examine the similarity of the service or equipment subject to the petition and the similarity of the advanced communications features or functions of such services or equipment.

(c) *Duration.* (1) A petition for a waiver of an individual advanced communications service or equipment used for advanced communications services may be granted for the life of the service or equipment as supported by evidence on the record, or for such time as the Commission determines based on evidence on the record.

(2) A petition for a class waiver may be granted for a time to be determined by the Commission based on evidence on the record, including the lifecycle of the equipment or service in the class. Any class waiver granted under this section will waive the obligations of this part for all advanced communications services and equipment used for advanced communications services subject to a class waiver and made available to the public prior to the expiration of such waiver.

(d) *Public notice.* All petitions for waiver filed pursuant to this section shall be put on public notice, with a minimum of a 30-day period for comments and oppositions.

Subpart B—Definitions

§ 14.10 Definitions.

(a) The term *accessible* shall have the meaning provided in § 14.21(b).

(b) The term *achievable* shall mean with reasonable effort or expense, as determined by the Commission. In making such a determination, the Commission shall consider:

(1) The nature and cost of the steps needed to meet the requirements of section 716 of the Act and this part with respect to the specific equipment or service in question;

(2) The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question, including on the development and deployment of new communications technologies;

(3) The type of operations of the manufacturer or provider; and

(4) The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and offered at differing price points.

(c) The term *advanced communications services* shall mean:

(1) Interconnected VoIP service, as that term is defined in this section;

(2) Non-interconnected VoIP service, as that term is defined in this section;

(3) Electronic messaging service, as that term is defined in this section; and

(4) Interoperable video conferencing service, as that term is defined in this section.

(d) The term *application* shall mean software designed to perform or to help the user perform a specific task or specific tasks, such as communicating by voice, electronic text messaging, or video conferencing.

(e) The term *compatible* shall have the meaning provided in § 14.21(d).

(f) The term *customer premises equipment* shall mean equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

(g) The term *customized equipment or services* shall mean equipment and services that are produced or provided to meet unique specifications requested by a business or enterprise customer and not otherwise available to the general public, including public safety networks and devices.

(h) The term *disability* shall mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.

(i) The term *electronic messaging service* means a service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.

(j) The term *end user equipment* shall mean equipment designed for consumer use. Such equipment may include both hardware and software components.

(k) The term *hardware* shall mean a tangible communications device, equipment, or physical component of communications technology, including peripheral devices, such as a smart phone, a laptop computer, a desktop computer, a screen, a keyboard, a speaker, or an amplifier.

(l) The term *interconnected VoIP service* shall have the same meaning as in § 9.3 of this chapter, as such section may be amended from time to time.

(m) An *interoperable video conferencing service* means a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing.

(n) The term *manufacturer* shall mean an entity that makes or produces a product, including equipment used for advanced communications services, including end user equipment, network equipment, and software.

(o) The term *network equipment* shall mean equipment facilitating the use of a network, including, routers, network interface cards, networking cables, modems, and other related hardware. Such equipment may include both hardware and software components.

(p) The term *nominal cost* in regard to accessibility and usability solutions shall mean small enough so as to generally not be a factor in the consumer's decision to acquire a product or service that the consumer otherwise desires.

(q) *A non-interconnected VoIP service* is a service that:

(1) Enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and

(2) Requires Internet protocol compatible customer premises equipment; and

(3) Does not include any service that is an interconnected VoIP service.

(r) The term *peripheral devices* shall mean devices employed in connection with equipment, including software, covered by this part to translate, enhance, or otherwise transform advanced communications services into a form accessible to individuals with disabilities.

(s) The term *service provider* shall mean a provider of advanced communications services that are offered in or affecting interstate commerce, including a provider of applications and services that can be used for advanced communications services and that can be accessed (*i.e.,* downloaded or run) by users over any service provider network.

(t) The term *software* shall mean programs, procedures, rules, and related data and documentation that direct the use and operation of a computer or related device and instruct it to perform a given task or function.

(u) The term *specialized customer premises equipment* shall mean customer premise equipment which is commonly used by individuals with disabilities to achieve access.

(v) The term *usable* shall have the meaning provided in § 14.21(c).

Subpart C—Implementation Requirements—What Must Covered Entities Do?

§ 14.20 Obligations.

(a) *General Obligations.* (1) With respect to equipment manufactured after the effective date of this part, a manufacturer of equipment used for advanced communications services, including end user equipment, network equipment, and software, must ensure that the equipment and software that such manufacturer offers for sale or otherwise distributes in interstate commerce shall be accessible to and usable by individuals with disabilities, unless the requirements of this subsection are not achievable.

(2) With respect to services provided after the effective date of this part, a provider of advanced communications services must ensure that services offered by such provider in or affecting interstate commerce are accessible to and usable by individuals with disabilities, unless the requirements of this paragraph are not achievable.

(3) If accessibility is not achievable either by building it in or by using third party accessibility solutions available to the consumer at nominal cost and that individuals with disabilities can access, then a manufacturer or service provider shall ensure that its equipment or service is compatible with existing peripheral devices or specialized customer premises equipment, unless the requirements of this subsection are not achievable.

(4) Providers of advanced communications services shall not install network features, functions, or capabilities that impede accessibility or usability.

(5) Providers of advanced communications services, manufacturers of equipment used with these services, and providers of networks used with these services may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through such services, equipment or networks.

(b) *Product design, development, and evaluation.* (1) Manufacturers and service providers must consider performance objectives set forth in § 14.21 at the design stage as early as possible and must implement such performance objectives, to the extent that they are achievable.

(2) Manufacturers and service providers must identify barriers to accessibility and usability as part of such evaluation.

(c) *Information Pass Through.* Equipment used for advanced communications services, including end user equipment, network equipment, and software must pass through cross-manufacturer, nonproprietary, industry-standard codes, translation protocols, formats or other information necessary to provide advanced communications services in an accessible format, if achievable. Signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

(d) *Information, documentation, and training.* Manufacturers and service providers must ensure that the information and documentation that they provide to customers is accessible, if achievable. Such information and documentation includes, but is not limited to, user guides, bills, installation guides for end user devices, and product support communications. The requirement to ensure the information is accessible also includes ensuring that individuals with disabilities can access, at no extra cost, call centers and customer support regarding both the product generally and the accessibility features of the product.

§ 14.21 Performance Objectives.

(a) *Generally.* Manufacturers and service providers shall ensure that equipment and services covered by this part are accessible, usable, and compatible as those terms are defined in paragraphs (b) through (d) of this section.

(b) *Accessible.* The term accessible shall mean that:

(1) Input, control, and mechanical functions shall be locatable, identifiable, and operable in accordance with each of the following, assessed independently:

(i) *Operable without vision.* Provide at least one mode that does not require user vision.

(ii) *Operable with low vision and limited or no hearing.* Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output.

(iii) *Operable with little or no color perception.* Provide at least one mode that does not require user color perception.

(iv) *Operable without hearing.* Provide at least one mode that does not require user auditory perception.

(v) *Operable with limited manual dexterity.* Provide at least one mode that

does not require user fine motor control or simultaneous actions.

(vi) *Operable with limited reach and strength.* Provide at least one mode that is operable with user limited reach and strength.

(vii) *Operable with a Prosthetic Device.* Controls shall be operable without requiring body contact or close body proximity.

(viii) *Operable without time-dependent controls.* Provide at least one mode that does not require a response time or allows response time to be by-passed or adjusted by the user over a wide range.

(ix) *Operable without speech.* Provide at least one mode that does not require user speech.

(x) *Operable with limited cognitive skills.* Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.

(2) All information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues, [shall] comply with each of the following, assessed independently:

(i) *Availability of visual information.* Provide visual information through at least one mode in auditory form.

(ii) *Availability of visual information for low vision users.* Provide visual information through at least one mode to users with visual acuity between 20/70 and 20/200 without relying on audio.

(iii) *Access to moving text.* Provide moving text in at least one static presentation mode at the option of the user.

(iv) *Availability of auditory information.* Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form.

(v) *Availability of auditory information for people who are hard of hearing.* Provide audio or acoustic information, including any auditory feedback tones that are important for the use of the product, through at least one mode in enhanced auditory fashion (*i.e.,* increased amplification, increased signal-to-noise ratio, or combination).

(vi) *Prevention of visually-induced seizures.* Visual displays and indicators shall minimize visual flicker that might induce seizures in people with photosensitive epilepsy.

(vii) *Availability of audio cutoff.* Where a product delivers audio output through an external speaker, provide an industry standard connector for headphones or personal listening devices (*e.g.,* phone-like handset or earcup) which cuts off the speaker(s) when used.

(viii) *Non-interference with hearing technologies.* Reduce interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) to the lowest possible level that allows a user to utilize the product.

(ix) *Hearing aid coupling.* Where a product delivers output by an audio transducer which is normally held up to the ear, provide a means for effective wireless coupling to hearing aids.

(c) *Usable.* The term usable shall mean that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation and technical support functionally equivalent to that provided to individuals without disabilities.

(d) *Compatible.* The term *compatible* shall mean compatible with peripheral devices and specialized customer premises equipment, and in compliance with the following provisions, as applicable:

(1) *External electronic access to all information and control mechanisms.* Information needed for the operation of products (including output, alerts, icons, on-line help, and documentation) shall be available in a standard electronic text format on a cross-industry standard port and all input to and control of a product shall allow for real time operation by electronic text input into a cross-industry standard external port and in cross-industry standard format. The cross-industry standard port shall not require manipulation of a connector by the user.

(2) *Connection point for external audio processing devices.* Products providing auditory output shall provide the auditory signal at a standard signal level through an industry standard connector.

(3) *TTY connectability.* Products that provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. It shall also be possible for the user to easily turn any microphone on and off to allow the user to intermix speech with TTY use.

(4) *TTY signal compatibility.* Products, including those providing voice communication functionality, shall support use of all cross-manufacturer non-proprietary standard signals used by TTYs.

Subpart D—Recordkeeping, Consumer Dispute Assistance, and Enforcement

§ 14.30 Generally.

(a) The rules in this subpart regarding recordkeeping and enforcement are applicable to all manufacturers and service providers that are subject to the requirements of sections 255, 716, and 718 of the Act and parts 6, 7 and 14 of this chapter.

(b) The requirements set forth in § 14.31 of this subpart shall be effective January 30, 2013.

(c) The requirements set forth in §§ 14.32 through 14.37 of this subpart shall be effective on October 8, 2013.

§ 14.31 Recordkeeping.

(a) Each manufacturer and service provider subject to section 255, 716, or 718 of the Act, must create and maintain, in the ordinary course of business and for a two year period from the date a product ceases to be manufactured or a service ceases to be offered, records of the efforts taken by such manufacturer or provider to implement sections 255, 716, and 718 with regard to this product or service, as applicable, including:

(1) Information about the manufacturer's or service provider's efforts to consult with individuals with disabilities;

(2) Descriptions of the accessibility features of its products and services; and

(3) Information about the compatibility of its products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access.

(b) An officer of each manufacturer and service provider subject to section 255, 716, or 718 of the Act, must sign and file an annual compliance certificate with the Commission.

(1) The certificate must state that the manufacturer or service provider, as applicable, has established operating procedures that are adequate to ensure compliance with the recordkeeping rules in this subpart and that records are being kept in accordance with this section and be supported with an affidavit or declaration under penalty of perjury, signed and dated by the authorized officer of the company with personal knowledge of the representations provided in the company's certification, verifying the truth and accuracy of the information therein.

(2) The certificate shall identify the name and contact details of the person or persons within the company that are

authorized to resolve complaints alleging violations of our accessibility rules and sections 255, 716, and 718 of the Act, and the agent designated for service pursuant to § 14.35(b) of this subpart and provide contact information for this agent. Contact information shall include, for the manufacturer or the service provider, a name or department designation, business address, telephone number, and, if available TTY number, facsimile number, and email address.

(3) The annual certification must be filed with the Commission on April 1, 2013 and annually thereafter for records pertaining to the previous calendar year. The certificate must be updated when necessary to keep the contact information current.

(c) Upon the service of a complaint, formal or informal, on a manufacturer or service provider under this subpart, a manufacturer or service provider must produce to the Commission, upon request, records covered by this section and may assert a statutory request for confidentiality for these records under 47 U.S.C. 618(a)(5)(C) and § 0.457(c) of this chapter. All other information submitted to the Commission pursuant to this subpart or pursuant to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with § 0.459 of this chapter.

§ 14.32 Consumer Dispute Assistance.

(a) A consumer or any other party may transmit a Request for Dispute Assistance to the Consumer and Governmental Affairs Bureau by any reasonable means, including by the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or email to *dro@fcc.gov.* Any Requests filed using a method other than the Commission's online system should include a cover letter that references section 255, 716, or 718 or the rules of parts 6, 7, or 14 of this chapter and should be addressed to the Consumer and Governmental Affairs Bureau. Any party with a question about information that should be included in a Request for Dispute Assistance should email the Commission's Disability Rights Office at *dro@fcc.gov* or call (202) 418–2517 (voice), (202) 418–2922 (TTY).

(b) A Request for Dispute Assistance shall include:

(1) The name, address, email address, and telephone number of the party making the Request (Requester);

(2) The name of the manufacturer or service provider that the requester believes is in violation of section 255, 716, or 718 or the rules in this part, and the name, address, and telephone number of the manufacturer or service provider, if known;

(3) An explanation of why the requester believes the manufacturer or service provider is in violation of section 255, 716, or 718 or the rules in this part, including details regarding the service or equipment and the relief requested, and all documentation that supports the requester's contention;

(4) The date or dates on which the requester either purchased, acquired, or used (or attempted to purchase, acquire, or use) the equipment or service in question;

(5) The Requester's preferred format or method of response to its Request for Dispute Assistance by CGB or the manufacturer or service provider (*e.g.,* letter, facsimile transmission, telephone (voice/TRS/TTY), email, audio-cassette recording, Braille, or some other method that will best accommodate the Requester's disability, if any);

(6) Any other information that may be helpful to CGB and the manufacturer or service provider to understand the nature of the dispute;

(7) Description of any contacts with the manufacturer or service provider to resolve the dispute, including, but not limited to, dates or approximate dates, any offers to settle, *etc.;* and

(8) What the Requester is seeking to resolve the dispute.

(c) CGB shall forward the Request for Dispute Assistance to the manufacturer or service provider named in the Request. CGB shall serve the manufacturer or service provider using the contact details of the certification to be filed pursuant to § 14.31(b). Service using contact details provided pursuant to § 14.31(b) is deemed served. Failure by a manufacturer or service provider to file or keep the contact information current will not be a defense of lack of service.

(d) CGB will assist the Requester and the manufacturer or service provider in reaching a settlement of the dispute.

(e) Thirty days after the Request for Dispute Assistance was filed, if a settlement has not been reached between the Requester and the manufacturer or service provider, the Requester may file an informal complaint with the Commission;

(f) When a Requester files an informal complaint with the Enforcement Bureau, as provided in § 14.34, the Commission will deem the CGB dispute assistance process closed and the requester and manufacturer or service provider shall be barred from further use of the Commission's dispute assistance process so long as a complaint is pending.

§ 14.33 Informal or formal complaints.

Complaints against manufacturers or service providers, as defined under this subpart, for alleged violations of this subpart may be either informal or formal.

§ 14.34 Informal complaints; form, filing, content, and consumer assistance.

(a) An informal complaint alleging a violation of section 255, 716 or 718 of the Act or parts 6, 7, or 14 of this chapter may be transmitted to the Enforcement Bureau by any reasonable means, including the Commission's online informal complaint filing system, U.S. Mail, overnight delivery, or email. Any Requests filed using a method other than the Commission's online system should include a cover letter that references section 255, 716, or 718 or the rules of parts 6, 7, or 14 of this chapter and should be addressed to the Enforcement Bureau.

(b) An informal complaint shall include:

(1) The name, address, email address, and telephone number of the complainant;

(2) The name, address, and telephone number of the manufacturer or service provider defendant against whom the complaint is made;

(3) The date or dates on which the complainant or person(s) on whose behalf the complaint is being filed either purchased, acquired, or used or attempted to purchase, acquire, or use the equipment or service about which the complaint is being made;

(4) A complete statement of fact explaining why the complainant contends that the defendant manufacturer or provider is in violation of section 255, 716 or 718 of the Act or the Commission's rules, including details regarding the service or equipment and the relief requested, and all documentation that supports the complainant's contention;

(5) A certification that the complainant submitted to the Commission a Request for Dispute Assistance, pursuant to § 14.32, no less than 30 days before the complaint is filed;

(6) The complainant's preferred format or method of response to the complaint by the Commission and defendant (*e.g.,* letter, facsimile transmissions, telephone (voice/TRS/TTY), email, audio-cassette recording, Braille, or some other method that will best accommodate the complainant's disability, if any); and

(7) Any other information that is required by the Commission's accessibility complaint form.

(c) Any party with a question about information that should be included in an Informal Complaint should email the Commission's Disability Rights Office at *dro@fcc.gov* or call (202) 418–2517 (voice), (202) 418–2922 (TTY).

§ 14.35 Procedure; designation of agents for service.

(a) The Commission shall forward any informal complaint meeting the requirements of § 14.34 of this subpart to each manufacturer and service provider named in or determined by the staff to be implicated by the complaint.

(b) To ensure prompt and effective service of informal and formal complaints filed under this subpart, every manufacturer and service provider subject to the requirements of section 255, 716, or 718 of the Act and parts 6, 7, or 14 of this chapter shall designate an agent, and may designate additional agents if it so chooses, upon whom service may be made of all notices, inquiries, orders, decisions, and other pronouncements of the Commission in any matter before the Commission. The agent shall be designated in the manufacturer or service provider's annual certification pursuant to § 14.31.

§ 14.36 Answers and replies to informal complaints.

(a) After a complainant makes a *prima facie* case by asserting that a product or service is not accessible, the manufacturer or service provider to whom the informal complaint is directed bears the burden of proving that the product or service is accessible or, if not accessible, that accessibility is not achievable under this part or readily achievable under parts 6 and 7. To carry its burden of proof, a manufacturer or service provider must produce documents demonstrating its due diligence in exploring accessibility and achievability, as required by parts 6, 7, or 14 of this chapter throughout the design, development, testing, and deployment stages of a product or service. Conclusory and unsupported claims are insufficient to carry this burden of proof.

(b) Any manufacturer or service provider to whom an informal complaint is served by the Commission under this subpart shall file and serve an answer responsive to the complaint and any inquires set forth by the Commission.

(1) The answer shall:

(i) Be filed with the Commission within twenty days of service of the complaint, unless the Commission or its staff specifies another time period;

(ii) Respond specifically to each material allegation in the complaint and assert any defenses that the manufacturer or service provider claim;

(iii) Include a declaration by an officer of the manufacturer or service provider attesting to the truth of the facts asserted in the answer;

(iv) Set forth any remedial actions already taken or proposed alternative relief without any prejudice to any denials or defenses raised;

(v) Provide any other information or materials specified by the Commission as relevant to its consideration of the complaint; and

(vi) Be prepared or formatted, including in electronic readable format compatible with the Commission's Summation or other software in the manner requested by the Commission and the complainant, unless otherwise permitted by the Commission for good cause shown.

(2) If the manufacturer's or service provider's answer includes the defense that it was not achievable for the manufacturer or service provider to make its product or service accessible, the manufacturer or service provider shall carry the burden of proof on the defense and the answer shall:

(i) Set forth the steps taken by the manufacturer or service provider to make the product or service accessible and usable;

(ii) Set forth the procedures and processes used by the manufacturer or service provider to evaluate whether it was achievable to make the product or service accessible and usable in cases where the manufacturer or service provider alleges it was not achievable to do so;

(iii) Set forth the manufacturer's basis for determining that it was not achievable to make the product or service accessible and usable in cases where the manufacturer or service provider so alleges; and

(iv) Provide all documents supporting the manufacturer's or service provider's conclusion that it was not achievable to make the product or service accessible and usable in cases where the manufacturer or service provider so alleges.

(c) Any manufacturer or service provider to whom an informal complaint is served by the Commission under this subpart shall serve the complainant and the Commission with a non-confidential summary of the answer filed with the Commission within twenty days of service of the complaint. The non-confidential summary must contain the essential elements of the answer, including, but not limited to, any asserted defenses to the complaint, must address the material elements of its answer, and include sufficient information to allow the complainant to file a reply, if the complainant chooses to do so.

(d) The complainant may file and serve a reply. The reply shall:

(1) Be served on the Commission and the manufacturer or service provider that is subject of the complaint within ten days after service of answer, unless otherwise directed by the Commission;

(2) Be responsive to matters contained in the answer and shall not contain new matters.

§ 14.37 Review and disposition of informal complaints.

(a) The Commission will investigate the allegations in any informal complaint filed that satisfies the requirements of § 14.34(b) of this subpart, and, within 180 days after the date on which such complaint was filed with the Commission, issue an order finding whether the manufacturer or service provider that is the subject of the complaint violated section 255, 716, or 718 of the Act, or the Commission's implementing rules, and provide a basis therefore, unless such complaint is resolved before that time.

(b) If the Commission determines in an order issued pursuant to paragraph (a) of this section that the manufacturer or service provider violated section 255, 716, or 718 of the Act, or the Commission's implementing rules, the Commission may, in such order, or in a subsequent order:

(1) Direct the manufacturer or service provider to bring the service, or in the case of a manufacturer, the next generation of the equipment or device, into compliance with the requirements of section 255, 716, or 718 of the Act, and the Commission's rules, within a reasonable period of time; and

(2) Take such other enforcement action as the Commission is authorized and as it deems appropriate.

(c) Any manufacturer or service provider that is the subject of an order issued pursuant to paragraph (b)(1) of this section shall have a reasonable opportunity, as established by the Commission, to comment on the Commission's proposed remedial action before the Commission issues a final order with respect to that action.

§ 14.38 Formal Complaints; General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments. Commission proceedings may also

require or permit other written submissions such as briefs, written interrogatories, and other supplementary documents or pleadings.

(a) Pleadings must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, including damages, should be pleaded fully and with specificity.

(b) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation, or a defense to such alleged violation.

(c) Facts must be supported by relevant documentation or affidavit.

(d) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority.

(e) Opposing authorities must be distinguished.

(f) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(g) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(h) All statements purporting to summarize or explain Commission orders or policies must cite, in standard legal form, the Commission ruling upon which such statements are based.

(i) Pleadings shall identify the name, address, telephone number, and facsimile transmission number for either the filing party's attorney or, where a party is not represented by an attorney, the filing party.

§ 14.39 Format and content of formal complaints.

(a) Subject to paragraph (d) of this section governing supplemental complaints filed pursuant to § 14.39 of this subpart, a formal complaint shall contain:

(1) The name of each complainant and defendant;

(2) The occupation, address and telephone number of each complainant and, to the extent known, each defendant;

(3) The name, address, and telephone number of complainant's attorney, if represented by counsel;

(4) Citation to the section of the Communications Act and/or order and/or regulation of the Commission alleged to have been violated;

(5) A complete statement of facts which, if proven true, would constitute such a violation. All material facts must be supported, pursuant to the requirements of § 14.38(c) of this subpart and paragraph (a)(11) of this section, by relevant affidavits and documentation, including copies of relevant written agreements, offers, counter-offers, denials, or other related correspondence. The statement of facts shall include a detailed explanation of the manner and time period in which a defendant has allegedly violated the Act, Commission order, or Commission rule in question, including a full identification or description of the communications, transmissions, services, or other carrier conduct complained of and the nature of any injury allegedly sustained by the complainant. Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the plaintiff's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

(6) Proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the complaint;

(7) The relief sought, including recovery of damages and the amount of damages claimed, if known;

(8) Certification that the complainant has, in good faith, discussed or attempted to discuss the possibility of settlement with each defendant prior to the filing of the formal complaint. Such certification shall include a statement that, prior to the filing of the complaint, the complainant mailed a certified letter outlining the allegations that form the basis of the complaint it anticipated filing with the Commission to the defendant carrier or one of the defendant's registered agents for service of process that invited a response within a reasonable period of time and a brief summary of all additional steps taken to resolve the dispute prior to the filing of the formal complaint. If no additional steps were taken, such certificate shall state the reason(s) why the complainant believed such steps would be fruitless;

(9) Whether a separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or same set of facts, in whole or in part, or whether the complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission;

(10) An information designation containing:

(i) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the complaint, along with a description of the facts within any such individual's knowledge;

(ii) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control, that are relevant to the facts alleged with particularity in the complaint. Such description shall include for each document:

(A) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(B) The author, preparer, or other source;

(C) The recipient(s) or intended recipient(s);

(D) Its physical location; and

(E) A description of its relevance to the matters contained in the complaint; and

(iii) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(11) Copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the complaint;

(12) A completed Formal Complaint Intake Form;

(13) A declaration, under penalty of perjury, by the complainant or complainant's counsel describing the amount, method, and the complainant's 10-digit FCC Registration Number, if any;

(14) A certificate of service; and

(15) A FCC Registration Number is required under part 1, subpart W. Submission of a complaint without the FCC Registration Number as required by part 1, subpart W will result in dismissal of the complaint.

(b) The following format may be used in cases to which it is applicable, with such modifications as the circumstances may render necessary:

Before the Federal Communications Commission, Washington, DC 20554

In the matter of

Complainant,

v.

Defendant.

File No. (To be inserted by the Enforcement Bureau)

Complaint

To: The Commission.
The complainant (here insert full name of each complainant and, if a corporation, the corporate title of such complainant) shows that:
(1) (Here state post office address, and telephone number of each complainant).
(2) (Here insert the name, and, to the extent known, address and telephone number of defendants).
(3) (Here insert fully and clearly the specific act or thing complained of, together with such facts as are necessary to give a full understanding of the matter, including relevant legal and documentary support).
Wherefore, complainant asks (here state specifically the relief desired).
(Date)
(Name of each complainant)
(Name, address, and telephone number of attorney, if any)

(c) The complainant may petition the staff, pursuant to § 1.3 of this chapter, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

(d) Supplemental complaints.

(1) Supplemental complaints filed pursuant to § 14.39 shall conform to the requirements set out in this section and § 14.38 of this subpart, except that the requirements in §§ 14.38(b), 14.39 (a)(4), (a)(5), (a)(8), (a)(9), (a)(12), and (a)(13) of this subpart shall not apply to such supplemental complaints;

(2) In addition, supplemental complaints filed pursuant to § 14.39 of this subpart shall contain a complete statement of facts which, if proven true, would support complainant's calculation of damages for each category of damages for which recovery is sought. All material facts must be supported, pursuant to the requirements of § 14.38(c) of this subpart and paragraph (a)(11) of this section, by relevant affidavits and other documentation. The statement of facts shall include a detailed explanation of the matters relied upon, including a full identification or description of the communications, transmissions, services, or other matters relevant to the calculation of damages and the nature of any injury allegedly sustained by the complainant. Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the complainant's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

(3) Supplemental complaints filed pursuant to § 14.39 of this subpart shall contain a certification that the complainant has, in good faith, discussed or attempted to discuss the possibility of settlement with respect to damages for which recovery is sought with each defendant prior to the filing of the supplemental complaint. Such certification shall include a statement that, no later than 30 days after the release of the liability order, the complainant mailed a certified letter to the primary individual who represented the defendant carrier during the initial complaint proceeding outlining the allegations that form the basis of the supplemental complaint it anticipates filing with the Commission and inviting a response from the carrier within a reasonable period of time. The certification shall also contain a brief summary of all additional steps taken to resolve the dispute prior to the filing of the supplemental complaint. If no additional steps were taken, such certification shall state the reason(s) why the complainant believed such steps would be fruitless.

§ 14.40 Damages.

(a) A complaint against a common carrier may seek damages. If a complainant wishes to recover damages, the complaint must contain a clear and unequivocal request for damages.

(b) If a complainant wishes a determination of damages to be made in the same proceeding as the determinations of liability and prospective relief, the complaint must contain the allegations and information required by paragraph (h) of this section.

(c) Notwithstanding paragraph (b) of this section, in any proceeding to which no statutory deadline applies, if the Commission decides that a determination of damages would best be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the Commission may at any time order that the initial proceeding will determine only liability and prospective relief, and that a separate, subsequent proceeding initiated in accordance with paragraph (e) of this section will determine damages.

(d) If a complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made, the complainant must:

(1) Comply with paragraph (a) of this section, and

(2) State clearly and unequivocally that the complainant wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief will be made.

(e) If a complainant proceeds pursuant to paragraph (d) of this section, or if the Commission invokes its authority under paragraph (c) of this section, the complainant may initiate a separate proceeding to obtain a determination of damages by filing a supplemental complaint that complies with § 14.39(d) of this subpart and paragraph (h) of this section within sixty days after public notice (as defined in § 1.4(b) of this chapter) of a decision that contains a finding of liability on the merits of the original complaint.

(f) If a complainant files a supplemental complaint for damages in accordance with paragraph (e) of this section, the supplemental complaint shall be deemed, for statutory limitations purposes, to relate back to the date of the original complaint.

(g) Where a complainant chooses to seek the recovery of damages upon a supplemental complaint in accordance with the requirements of paragraph (e) of this section, the Commission will resolve the separate, preceding liability complaint within any applicable complaint resolution deadlines contained in the Act.

(h) In all cases in which recovery of damages is sought, it shall be the responsibility of the complainant to include, within either the complaint or supplemental complaint for damages filed in accordance with paragraph (e) of this section, either:

(1) A computation of each and every category of damages for which recovery is sought, along with an identification of all relevant documents and materials or such other evidence to be used by the complainant to determine the amount of such damages; or

(2) An explanation of:

(i) The information not in the possession of the complaining party that is necessary to develop a detailed computation of damages;

(ii) Why such information is unavailable to the complaining party;

(iii) The factual basis the complainant has for believing that such evidence of damages exists;

(iv) A detailed outline of the methodology that would be used to create a computation of damages with such evidence.

(i) Where a complainant files a supplemental complaint for damages in accordance with paragraph (e) of this section, the following procedures may apply:

(1) Issues concerning the amount, if any, of damages may be either

designated by the Enforcement Bureau for hearing before, or, if the parties agree, submitted for mediation to, a Commission Administrative Law Judge. Such Administrative Law Judge shall be chosen in the following manner:

(i) By agreement of the parties and the Chief Administrative Law Judge; or

(ii) In the absence of such agreement, the Chief Administrative Law Judge shall designate the Administrative Law Judge.

(2) The Commission may, in its discretion, order the defendant either to post a bond for, or deposit into an interest bearing escrow account, a sum equal to the amount of damages which the Commission finds, upon preliminary investigation, is likely to be ordered after the issue of damages is fully litigated, or some lesser sum which may be appropriate, provided the Commission finds that the grant of this relief is favored on balance upon consideration of the following factors:

(i) The complainant's potential irreparable injury in the absence of such deposit;

(ii) The extent to which damages can be accurately calculated;

(iii) The balance of the hardships between the complainant and the defendant; and

(iv) Whether public interest considerations favor the posting of the bond or ordering of the deposit.

(3) The Commission may, in its discretion, suspend ongoing damages proceedings for fourteen days, to provide the parties with a time within which to pursue settlement negotiations and/or alternative dispute resolution procedures.

(4) The Commission may, in its discretion, end adjudication of damages with a determination of the sufficiency of a damages computation method or formula. No such method or formula shall contain a provision to offset any claim of the defendant against the complainant. The parties shall negotiate in good faith to reach an agreement on the exact amount of damages pursuant to the Commission-mandated method or formula. Within thirty days of the release date of the damages order, parties shall submit jointly to the Commission either:

(i) A statement detailing the parties' agreement as to the amount of damages;

(ii) A statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; or

(iii) A statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached.

(j) Except where otherwise indicated, the rules governing initial formal complaint proceedings govern supplemental formal complaint proceedings, as well.

§ 14.41 Joinder of complainants and causes of action.

(a) Two or more complainants may join in one complaint if their respective causes of action are against the same defendant and concern substantially the same facts and alleged violation of the Communications Act.

(b) Two or more grounds of complaint involving the same principle, subject, or statement of facts may be included in one complaint, but should be separately stated and numbered.

§ 14.42 Answers.

(a) Any defendant upon whom copy of a formal complaint is served shall answer such complaint in the manner prescribed under this section within twenty days of service of the formal complaint by the complainant, unless otherwise directed by the Commission.

(b) The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint. Every effort shall be made to narrow the issues in the answer. The defendant shall state concisely its defense to each claim asserted, admit or deny the averments on which the complainant relies, and state in detail the basis for admitting or denying such averment. General denials are prohibited. Denials based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the defendant's belief and why the defendant could not reasonably ascertain the facts from the complainant or any other source. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the defendant shall specify so much of it as is true and shall deny only the remainder. The defendant may deny the allegations of the complaint as specific denials of either designated averments or paragraphs.

(c) The answer shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the answer.

(d) Averments in a complaint or supplemental complaint filed pursuant to §§ 14.38 and 14.39 of this subpart are deemed to be admitted when not denied in the answer.

(e) Affirmative defenses to allegations contained in the complaint shall be specifically captioned as such and presented separately from any denials made in accordance with paragraph (c) of this section.

(f) The answer shall include an information designation containing:

(1) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the answer, along with a description of the facts within any such individual's knowledge;

(2) A description of all documents, data compilations and tangible things in the defendant's possession, custody, or control, that are relevant to the facts alleged with particularity in the answer. Such description shall include for each document:

(i) The date it was prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the defendant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.

(g) The answer shall attach copies of all affidavits, documents, data compilations and tangible things in the defendant's possession, custody, or control, upon which the defendant relies or intends to rely to support the facts alleged and legal arguments made in the answer.

(h) The answer shall contain certification that the defendant has, in good faith, discussed or attempted to discuss, the possibility of settlement with the complainant prior to the filing of the formal complaint. Such certification shall include a brief summary of all steps taken to resolve the dispute prior to the filing of the formal complaint. If no such steps were taken, such certificate shall state the reason(s) why the defendant believed such steps would be fruitless;

(i) The defendant may petition the staff, pursuant to § 1.3 of this chapter, for a waiver of any of the requirements

of this section. Such waiver may be granted for good cause shown.

§ 14.43 Cross-complaints and counterclaims.

Cross-complaints seeking any relief within the jurisdiction of the Commission against any party (complainant or defendant) to that proceeding are expressly prohibited. Any claim that might otherwise meet the requirements of a cross-complaint may be filed as a separate complaint in accordance with §§ 14.38 through 14.40 of this subpart. For purposes of this subpart, the term ''cross-complaint'' shall include counterclaims.

§ 14.44 Replies.

(a) Within three days after service of an answer containing affirmative defenses presented in accordance with the requirements of § 14.42(e) of this subpart, a complainant may file and serve a reply containing statements of relevant, material facts and legal arguments that shall be responsive to only those specific factual allegations and legal arguments made by the defendant in support of its affirmative defenses. Replies which contain other allegations or arguments will not be accepted or considered by the Commission.

(b) Failure to reply to an affirmative defense shall be deemed an admission of such affirmative defense and of any facts supporting such affirmative defense that are not specifically contradicted in the complaint.

(c) The reply shall contain proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the reply.

(d) The reply shall include an information designation containing:

(1) The name, address and position of each individual believed to have firsthand knowledge about the facts alleged with particularity in the reply, along with a description of the facts within any such individual's knowledge.

(2) A description of all documents, data compilations and tangible things in the complainant's possession, custody, or control that are relevant to the facts alleged with particularity in the reply. Such description shall include for each document:

(i) The date prepared, mailed, transmitted, or otherwise disseminated;

(ii) The author, preparer, or other source;

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(e) The reply shall attach copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the reply.

(f) The complainant may petition the staff, pursuant to § 1.3 of this chapter, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

§ 14.45 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularity the grounds and authority therefor, and setting forth the relief or order sought.

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of § 14.38(c) of this subpart, except for those facts of which official notice may be taken.

(c) The moving party shall provide a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly marked as a ''Proposed Order.'' The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 14.51(d) of this subpart. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(d) Oppositions to any motion shall be accompanied by a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly captioned as a ''Proposed Order.'' The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 14.51(d) of this subpart. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(e) Oppositions to motions may be filed and served within five business days after the motion is filed and served and not after. Oppositions shall be limited to the specific issues and allegations contained in such motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting of the motion.

(f) No reply may be filed to an opposition to a motion.

(g) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(h) Amendments or supplements to complaints to add new claims or requests for relief are prohibited. Parties are responsible, however, for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding as required under § 14.38(g) of this subpart.

§ 14.46 Formal complaints not stating a cause of action; defective pleadings.

(a) Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act or a Commission rule or order will be dismissed. In such case, any amendment or supplement to such document will be considered a new filing which must be made within the statutory periods of limitations of actions contained in section 415 of the Communications Act.

(b) Any other pleading filed in a formal complaint proceeding not in conformity with the requirements of the applicable rules in this part may be deemed defective. In such case the Commission may strike the pleading or request that specified defects be corrected and that proper pleadings be filed with the Commission and served on all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

§ 14.47 Discovery.

(a) A complainant may file with the Commission and serve on a defendant, concurrently with its complaint, a request for up to ten written interrogatories. A defendant may file with the Commission and serve on a complainant, during the period starting

with the service of the complaint and ending with the service of its answer, a request for up to ten written interrogatories. A complainant may file with the Commission and serve on a defendant, within three calendar days of service of the defendant's answer, a request for up to five written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Requests for interrogatories filed and served pursuant to this procedure may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding, provided, however, that requests for interrogatories filed and served by a complainant after service of the defendant's answer shall be limited in scope to specific factual allegations made by the defendant in support of its affirmative defenses. This procedure may not be employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.

(b) Requests for interrogatories filed and served pursuant to paragraph (a) of this section shall contain a listing of the interrogatories requested and an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) A responding party shall file with the Commission and serve on the propounding party any opposition and objections to the requests for interrogatories as follows:

(1) By the defendant, within ten calendar days of service of the requests for interrogatories served simultaneously with the complaint and within five calendar days of the requests for interrogatories served following service of the answer;

(2) By the complainant, within five calendar days of service of the requests for interrogatories; and

(3) In no event less than three calendar days prior to the initial status conference as provided for in § 14.50(a) of this subpart.

(d) Commission staff will consider the requests for interrogatories, properly filed and served pursuant to paragraph (a) of this section, along with any objections or oppositions thereto, properly filed and served pursuant to paragraph (b) of this section, at the initial status conference, as provided for in § 14.50(a)(5) of this subpart, and at that time determine the interrogatories, if any, to which parties shall respond, and set the schedule of such response.

(e) The interrogatories ordered to be answered pursuant to paragraph (d) of this section are to be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them. The answers shall be filed with the Commission and served on the propounding party.

(f) A propounding party asserting that a responding party has provided an inadequate or insufficient response to a Commission-ordered discovery request may file a motion to compel within ten days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of § 14.45 of this subpart.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that provides:

(1) Indexing by useful identifying information about the documents; and

(2) Technology that allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) The Commission may allow additional discovery, including, but not limited to, document production, depositions and/or additional interrogatories. In its discretion, the Commission may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

§ 14.48 Confidentiality of information produced or exchanged by the parties.

(a) Any materials generated in the course of a formal complaint proceeding may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(b) Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) These individuals shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(d) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (b) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(e) Upon termination of a formal complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

§ 14.49 Other required written submissions.

(a) The Commission may, in its discretion, or upon a party's motion showing good cause, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(b) Unless otherwise directed by the Commission, all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, or any other pleading submitted in the proceeding. Claims and defenses previously made but not reflected in the briefs will be deemed abandoned. The Commission may, in its discretion, limit the scope of any briefs to certain subjects or issues. A party shall attach to its brief copies of all documents, data compilations, tangible things, and affidavits upon which such party relies or intends to rely to support the facts alleged and legal arguments made in its brief and such brief shall contain a full explanation of how each attachment is relevant to the issues and matters in dispute. All such attachments to a brief shall be documents, data compilations or tangible things, or affidavits made by persons, that were identified by any party in its information designations filed pursuant to §§ 14.39(a)(10)(i), (a)(10)(ii), 14.27(f)(1), (f)(2), and 14.44(d)(1), (d)(2) of this subpart. Any other supporting documentation or affidavits that are attached to a brief must be accompanied by a full explanation of the relevance of such materials and why such materials were not identified in the information designations. These briefs shall contain the proposed findings of fact and conclusions of law which the filing party is urging the Commission to adopt, with specific citation to the record, and supporting relevant authority and analysis.

(c) In cases in which discovery is not conducted, absent an order by the Commission that briefs be filed, parties may not submit briefs. If the Commission does authorize the filing of briefs in cases in which discovery is not conducted, briefs shall be filed concurrently by both the complainant and defendant at such time as designated by the Commission staff and in accordance with the provisions of this section.

(d) In cases in which discovery is conducted, briefs shall be filed concurrently by both the complainant and defendant at such time designated by the Commission staff.

(e) Briefs containing information which is claimed by an opposing or third party to be proprietary under § 14.48 of this subpart shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked ''Not for Public Inspection.'' An edited version removing all proprietary data shall also be filed with the Commission for inclusion in the public file. Edited versions shall be filed within five days from the date the unedited brief is submitted, and served on opposing parties.

(f) Initial briefs shall be no longer than twenty-five pages. Reply briefs shall be no longer than ten pages. Either on its own motion or upon proper motion by a party, the Commission staff may establish other page limits for briefs.

(g) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

(h) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of § 14.50(a) of this subpart.

§ 14.50 Status conference.

(a) In any complaint proceeding, the Commission may, in its discretion, direct the attorneys and/or the parties to appear before it for a status conference. Unless otherwise ordered by the Commission, an initial status conference shall take place, at the time and place designated by the Commission staff, ten business days after the date the answer is due to be filed. A status conference may include discussion of:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of additional pleadings or evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of all or some of the matters in controversy by agreement of the parties;

(5) Whether discovery is necessary and, if so, the scope, type and schedule for such discovery;

(6) The schedule for the remainder of the case and the dates for any further status conferences; and

(7) Such other matters that may aid in the disposition of the complaint.

(b)(1) Parties shall meet and confer prior to the initial status conference to discuss:

(i) Settlement prospects;

(ii) Discovery;

(iii) Issues in dispute;

(iv) Schedules for pleadings;

(v) Joint statement of stipulated facts, disputed facts, and key legal issues; and

(2) Parties shall submit a joint statement of all proposals agreed to and disputes remaining as a result of such meeting to Commission staff at least two business days prior to the scheduled initial status conference.

(c) In addition to the initial status conference referenced in paragraph (a) of this section, any party may also request that a conference be held at any time after the complaint has been filed.

(d) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a formal complaint proceeding including, inter alia, procedural matters, discovery, and the submission of briefs or other evidentiary materials.

(e) Parties may make, upon written notice to the Commission and all attending parties at least three business days prior to the status conference, an audio recording of the Commission staff's summary of its oral rulings. Alternatively, upon agreement among all attending parties and written notice to the Commission at least three business days prior to the status conference, the parties may make an audio recording of, or use a stenographer to transcribe, the oral presentations and exchanges between and among the participating parties, insofar as such communications are ''on-the-record'' as determined by the Commission staff, as well as the Commission staff's summary of its oral rulings. A complete transcript of any audio recording or stenographic transcription shall be filed with the Commission as part of the record, pursuant to the provisions of paragraph (f)(2) of this section. The parties shall make all necessary arrangements for the use of a stenographer and the cost of transcription, absent agreement to the contrary, will be shared equally by all parties that agree to make the record of the status conference.

(f) The parties in attendance, unless otherwise directed, shall either:

(1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by 5:30 p.m., Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be submitted both as hard copy and on computer disk in accordance with the requirements of § 14.51(d) of this subpart; or

(2) Pursuant to the requirements of paragraph (e) of this section, submit to the Commission by 5:30 p.m., Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:

(i) A transcript of the audio recording of the Commission staff's summary of its oral rulings;

(ii) A transcript of the audio recording of the oral presentations and exchanges between and among the participating parties, insofar as such communications are ''on-the-record'' as determined by the Commission staff, and the Commission staff's summary of its oral rulings; or

(iii) A stenographic transcript of the oral presentations and exchanges between and among the participating parties, insofar as such communications are ''on-the-record'' as determined by the Commission staff, and the Commission staff's summary of its oral rulings.

(g) Status conferences will be scheduled by the Commission staff at such time and place as it may designate to be conducted in person or by telephone conference call.

(h) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver by that party and will not preclude the Commission staff from conferring with those parties and/or counsel present.

§ 14.51 Specifications as to pleadings, briefs, and other documents; subscription.

(a) All papers filed in any formal complaint proceeding must be drawn in conformity with the requirements of §§ 1.49 and 1.50 of this chapter.

(b) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

(d) All proposed orders shall be submitted both as hard copies and on computer disk formatted to be compatible with the Commission's computer system and using the Commission's current word processing software. Each disk should be submitted in ''read only'' mode. Each disk should be clearly labeled with the party's name, proceeding, type of pleading, and date of submission. Each disk should be accompanied by a cover letter. Parties who have submitted copies of tariffs or reports with their hard copies need not include such tariffs or reports on the disk. Upon showing of good cause, the Commission may waive the requirements of this paragraph.

§ 14.52 Copies; service; separate filings against multiple defendants.

(a) Complaints may generally be brought against only one named defendant; such actions may not be brought against multiple defendants unless the defendants are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall file an original copy of the complaint and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) Serve two copies on the Enforcement Bureau; and

(3) If a complaint is addressed against multiple defendants, file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

(c) Generally, a separate file is set up for each defendant. An original plus two copies shall be filed of all pleadings and documents, other than the complaint, for each file number assigned.

(d) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(e) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by facsimile transmission to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by regular U.S. mail delivery, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by regular U.S. mail to all parties, a schedule detailing the date the answer will be due and the date, time and location of the initial status conference.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or by facsimile transmission followed by regular U.S. mail delivery, together with a proof of such service in accordance with the requirements of § 1.47(g) of this chapter. Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service such as, or comparable to, the US Postal Service Express Mail, United Parcel Service or Federal Express; or

(3) Service by facsimile transmission that is fully transmitted to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by facsimile transmission that is fully transmitted to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day.

(g) Supplemental complaint proceedings. Supplemental complaints filed pursuant to § 14.39 of this subpart shall conform to the requirements set out in this section, except that the complainant need not submit a filing fee, and the complainant may effect service pursuant to paragraph (f) of this

section rather than paragraph (d) of this section.

[FR Doc. 2011–31162 Filed 12–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL REGISTER

Vol. 76 Friday,

No. 251 December 30, 2011

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments to the Queen Conch and Reef Fish Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100120037–1626–02]

RIN 0648–AY55

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments to the Queen Conch and Reef Fish Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 2 to the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands, and Amendment 5 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Amendments 2 and 5), prepared by the Caribbean Fishery Management Council (Council). This final rule: Establishes annual catch limits (ACLs) and accountability measures (AMs) for queen conch and for all reef fish units or sub-units that are classified as undergoing overfishing (*i.e.,* snapper, grouper and parrotfish); allocates ACLs among island management areas; revises the composition of the snapper and grouper complexes; prohibits fishing for and possession of three parrotfish species; establishes recreational bag limits for snappers, groupers, and parrotfishes; and establishes framework procedures for the queen conch and reef fish fishery management plans. Amendments 2 and 5 also revise management reference points and status determination criteria. The intended effect of the rule is to prevent overfishing of queen conch and reef fish species while maintaining catch levels consistent with achieving optimum yield (OY).

DATES: This final rule is effective January 30, 2012.

ADDRESSES: Electronic copies of Amendments 2 and 5, which include an Environmental Impact Statement (EIS), a final regulatory flexibility analysis (FRFA), a regulatory impact review (RIR), and a fishery impact statement may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/2010_Caribbean_ACL_Amendment_FEIS_092011.pdf.*

FOR FURTHER INFORMATION CONTACT: Bill Arnold, Southeast Regional Office, NMFS, telephone: (727) 824–5305, email: *Bill.Arnold@noaa.gov.*

SUPPLEMENTARY INFORMATION: In the exclusive economic zone (EEZ) of the U.S. Caribbean, the queen conch fishery is managed under the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (USVI) (Queen Conch FMP), and the reef fish fishery is managed under the Reef Fish Fishery Management Plan of Puerto Rico and the USVI (Reef Fish FMP). These FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

NMFS' 2011 Report on the Status of U.S. Fisheries classifies Caribbean queen conch, Grouper Units 1 and 4, Snapper Unit 1, and parrotfishes as undergoing overfishing.

On September 26, 2011, NMFS published a notice of availability for Amendments 2 and 5 and requested public comment (76 FR 59375). On October 27, 2011, NMFS published a proposed rule for Amendments 2 and 5 and requested public comment (76 FR 66675). The proposed rule and Amendments 2 and 5 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

This final rule amends the composition of stock complexes within the Reef Fish FMP. Grouper and snapper unit complexes are being revised to include two species of commonly harvested fish that were previously excluded, remove the creole-fish from the Reef Fish FMP since the Council decided the species is no longer in need of Federal conservation and management due to no reported landings in the EEZ in recent years, and aggregate species in an ecologically consistent manner within the Reef Fish FMP.

This final rule revises and establishes management reference points for snapper, grouper, parrotfish and queen conch in the following manner: (1) Establishes average catch as a proxy for calculating the MSY for all units or complexes; (2) calculates the MSY proxy for each species or unit using average catch from commercial landings data from 1999–2005 for Puerto Rico and St. Croix, and from 2000–2005 for St. Thomas/St. John, and recreational catch data from 2000–2005 for Puerto Rico only; (3) sets the ABC for queen conch and parrotfish equal to the fishing level recommendation specified by the Council's Scientific and Statistical Committee (SSC) for those species; (4) defines the overfishing threshold of all species as the OFL, which would equal the MSY proxy; setting the OY and the ACL as equal values; (5) sets the OY equal to the OFL multiplied by a reduction factor of 0.85 to account for uncertainty in the scientific and management process for snapper and grouper in all three management areas. The OY of queen conch was not reduced below the ABC; (6) sets the ACL for parrotfish as a 0.85 reduction of the SSC's ABC recommendation to account for uncertainty, ecological factors and other concerns for all three island groups; and (7) sets the OY/ACL equal to zero for Nassau grouper, goliath grouper, rainbow parrotfish, blue parrotfish, and midnight parrotfish.

This final rule also establishes island-specific management to enable application of AMs in response to harvesting activities on a single island (Puerto Rico, St. Croix) or island group (St. Thomas/St. John) without necessarily affecting fishing activities on the other islands or island groups. This final rule establishes geographic boundaries between islands/island groups based upon an equidistant approach that uses a mid-point to divide the exclusive economic zone (EEZ) among islands. The three island management areas are: Puerto Rico, St. Croix, and St. Thomas/St. John.

This final rule establishes ACLs and AMs for queen conch and for all snapper, grouper, and parrotfish units or complexes in the Caribbean Reef Fish FMP. The ACLs include reductions in catch to buffer allocations to account for scientific and catch-level uncertainty. Each ACL is sub-divided among the three islands/island groups, and for Puerto Rico only, separate sector ACLs (commercial and recreational) are established because commercial and recreational sector landings data are both available. For the St. Croix and St. Thomas/St. John island management areas, only commercial data are available; therefore, ACLs are established for the St. Croix and St. Thomas/St. John management areas based on commercial landings data only. The final rule specifies an ACL of zero for Nassau grouper, goliath grouper, rainbow parrotfish, blue parrotfish, and midnight parrotfish.

The AMs are designed to prevent fishermen from exceeding the ACLs. The AMs for queen conch are described in the 2010 regulatory amendment (May 26, 2011, 76 FR 30554) to the Queen Conch FMP, and state that when the

USVI closes its territorial waters off St. Croix to the harvest and possession of queen conch, NMFS will concurrently close the EEZ in the area of Lang Bank until the start of the next territorial fishing season. For Puerto Rico and St Thomas/St. John, the applicable ACL will be set at zero and so the harvest prohibition will function as the AM in the EEZ for those areas.

This final rule triggers AMs if an ACL has been exceeded based on a moving multi-year average of landings as described in the FMP. If the ACL is exceeded, this final rule reduces the length of the fishing season for the affected species the year following an overage by the amount needed to prevent such an overage from occurring again. The AM is triggered unless NMFS' Southeast Fisheries Science Center, in consultation with the Council and its Scientific and Statistical Committee (SSC), determines the overage occurred because data collection and monitoring improved, rather than because catches actually increased. In such circumstances NMFS and the Council would review the relevant information and take further action as appropriate.

To maintain the role of parrotfish with respect to the health and ecological protection of threatened *Acropora* coral, this final rule prohibits the harvest of the three largest species of parrotfish that occur on Caribbean coral reefs. The harvest of blue, midnight, and rainbow parrotfish will be prohibited.

Additionally, this final rule establishes an aggregate bag limit for the recreational harvest of snapper, grouper and parrotfish. The daily recreational bag limit for snapper, grouper, and parrotfish combined will be five fish per person per day, with no more than two parrotfish per person within the aggregate. This rule also establishes a vessel limit on snapper, grouper, and parrotfish of 15 fish per day, including no more than 6 parrotfish per vessel per day.

To facilitate timely adjustments to harvest parameters and other management measures, this final rule establishes framework procedures for both the Reef Fish and Queen Conch FMPs. Management measures to be adjusted through framework amendments include but are not limited to quotas, closures, trip limits, bag limits, size limits, gear restrictions, fishing years, and reference points.

Comments and Responses

The following summarizes the comments NMFS received on Amendments 2 and 5 and the proposed rule, and NMFS' respective responses. Nine submissions were received on the amendments and the proposed rule, including comments from individuals, state and Federal agencies, environmental organizations, and fishing associations. Several commenters were generally supportive of the actions included in Amendments 2 and 5. A Federal agency had no specific comments and a non-governmental organization was supportive and recommended approval. Comments that pertain to specific actions addressed in Amendments 2 and 5 or the proposed rule are summarized and responded to below.

Comment 1: The boundary lines defining the EEZ subdivisions should take into account the distribution of marine biotopes and an additional (unquantified) buffer be added to the 15 percent uncertainty reduction in the setting of ACLs.

Response: Although state and Federal efforts are underway to map and define biological communities throughout the U.S. Caribbean, suitable information is not yet available to support allocation of subdivisions by biotope. However, input from fishers with regard to their fishing locations were taken into consideration when establishing the boundary lines. Additionally, those boundary lines do not prevent fishers from fishing in any area of the U.S. Caribbean EEZ. Instead, the boundary lines only become restrictive when the ACL has been met for a species or species group within the EEZ subdivision for a particular island or island group. Then, AMs will be applied for that EEZ subdivision.

With respect to the additional buffer for setting ACLs, the 15-percent reduction serves as a buffer between the overfishing level and the ACL, thus minimizing the likelihood that overfishing will occur. Other ''buffers,'' including more stringent ones (*i.e.,* buffers that reduce allowable catch to an even greater degree), were considered by the Council but not implemented. The Council determined that these more stringent buffers were not necessary to prevent overfishing of snapper, grouper, and parrotfish. The Council also determined that the 15 percent reduction would more effectively encourage the development of compatible regulations by territorial and commonwealth governments and increase data collection efforts, which would bring more stability to the management regime. The Council further reduced allowable parrotfish harvest in St. Croix EEZ waters by 15,000 lb (6,804 kg) to address ecological considerations as described in Amendments 2 and 5.

Comment 2: There is a need to reduce emphasis on fisheries management and to instead increase emphasis on restocking, preservation, establishment of defined shipping lanes, and deployment of fish attraction devices to better protect the environment and improve fishing opportunities.

Response: The amendment and associated rule are designed to address the requirements of the Magnuson-Stevens Act. The Magnuson-Stevens Act is focused on the Federal management of fishing activities. While an ecosystem based approach to fisheries management is a principle of NMFS' overall management strategy, achieving that goal requires the cooperation by a host of local, state, and Federal agencies and the constituencies upon which those agencies depend. These efforts are ongoing.

Comment 3: There is no rationale for the Council's SSC to establish a specific parrotfish quota for St. Croix, St. Thomas/St. John, and Puerto Rico.

Response: The SSC's rationale for establishing the ABC levels from which ACLs were derived for each of the islands or island groups, was that those levels are roughly equal to the average catch during the reference years chosen by the Council (1999–2005 for Puerto Rico and St. Croix commercial landings, 2000–2005 for Puerto Rico recreational and St. Thomas/St. John commercial landings). Those year sequences were chosen by the Council based on outcomes from working group meetings of the Annual Catch Limit Working Group (ACLG), Technical Monitoring and Compliance Team (TMCT), and Southeast Data Assessment and Review (SEDAR), whose task was to identify and analyze available data in the U.S. Caribbean. The SEDAR findings, along with those of the ACLG, were presented to the SSC for development of OFL and ABC limits. Using those year sequences, the SSC established ABC values separately for St. Croix, St. Thomas/St. John, and Puerto Rico. The Council chose to reduce by 15 percent from each ABC when setting the ACL for each island, with an additional 5.8822 percent reduction (equal to 15,000 lb whole weight (6,804 kg)) for St. Croix, due the intense and directed nature of the parrotfish fishery on that island. That 15 percent reduction acts to ensure that the OFL is not exceeded as a result of both scientific and management uncertainty.

Comment 4: The prohibition on harvest of midnight, blue, and rainbow parrotfish would have little biological impact because the species are extremely rare to the point of being effectively unavailable for harvest by the

commercial and recreational sectors. It is necessary to maintain the largest-sized individuals among grazing species and the lack of species-specific parrotfish landings data would render it impossible to enforce prohibitions on the take of midnight, blue, and rainbow parrotfish.

Response: The Council chose to prohibit the harvest of these three parrotfish species because they are so rare on U.S. Caribbean coral reefs. Given those very low densities, it is likely that their recovery will be lengthy as the populations rebuild to densities adequate to support consistently successful reproduction. However, without this prohibition on harvest, it is probable that recovery will take much longer, so the Council and NMFS consider the harvest prohibition to be an essential first step in the process of recovering these parrotfish populations. Regarding the need to maintain the largest individuals among grazing species, this rule prohibits harvesting the three largest species of parrotfish (midnight, blue, rainbow) to accomplish that goal. Finally, regardless of how the parrotfish species are reported, they are easily identified, making it relatively straightforward to enforce the prohibition on harvest of midnight, blue, and rainbow parrotfish in Caribbean EEZ waters.

Comment 5: The parrotfish harvest reductions, particularly from the waters surrounding St. Croix, are inadequate to address overfishing of these species and do not ensure adequate provision of critical settlement substrate for threatened *Acroporid* corals. Parrotfish harvest in the U.S. Caribbean is unsustainable and the proposed parrotfish harvest reductions are very unlikely to significantly decrease fishing pressure on parrotfish. Since the collapse of long-spined sea urchin populations, parrotfish are the only major grazer remaining on U.S. Caribbean coral reefs.

Response: The NMFS Protected Resources Division developed a Biological Opinion (BiOp) in October 2011 regarding the continued authorization of the reef fish fishery in the U.S. Caribbean. The BiOp focused its analyses on impacts to various species of turtles and on the impacts of continued parrotfish harvest on the availability of critical settlement substrate for *Acroporid* corals (specifically *Acropora cervicornis* and *A. palmata*). The BiOp determined that the continued operation of the U.S. Caribbean reef fish fishery is not likely to jeopardize the continued existence of *Acroporid* corals and not likely to destroy or adversely modify *Acropora* critical habitat in the U.S. Caribbean.

This rule reduces all parrotfish harvest levels in an effort to end overfishing of all parrotfish species. These reductions are described in detail in Amendment 5 to the Reef Fish FMP. For St. Croix, the ACL established by this final rule will adjust harvest to a level roughly 33 percent below the average of the most recent 2 years (2006 and 2007) of landings available at the time the Notice of Intent to Prepare an Environmental Impact Statement for Amendment 5 was published in April 2009 (April 17, 2009, 74 FR 17818) for. These are substantial parrotfish harvest reductions, and both NMFS and the Council believe that these reductions will substantially decrease fishing pressure on these species. NMFS agrees that parrotfish may be the only major grazer remaining on U.S. Caribbean coral reefs after the collapse of long-spined sea urchin populations. Although there are other grazers on Caribbean coral reefs (*e.g.,* surgeonfish), NMFS and the Council acknowledge that parrotfish are an important component of Caribbean coral reef ecosystems. The level of reduction was designed to balance those ecological considerations with the cultural importance of parrotfish to U.S. Caribbean residents, particularly residents of St. Croix.

Comment 6: The AMs proposed in the rule are inadequate to prevent overfishing. The provision that allows the Council to not apply AMs if it is determined by the Council's SSC, in conjunction with the SEFSC, that surpassing the ACL resulted from enhanced reporting of landings, rather than by an actual increase in harvest, contradicts the intent of the Magnuson-Stevens Act with respect to the application of AMs.

Response: AMs included in both Amendments 2 and 5 are post-season in nature to account for the present reporting characteristics of the U.S. Caribbean fisheries. The AMs will be applied automatically unless there is a determination by the SEFSC (in consultation with the Council's SSC) that the ACL increase is due to improved reporting rather than due to an actual increase in landings. Post-season AMs are not always the preferred method of a management strategy to respond to an ACL overage, and the fishers themselves have requested that in-season monitoring schemes be developed. Regional efforts are ongoing in the U.S. Caribbean to develop better methodologies to submit, compile, distribute, and analyze landings data. Progress has already been made, particularly in the electronic transmittal of data from state to Federal agencies. However, due to delays inherent in the present reporting process, landings data are not available within the fishing season, so only post-season AMs are presently feasible. Regarding the SSC and SEFSC review of data to determine if exceeding an ACL was the result of better reporting or increased landings, this provision allows for the best scientific information available to be applied to more effectively manage fishing activity. Thus, both the Council and NMFS decided this was a necessary approach if the long-term goal of more timely and accurate reporting was to be achieved.

Comment 7: The adverse economic impacts of the rule on USVI small businesses are overestimated because it assumes all of the licensed fisherman land species that are the subject of the final rule.

Response: It was assumed in the initial regulatory flexibility analysis (IRFA), and is assumed here that each and every one of the 383 licensed commercial fishermen of the USVI represents a small business. Hence, the final rule potentially impacts 383 small businesses in the USVI, whether they all presently fish for these species or not. The total adverse economic impacts to St. Croix and St. Thomas/St. John commercial fishermen are estimated independently of the number of small businesses, and instead by estimated reductions in historical and forecasted annual landings caused by shortened fishing seasons. The number of small businesses is used to estimate the average adverse economic impact per small business. If the number of small businesses adversely affected is lower, the average adverse economic impact per small business will be greater, but the estimates of the total adverse economic impacts do not change. The best information available was used to analyze these economic impacts.

Comment 8: The species of concern in this amendment should not have been considered as being ''overfished or undergoing overfishing'' in all of the island areas, as the incidents of overfishing are localized. As a result of previous management measures taken by both the Council and the states to address these incidents of overfishing (*i.e.,* the 2005 Sustainable Fisheries Act Amendment (2005 Caribbean SFA Amendment); seasonal and permanent closures; size limits; quotas) along with the use of available scientific information, the species groups classified as overfishing should have been reclassified. All of these previous actions should have been considered

while setting ACLs, and these values in most cases should have been the same as for species considered not to be undergoing overfishing.

Response: The purpose of Amendments 2 and 5 was not to revise the status of stocks with respect to their classification as either undergoing overfishing or overfished, but to establish management reference points and ACLs based upon the previously determined status of those stocks. Overfished or undergoing overfishing designations apply to the fishery as defined in the FMP, which is Caribbean-wide. Management reference points were set U.S. Caribbean-wide, then allocated among the three island groups (St. Thomas/St. John, St. Croix, Puerto Rico) according to proportional contribution by each island group to the total average landings used to set the MSY proxy and OFL. Because of the nature of landings data in the U.S. Caribbean, where landings are commonly reported to fishery management unit (FMU) level rather than to species level (with the exception of snapper in Puerto Rico, as described in Amendment 5 to Reef Fish FMP), ACL assignments were made at the FMU level rather than at the level of the individual species.

The 2005 Caribbean SFA Amendment was taken into consideration when devising alternatives included in Amendments 2 and 5. That amendment implemented a variety of management measures for reef fish species in the U.S. Caribbean, including area closures that may have affected reported landings. A primary consideration during the development of the management reference point alternatives was the choice of the year sequence used to establish the average catch, and from that, the MSY proxy and overfishing limit (OFL) were developed. When evaluating alternatives for year sequences for average catch, the Council chose not to use data from any years more recent than 2005, due to the potential impact on landings of the previous management measures listed in the comment.

The Council chose a 0.85 reduction to set the ACLs. Before making a decision on the appropriate reduction, the Council reviewed public comments and the recommendation of its Reef Fish Advisory Panel, which functions as interface between user groups and the Council and provides insight from in-the-field observations. Fishers and the Advisory Panel supported a 0.85 reduction while an environmental organization supported a 0.75 reduction. The Council also had several discussions regarding the issue of uncertainty and the value of choosing an uncertainty factor that would be most acceptable to the territorial and commonwealth governments. The Council determined that the 0.85 scalar would be most likely to result in the application of compatible state regulations and increased data collection efforts, thereby stabilizing the management regime.

After Amendments 2 and 5 were developed, the Council initiated development of the 2011 Caribbean ACL Amendment pertaining to those species not designated as undergoing overfishing. The Council chose to reduce by 10 percent for most of the units included in the 2011 Caribbean ACL Amendment, rather than by 15 percent as was done for the units included in Amendment 5 to the Reef Fish FMP. This 10 percent reduction was chosen because landings patterns for the species included in the 2011 Caribbean ACL Amendment were less variable than for the species included in Amendment 5 to the Reef Fish FMP. It was determined by the Council that those less variable landings required a smaller reduction to minimize the likelihood that landings in any year would exceed the OFL.

Comment 9: The ACLs proposed are inconsistent with National Standard (NS) 1, which requires that conservation and management measures shall prevent overfishing while achieving the OY from each fishery. Setting ACLs creates artificial limitations for the fishermen of St. Thomas, and management to an artificial buffer is not necessary because their fishery has been stable throughout the past four decades.

Response: The 2006 revisions to the Magnuson-Stevens Act require that ACLs be set at a level such that overfishing does not occur, regardless of the relative stability of the reported landings. Available data in the U.S. Caribbean are not sufficient to support direct estimation of MSY and other key parameters. In such cases, the NS 1 guidelines direct regional fishery management councils to estimate them using reasonable proxies, like long-term average catch, and to consider uncertainty in determining the appropriateness of alternative proxies. The NS 1 guidelines suggest that ACLs and OY should generally be reduced from the overfishing threshold and MSY, respectively, to effectively prevent overfishing. The Council chose to set OY and ACL as equal values, taking into consideration the socioeconomic and ecological components of OY when determining how far ACLs should be reduced below the overfishing threshold. An 'uncertainty' factor was applied to reduce allowable landings below the OFL in an effort to account for uncertainty in the scientific and management processes. The uncertainty factor is designed to account for scientific uncertainty in estimating the OFL and management uncertainty in effectively constraining harvest over time. The reduction (buffer) chosen by the Council will prevent overfishing by minimizing the likelihood that annual landings will exceed the OFL, while achieving, on a continuing basis, OY.

Comment 10: The establishment of ACLs is not consistent with National Standard 2 (NS 2), which requires that conservation and management measures be based in the best scientific information available. ACLs are not based on the best scientific information because they were based on unreliable reported landings data (*e.g.* not species-specific), and that data should be obtained from port sampling and this method was not used to formulate the ACLs.

Response: NMFS and the Council have considered NS 2 in the development of ACLs. Although the reported landings data has areas in need of improvement, this is the best scientific information available. Those landings data are provided by the fishers on an island-specific basis. The SEFSC, along with participating state, Federal, private, and fishing interests conducted analyses of port sampling data and determined they were inadequate with respect to the requirements for randomness and temporal consistency which therefore minimizes the utility of port sampling for establishing ACLs.

Comment 11: The establishment of management measures in Amendments 2 and 5 is not consistent with National Standard 6 (NS 6), which requires that conservation and management measures take into account, and allow for variations among fisheries, fishery resources, and catches. The variability in the fishery of St. Thomas/St. John is low and almost entirely due to normal year-to-year fluctuations in environmental variables, and that variability should be considered in the establishment of management measures for the specific island group.

Response: The landings variability for all island groups was analyzed. The data used for all islands for establishing management measures has the same limitations and were therefore treated in the same manner to account for both expected and unpredictable variations. This was done by applying a buffer to reduce OY and ACL from the OFL or ABC. Management reference points were set for the U.S. Caribbean and then

allocated among the three island groups (St. Thomas/St. John, St. Croix, Puerto Rico) according to the proportional contribution by each island group to the total average landings used to set the MSY proxy and OFL.

Comment 12: The designation of Puerto Rico and the USVI as fishing communities under the terms of National Standard 8 (NS 8) is questionable. NS 8 requires that conservation and management measures take into account the importance of fishery resources to fishing communities by using economic and social data to provide the sustained participation of the communities and minimize adverse economic impacts to the community to the extent practicable. The passage of recent ACLs in 2010 and 2011 should have been accompanied by in-depth analysis of the impacts of those actions upon the USVI fishing communities, and no ACLs should be approved until the analyses are completed and implications are considered.

Response: NMFS and the Council recognize the designation of St. Thomas/St. John, St. Croix, and coastal areas of Puerto Rico as fishing communities. However, for Puerto Rico, the fishing community designation does not apply to the entire island, but instead to the northern coastal, southern coastal, eastern coastal, and western coastal municipalities combined. The impacts of the provisions of Amendments 2 and 5 are included within the analysis of the social impacts, which is found in the Social Impact Assessment (section 9) of the Final Environmental Impact Statement. Additionally, the NS 8 guidelines state that consideration of impacts to designated fishing communities be within the context of the conservation requirements of the Magnuson-Stevens Act. These requirements were considered during the development of Amendments 2 and 5. The impacts to the fishing communities were analyzed and minimized to the extent practicable while still meeting the other Magnuson-Stevens Act requirements. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP.

Comment 13: For ACLs and AMs to be effective, Puerto Rico and the USVI should achieve compatibility with Federal regulations, and adequate funding should be available to collect and process data, enforce regulations, and effectively manage the fishery. There is an importance to ''buy in'' by the fishers with regard to the concept of a regulated, sustainable resource.

Response: Efforts are underway by the Council, NMFS, and the states to establish compatible regulations in both Puerto Rico and the USVI, but those regulatory changes must be effectuated by the state governments rather than by the Council or NMFS. NMFS recognizes the advantages to developing and implementing regulations to ensure the long-term sustainability of Caribbean fisheries resources and the ecosystems upon which they depend.

Comment 14: The cost of the prohibition on fishing for blue, rainbow and midnight parrotfish in the EEZ off the USVI, especially St. Croix, was overestimated because the species are rarely, if ever, caught in Federal waters and the adverse impacts should be minimal.

Response: Because parrotfish harvest data is not available at the species level in the USVI, the expected economic effects of the regulations associated with blue, rainbow, and midnight parrotfish could not be quantitatively assessed at the species level. As a result, the IRFA only provided quantitative estimates of the expected economic effects of the proposed regulations on all parrotfish species combined. Because blue, rainbow, and midnight parrotfish may not be the primary parrotfish species harvested, the estimates of the expected economic impacts on all parrotfish species may not be representative of the impacts on these three species and may, in fact, overestimate actual effects. However, overestimation of potential economic effects is not expected to be a substantive issue because the purpose of the RFA is to identify alternatives that achieve the regulatory objective while reducing or minimizing significant adverse economic effects on small entities. If the effects are minimal, as the comment suggests, then the need to reduce these effects is diminished.

Comment 15: Fishermen will not be able to relocate into territorial waters to mitigate for any losses of parrotfish landings because the resource is overexploited in territorial waters. It is incorrect to assume that USVI fishermen may be able to mitigate for some, but not all, of the losses incurred by the parrotfish prohibition.

Response: The RIR determined and the IRFA indicated that USVI fishermen could mitigate for 20 percent of the potential loss of landings by shifting effort into territorial waters. In response to this comment on the proposed rule, the FRFA includes the possibility that fishermen cannot mitigate for any losses of landings of parrotfish, snapper and grouper in the USVI as a result of new ACLs. This new assumption indicates that the ACLs may be up to 100 percent effective in reducing ACL overages.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendments 2 and 5 and is consistent with the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. However, ACLs are a controversial issue in the U.S. Caribbean, which is a region with populations characterized by large percents of racial/ethnic minorities, high poverty rates, and low median household incomes. Moreover, commercial fishermen of St. Croix and St. Thomas/St. John will experience a substantially greater adverse economic impact relative to their counterparts in Puerto Rico.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, NMFS prepared a final regulatory flexibility analysis (FRFA) that includes a statement of need for, and objectives of, the rule; a summary and assessment of significant issues raised by public comments; a description and estimate of the number of small entities; a description of the compliance requirements, including estimates of the adverse economic impacts; and a description of steps taken to minimize significant adverse economic impact on small entities. The description of the action, why it is being considered, and the objectives of this action are contained in the proposed rule (76 FR 66675, Oct. 27, 2011), at the beginning of this section in the preamble, and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (*see* **ADDRESSES**). A summary of the FRFA follows.

The final rule, which consists of several actions, will establish recreational bag limits for specified reef fish species; specify ACLs and AMs for parrotfish, grouper, snapper, and queen conch and establish framework measures to facilitate regulatory modifications. The rule will not alter existing reporting or record-keeping requirements.

The Magnuson Stevens Act provides the statutory basis for the rule.

There were no significant issues regarding the IRFA raised by public comments; however, three comments were received regarding the estimate of the adverse economic impacts on USVI fishermen. The first comment disagreed with the description of the impact of the

prohibition on fishing for blue, rainbow and midnight parrotfish in the EEZ off the USVI, especially St. Croix. The comment contends that the cost of the prohibition on fishing for and possession of blue, rainbow and midnight parrotfish in the EEZ, particularly off St. Croix, was overestimated because the species are rarely, if ever, caught in Federal waters and the adverse impact should be minimal. Because parrotfish harvest data is not available at the species level in the USVI, the expected economic effects of the regulations associated with blue, rainbow, and midnight parrotfish could not be quantitatively assessed at the species level. As a result, the IRFA only provided quantitative estimates of the expected economic effects of the proposed regulations on all parrotfish species combined. Because blue, rainbow, and midnight parrotfish may not be the primary parrotfish species harvested, the estimates of the expected economic impacts on all parrotfish species may not be representative of the impacts on these three species and, in fact, overestimate actual effects. However, overestimation of potential economic effects is not expected to be a substantive issue because the purpose of the RFA is to identify alternatives that achieve the regulatory objective while reducing or minimizing significant adverse economic effects on small entities. If the effects are minimal, as the comment suggests, then the need to reduce these effects is diminished.

The second comment disagreed with the assumption that USVI fishermen may be able to mitigate for some, but not all, losses by increasing landings of snapper, grouper, and parrotfish species taken in the EEZ by relocating into territorial waters, although it is more difficult for USVI fishermen to substitute fishing in territorial waters for fishing in Federal waters. The comment contends that fishermen would not be able to relocate into territorial waters to mitigate for any losses of parrotfish landings because the resource is overexploited in territorial waters. NMFS, in its RIR, determined and through the IRFA indicated that USVI fishermen could mitigate for 20 percent of the potential loss of landings by shifting effort into territorial waters. In response to this comment, the FRFA includes the possibility that fishermen cannot mitigate for any losses of landings of parrotfish, snapper and grouper in the USVI. That new assumption results in the ACLs being up to 100 percent effective in reducing an overage.

The third comment contended the estimate of the adverse economic impacts to USVI small businesses was too high because it assumed all of the licensed fishermen land species that are the subject of the final rule. NMFS assumed in the IRFA, and assumes here, that every one of the 383 licensed commercial fishermen of the USVI represents a small business that may potentially be impacted by this rule, whether they all presently fish for these species or not. The total adverse economic impacts to St. Croix and St. Thomas/St. John commercial fishermen are estimated independently of the number of small businesses and instead by estimated reductions in historical and forecasted annual landings. The number of small businesses is used to estimate the average adverse economic impact per small business. If the number of small businesses adversely affected is lower, the average adverse economic impact per small business will be greater.

This final rule is expected to directly affect businesses that harvest parrotfish, snapper and grouper from Federal waters off Puerto Rico and the USVI and those that harvest queen conch in Federal waters off St. Croix. These businesses are in the finfish fishing (NAICS 114111), shellfish fishing (NAICS 114112) and charter fishing industries (NAICS 487210). A business is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts or number of employees not in excess of the Small Business Administration's (SBA's) size standards. The finfish and shellfish fishing industries have an SBA size standard of $4.0 million in annual receipts, and the charter fishing industry's size standard is $7.0 million in annual receipts. NMFS assumes all commercial (finfish and shellfish) and charter fishing businesses that operate in the U.S. Caribbean have annual receipts less than these size standards and are small businesses.

In 2008, there were from 868 to 874 active commercial fishermen in Puerto Rico; 74 percent of these fishermen were captains and the remaining 26 percent were crew members. NMFS assumes each captain represents a small business in the finfish fishing and shellfish fishing industries and each member of the crew an employee of one of those businesses. Therefore, NMFS concludes that there are 642 to 644 small businesses in the finfish fishing and shellfish fishing industries in Puerto Rico, and potentially all of these businesses will be directly affected by the rule. In 2008, there were 223 licensed commercial fishermen in St. Croix and 160 in St. Thomas/St. John. There is a moratorium on increasing the number of U.S. Virgin Islands commercial fishing licenses, so the FRFA assumes the 223 commercial fishermen in St. Croix and 160 commercial fishermen in St. Thomas/St. John represent 383 small businesses in the finfish fishing and shellfish fishing industries in the U.S. Virgin Islands who will be directly affected by the rule.

There are an estimated 9 small businesses in the charter fishing industry in Puerto Rico, 12 such businesses in St. Thomas/St. John and 1 in St. Croix. The final rule will apply to all of these small businesses.

The final rule will apply to all small businesses in Puerto Rico, St. Croix and St. Thomas/St. John within the finfish fishing, shellfish fishing, and charter fishing industries. Therefore, the final rule applies to a substantial number of small entities in the U.S. Caribbean in these industries. Charter fishing operations in Puerto Rico and the U.S. Virgin Islands target pelagic species and tend not to target queen conch or reef fish species in Federal waters. Consequently, it is expected that small businesses in the charter fishing industry in Puerto Rico, St. Croix or St. Thomas/St. John will experience little to no adverse economic impact because of this final rule.

The final rule is expected to result in one shortened Federal fishing season in the Puerto Rico EEZ, three shortened fishing seasons in the St. Croix EEZ, and three shortened fishing seasons in the St. Thomas/St. John EEZ. This final rule is expected to have a substantially greater adverse economic impact on small businesses in the finfish fishing industries in St. Croix and St. Thomas/St. John than in Puerto Rico because the projected reductions in harvest of the different species, as discussed in the following paragraphs, are substantially larger in the USVI than in Puerto Rico. There is expected to be no adverse economic impact on small businesses in the shellfish fishing industry.

A comparison of the Puerto Rico commercial ACLs for parrotfish, grouper and Snapper Units 1, 3 and 4 to baseline annual commercial landings suggests the commercial ACLs for these units will not require reductions in the lengths of the Federal commercial fishing seasons for these units in the Puerto Rico EEZ. Therefore, NMFS expects no adverse economic impact on small businesses in Puerto Rico that harvest these species.

The Puerto Rico commercial Snapper Unit 2 ACL is less than the baseline annual landings, which suggests there will be an overage of Snapper Unit 2

landings of 509 lb (231 kg) and a shortened Snapper Unit 2 fishing season in the Puerto Rico EEZ. NMFS expects that Puerto Rico's small businesses will mitigate for the potentially shortened Snapper Unit 2 fishing season in the Puerto Rico EEZ by moving into territorial waters to harvest Snapper Unit 2 species during the time the Federal season is closed, because approximately 95 percent of fishable area off Puerto Rico is in territorial waters. Hence, NMFS projects that Puerto Rico small businesses would lose up to 10 percent of baseline Snapper Unit 2 landings annually with a value up to $383. That loss represents less than a tenth of a percent of annual Snapper Unit 2 landings and on average, less than 1 lb (0.45 kg) of Snapper Unit 2 species and less than $1 lost per small business in Puerto Rico. Another mitigating behavior would be to target alternative species in the Puerto Rico EEZ that have open seasons.

The St. Croix ACLs for parrotfish, snapper and grouper are less than baseline average annual landings, which indicates fishing seasons for these units will be reduced. St. Croix small businesses will incur annual losses of landings of up to 34 percent of parrotfish landings, 27 percent of snapper landings, and 6 percent of grouper landings each year. These reductions represent losses of ex-vessel revenue up to approximately $0.83 million annually. The average St. Croix small business will lose up to $3,706 annually. When estimated losses of revenues from the 2011 ACLs Amendment are added, St. Croix small businesses lose collectively up to $1.19 million annually.

The St. Thomas/St. John ACLs for parrotfish, snapper and grouper are less than baseline average annual landings, which indicates fishing seasons for these units will be reduced. St. Thomas/St. John small businesses will lose up to 6 percent of parrotfish, 20 percent of snapper and 9 percent of grouper landings each year. These reductions represent losses of ex-vessel revenue up to approximately $0.27 million. The average St. Thomas/St. John small business will lose up to $1,690 annually. When estimated losses of revenues from the 2011 ACLs Amendment are added, St. Thomas/St. John small businesses lose collectively up to $0.51 million annually.

The percent of fishable area in the U.S. Virgin Islands' territorial waters is significantly less than the percent of fishable area in Puerto Rico's territorial waters. 38 percent of fishable area off the U.S. Virgin Islands lies within the U.S. Caribbean EEZ, and a larger share of landings in St. Croix and St. Thomas/St. John derive from fishing in the EEZ than in Puerto Rico. Therefore, it is more difficult for U.S. Virgin Islands fishermen to substitute fishing in territorial waters for fishing in Federal waters.

The final rule rejects alternatives that would have established ACLs and AMs that would have resulted in larger reductions in Federal fishing seasons and greater significant adverse economic impacts on small businesses, especially in the USVI.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 22, 2011.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.32, paragraph (b)(1)(v) is added to read as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(1) * * *

(v) No person may fish for or possess midnight parrotfish, blue parrotfish, or rainbow parrotfish in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released with a minimum of harm.

* * * * *

■ 3. In § 622.33, paragraph (d)(1) is revised to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

* * * * *

(d) * * *

(1) Pursuant to the procedures and criteria established in the FMP for Queen Conch Resources in Puerto Rico and the U.S. Virgin Islands, when the ACL, as specified in § 622.49(c)(2)(i)(A), is reached or projected to be reached, the Regional Administrator will close the Caribbean EEZ to the harvest and possession of queen conch, in the area east of 64°34′ W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands, by filing a notification of closure with the Office of the Federal Register.

* * * * *

■ 4. In § 622.39, paragraph (g) is added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(g) *Caribbean reef fish*—(1) *Applicability.* Paragraph (a)(1) of this section notwithstanding, the bag limits of paragraph (g)(2) of this section do not apply to a person who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(2) *Bag limits.* Groupers, snappers, and parrotfishes combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day; but not to exceed 2 parrotfish per person per day or 6 parrotfish per vessel per day.

■ 5. In § 622.48, paragraph (b) is revised and paragraph (m) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(b) *Caribbean reef fish.* Fishery management units (FMUs), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), overfishing limit (OFL), acceptable biological catch (ABC) control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

* * * * *

(m) *Caribbean queen conch.* Quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing year, MSY, OY, TAC, MFMT, MSST, OFL, ABC control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

■ 6. In § 622.49, the section heading is revised and paragraph (c) is added to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(c) *Caribbean island management areas.* If landings from a Caribbean island management area, as specified in Appendix E to part 622, except for landings of queen conch (see § 622.33(d)), are estimated by the SRD to have exceeded the applicable ACL, as specified in paragraph (c)(1) of this section for Puerto Rico management

area species or species groups, paragraph (c)(2) of this section for St. Croix management area species or species groups, or paragraph (c)(3) for St. Thomas/St. John management area species or species groups, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL. If NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMP. With the exceptions of Caribbean queen conch in Puerto Rico and St. Thomas/St. John management areas, goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for each management area. The ACLs specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section are given in round weight. (See § 622.32 for limitations on taking prohibited and limited harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands or by a person subject to the bag limits.)

(1) *Puerto Rico*—(i) *Commercial ACLs.* The following ACLs apply to commercial landings of Puerto Rico management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—52,737 lb (23,915 kg).

(C) *Snapper Unit 1*—284,685 lb (129,131 kg).

(D) *Snapper Unit 2*—145,916 lb (66,186 kg).

(E) *Snapper Unit 3*—345,775 lb (156,841 kg).

(F) *Snapper Unit 4*—373,295 lb (169,324 kg).

(G) *Groupers*—177,513 lb (80,519 kg).

(ii) *Recreational ACLs.* The following ACLs apply to recreational landings of Puerto Rico management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—15,263 lb (6,921 kg).

(C) *Snapper Unit 1*—95,526 lb (43,330 kg).

(D) *Snapper Unit 2*—34,810 lb (15,790 kg).

(E) *Snapper Unit 3*—83,158 lb (37,720 kg).

(F) *Snapper Unit 4*—28,509 lb (12,931 kg).

(G) *Groupers*—77,213 lb (35,023 kg).

(2) *St. Croix.* (i) *ACLs.* The following ACLs apply to landings of St. Croix management area species or species groups.

(A) *Queen conch*—50,000 lb (22,680 kg).

(B) *Parrotfishes*—240,000 lb (108,863 kg).

(C) *Snappers*—102,946 lb (46,696 kg).

(D) *Groupers*—30,435 lb (13,805 kg).

(ii) [Reserved]

(3) *St. Thomas/St. John.* (i) *ACLs.* The following ACLs apply to landings of St. Thomas/St. John management area species or species groups.

(A) *Queen conch*—0 lb (0 kg), for the EEZ only.

(B) *Parrotfishes*—42,500 lb (19,278 kg).

(C) *Snappers*—133,775 lb (60,679 kg).

(D) *Groupers*—51,849 lb (23,518 kg).

(ii) [Reserved]

■ 7. In table 2 of Appendix A to Part 622, Lutjanidae—Snappers, units 1 and 2 are revised; In Serranidae—Sea basses and groupers, units 3 and 4 are revised; and In Serranidae—Sea basses and groupers, unit 5 is added to read as follows:

Appendix A to Part 622—Species Tables

* * * * *

Table 2 of Appendix A to Part 622—Caribbean Reef Fish

Lutjanidae—Snappers

Unit 1

Black snapper, *Apsilus dentatus*
Blackfin snapper, *Lutjanus buccanella*
Silk snapper, *Lutjanus vivanus*
Vermilion snapper, *Rhomboplites aurorubens*
Wenchman, *Pristipomoides aquilonaris*

Unit 2

Cardinal, *Pristipomoides macrophthalmus*
Queen snapper, *Etelis oculatus*

* * * * *

Serranidae—Sea basses and Groupers

* * * * *

Unit 3

Coney, *Epinephelus fulvus*
Graysby, *Epinephelus cruentatus*
Red hind, *Epinephelus guttatus*
Rock hind, *Epinephelus adscensionis*

Unit 4

Black grouper, *Mycteroperca bonaci*
Red grouper, *Epinephelus morio*
Tiger grouper, *Mycteroperca tigris*
Yellowfin grouper, *Mycteroperca venenosa*

Unit 5

Misty grouper, *Epinephelus mystacinus*
Yellowedge grouper, *Epinephelus flavolimbatus*

* * * * *

■ 8. Appendix E to part 622 is added to read as follows:

Appendix E to Part 622—Caribbean Island/Island Group Management Areas

Table 1 of Appendix E to Part 622—*Coordinates of the Puerto Rico Management Area.*

The Puerto Rico management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″
B (intersects with the EEZ/Territorial boundary)	18°25′46.3015″	65°06′31.866″
From Point B, proceed southerly along the EEZ/Territorial boundary to Point C		
C (intersects with the EEZ/Territorial boundary)	18°13′59.0606″	65°05′33.058″
D	18°01′16.9636″	64°57′38.817″
E	17°30′00.000″	65°20′00.1716″
F	16°02′53.5812″	65°20′00.1716″
From Point F, proceed southwesterly, then northerly, then easterly, and finally southerly along the International/EEZ boundary to Point A		
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″

Table 2 of Appendix E to Part 622—*Coordinates of the St. Croix Management Area.*

The St. Croix management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
G	18°03′03″	64°38′03″
From Point G, proceed easterly, then southerly, then southwesterly along the EEZ/Territorial boundary to Point F		
F	16°02′53.5812″	65°20′00.1716″
E	17°30′00.000″	65°20′00.1716″
D	18°01′16.9636″	64°57′38.817″
G	18°03′03″	64°38′03″

Table 3 of Appendix E to Part 622—*Coordinates of the St. Thomas/St. John Management Area.*

The St. Thomas/St. John management area is bounded by rhumb lines connecting, in order, the following points.

Point	North lat.	West long.
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″
From Point A, proceed southeasterly along the EEZ/Territorial boundary to Point G		
G	18°03′03″	64°38′03″
D	18°01′16.9636″	64°57′38.817″
C (intersects with the EEZ/Territorial boundary)	18°13′59.0606″	65°05′33.058″
From Point C, proceed northerly along the EEZ/Territorial boundary to Point B		
B (intersects with the EEZ/Territorial boundary)	18°25′46.3015″	65°06′31.866″
A (intersects with the International/EEZ boundary)	19°37′29″	65°20′57″

[FR Doc. 2011–33512 Filed 12–29–11; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 76 Friday,

No. 251 December 30, 2011

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Amendments to the Reef Fish, Spiny Lobster, Queen Conch and Coral and Reef Associated Plants and Invertebrates Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 101217620–1788–03]

RIN 0648–BA62

Amendments to the Reef Fish, Spiny Lobster, Queen Conch and Coral and Reef Associated Plants and Invertebrates Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 6 to the Fishery Management Plan (FMP) for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP), Amendment 5 to the FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP), Amendment 3 to the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (Queen Conch FMP), and Amendment 3 to the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (Corals and Reef Associated Plants and Invertebrates FMP). In combination, the amendments represent the 2011 Caribbean ACL Amendment prepared by the Caribbean Fishery Management Council (Council). This final rule will: Establish annual catch limits (ACLs) and accountability measures (AMs) for reef fish, spiny lobster, and aquarium trade species which are not determined to be undergoing overfishing; allocate ACLs among island management areas; establish recreational bag limits for reef fish and spiny lobster; remove eight conch species from the Queen Conch FMP; and establish framework procedures for the Spiny Lobster and Corals and Reef Associated Plants and Invertebrates FMPs. The 2011 Caribbean ACL Amendment will also revise management reference points and status determination criteria for selected reef fish, spiny lobster, and aquarium trade species. The intended effect of the rule is to prevent overfishing of reef fish, spiny lobster, and aquarium trade species while maintaining catch levels consistent with achieving optimum yield (OY).

DATES: This final rule is effective January 30, 2012.

ADDRESSES: Electronic copies of the 2011 Caribbean ACL Amendment, which includes an environmental impact statement (EIS), an initial regulatory flexibility analysis (IRFA), a regulatory impact review, and a fishery impact statement may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/2011_ACL_Amendment_FEIS_102511.pdf.*

FOR FURTHER INFORMATION CONTACT: Britni Tokotch, Southeast Regional Office, NMFS, telephone: (727) 824–5305, or email: *Britni.Tokotch@noaa.gov.*

SUPPLEMENTARY INFORMATION: In the exclusive economic zone (EEZ) of the U.S. Caribbean, the reef fish fishery is managed under the Reef Fish FMP, spiny lobster is managed under the Spiny Lobster FMP, conch is managed under the Queen Conch FMP, and aquarium trade species fisheries are managed under the Reef Fish FMP and the Coral and Reef Associated Plants and Invertebrates FMP. These FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

NMFS' 2011 Report on the Status of U.S. Fisheries classifies Caribbean spiny lobster, angelfishes, boxfishes, goatfishes, grunts, wrasses, jacks, scups and porgies, squirrelfishes, surgeonfishes, triggerfishes and filefishes, tilefishes, and aquarium trade species as unknown with respect to their status regarding overfishing. The eight species of conch to be removed from the Queen Conch FMP are currently in the FMP as data collection only species and were not included in this report.

On September 26, 2011, NMFS published a notice of availability for the 2011 Caribbean ACL Amendment and requested public comment (76 FR 59377). On November 7, 2011, NMFS published a proposed rule for the 2011 Caribbean ACL Amendment and requested public comment (76 FR 68711). The proposed rule and the 2011 Caribbean ACL Amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule are provided below.

This final rule revises three management reference points within the FMPs. The management reference points for maximum sustainable yield (MSY), overfishing threshold, and OY, are revised as methods to measure the status and performance of the fisheries relative to established goals, and are also used to establish ACLs. Proxies have been established for these reference points because available data in the U.S. Caribbean are not sufficient to support direct estimation of these parameters.

This final rule removes eight conch species from within the Queen Conch FMP that were in the FMP as data collection only species and were not included in the NMFS 2011 Report on the Status of U.S. Fisheries. These eight species are not generally targeted for harvest and the Council determined that any landings are minimal. After implementation of this final rule, only the queen conch will be retained in the FMP.

This final rule also revises the utilization of island-specific management areas to enable application of AMs in response to harvesting activities on a single island (Puerto Rico, St. Croix) or island group (St. Thomas/St. John) without necessarily affecting fishing activities on the other islands or island groups. This final rule utilizes geographic boundaries among islands/island groups based upon an equidistant approach that uses a mid-point to divide the exclusive economic zone (EEZ) among islands. The three island management areas include: Puerto Rico, St. Croix, and St. Thomas/St. John.

This final rule establishes ACLs and AMs for angelfish, boxfish, goatfishes, grunts, wrasses, jacks, scups and porgies, squirrelfishes, surgeonfish, triggerfish and filefish, tilefish, spiny lobster, and aquarium trade species units or complexes in the Reef Fish, Spiny Lobster, and Coral and Reef Associated Plants and Invertebrates FMPs. The harvest of Caribbean prohibited corals that are contained within the FMP for Coral and Reef Associated Plant and Invertebrates, and that are not described as aquarium trade species, is prohibited by Federal regulations. Therefore, a functional ACL of zero is considered for these prohibited species. Additionally, the harvest prohibition serves as a functional AM to manage the ACL.

Except for tilefish and aquarium trade species, each ACL is sub-divided among the three islands/island groups. The ACL for tilefish and aquarium trade species is applicable for the entire Caribbean EEZ. Separate commercial and recreational sector ACLs are established for the Puerto Rico management area where landings data are available for both sectors. For the other island management areas (St. Croix and St. Thomas/St. John), only commercial data are available; therefore,

ACLs are established for the St. Croix and St. Thomas/St. John management areas based on commercial landings data only.

The AMs are designed to prevent fishermen from exceeding the ACLs. Under this final rule, AMs are triggered if an ACL has been exceeded, the AM reduces the length of the fishing season for the affected species the year following the year it is determined that the ACL was exceeded by the amount needed to prevent such an overage from occurring again. The AM is triggered unless NMFS' Southeast Fisheries Science Center (SEFSC), in consultation with the Council and its Scientific and Statistical Committee (SSC), determines the overage occurred because data collection and monitoring improved rather than because catches actually increased.

Additionally, this rule establishes an aggregate bag limit for the recreational harvest of angelfishes, boxfishes, goatfishes, grunts, wrasses, jacks, scups and porgies, squirrelfishes, surgeonfishes, triggerfishes and filefishes, and tilefishes. The daily recreational bag limit for the described reef fish species will be five fish per person per day, with no more than one surgeonfish per person per day allowed within the aggregate. This final rule also establishes a vessel limit of 15 fish per vessel per day, including no more than 4 surgeonfish per vessel per day. The final rule also sets a bag limit of 3 spiny lobster per person per day with a vessel limit of 10 spiny lobster per vessel per day.

To facilitate timely adjustments to harvest parameters and other management measures if needed, this final rule establishes framework procedures for the Spiny Lobster FMP and revises the framework procedures for the Coral and Reef Associated Plants and Invertebrates FMP. These measures give the Council and NMFS greater flexibility to more promptly alter harvest parameters and other management measures as new scientific information becomes available.

In 1994, the original Corals and Reef Associated Plants and Invertebrates FMP set the OY for sea grasses, stony coral, octocorals, and live-rock at zero. Corals that are contained within the Corals and Reef Associated Plants and Invertebrates FMP and that are not described as aquarium trade species (stony corals, octocorals and live rock), are Caribbean prohibited corals. Federal regulations state that Caribbean prohibited corals may not be fished for or possessed in or from the Caribbean EEZ. Therefore, a functional ACL of zero is considered for these prohibited species. Additionally, the harvest prohibition serves as a functional AM to manage the ACL.

Comments and Responses

The following is a summary of the comments NMFS received on the 2011 Caribbean ACL Amendment and the proposed rule, and NMFS' respective responses. Five submissions were received on the amendment and the proposed rule, including comments from an individual, a Federal agency, an environmental organization, and a fishing association. Some comments were generally supportive of the actions included in the 2011 Caribbean ACL Amendment. A Federal agency had no specific comments and a non-governmental organization and an individual were supportive of the amendment and recommended approval. Two comments were not supportive of implementing ACLs in the U.S. Caribbean. Comments that pertain to specific actions addressed in the 2011 Caribbean ACL Amendment or the proposed rule are summarized and responded to below.

Comment 1: Since spiny lobster landings in St. Thomas/St. John have been increasing, the use of average landings to determine the overfishing limit (OFL) in this fishery results in a loss of 20,000 lb whole weight (9,072 kg) of potential harvest before any ACL reduction is considered. Additionally, imposing an average-based ACL on a fishery that has been undergoing four decades of consistent growth will create a situation of constant overfishing when none exists.

Response: Based on the comment, it is not clear what year sequence the indicated 20,000 lb (9,072 kg) reduction is based on. However, the average-based OFL selected by the Council was determined based on the selected year sequence (2000–2008) as discussed in the 2011 Caribbean ACL Amendment. The reference points determined by the selected year sequence (2000–2008) would not result in a reduction in landings from the average. The Council chose to establish an ACL for spiny lobster on St. Thomas/St. John using the same criteria that was used for the other species in the Reef Fish FMP that are not designated as undergoing overfishing, basing the spiny lobster ACL on average catch derived from landings data provided by fishers and reduced by the Council as necessary to account for risk as determined by the Council's SSC.

Data from St. Thomas/St. John indicate that spiny lobster landings increased from the year 2000 through 2003, varied only slightly during 2004 through 2006, then decreased in 2007 and 2008 relative to the preceding years. These data suggest that spiny lobster landings from St. Thomas/St. John varied, to include a recent downturn, rather than steadily increasing. Landings data from 2008, the year of most recent available data for St. Thomas/St. John, is actually less than the average catch during the years of 2000 through 2008, the year series selected by the Council's SSC. 2008 landings for spiny lobster for St. Thomas/St. John were in excess of the ACL implemented through this final rule by approximately 5,000 lb (2,268 kg).

Comment 2: The ACLs proposed are inconsistent with National Standard 1 (NS 1), which requires that conservation and management measures shall prevent overfishing while achieving the OY from each fishery. Setting ACLs creates artificial limitations to the fishermen of St. Thomas and management to an artificial buffer is not necessary because their fishery has been stable throughout the past four decades.

Response: The Magnuson-Stevens Act requires that for fisheries determined by the Secretary to not be subject to overfishing, ACLs must be established at a level that prevents overfishing and helps to achieve OY. Available data in the U.S. Caribbean are not sufficient to support direct estimation of MSY and other key parameters. In such cases, the NS 1 guidelines (50 CFR 600.310) direct regional fishery management councils to estimate them using reasonable proxies, such as long-term average catch, and to consider scientific and management uncertainty in determining the appropriateness of alternative proxies. Reductions to the average catches used to determine the ACL are necessary, especially with data-poor stocks. The NS 1 guidelines suggest that ACLs and OY should generally be reduced from the overfishing threshold and MSY, respectively, to effectively prevent overfishing. This reduction (buffer) minimizes the likelihood that expected annual variations in landings around the ACL (which is based upon average annual catch and therefore by definition is expected to be exceeded roughly half the time) will not exceed the OFL. The ACLs and OY determined in the 2011 Caribbean ACL Amendment have been reduced from the overfishing threshold and MSY, respectively, and thus are consistent with the NS 1 guidelines.

Comment 3: The establishment of ACLs is not consistent with National Standard 2 (NS 2), which requires that conservation and management measures be based on the best scientific information available. ACLs were not

based on the best scientific information because they were based on unreliable reported landings data (*e.g.* not species-specific), and that data should be obtained from port sampling and this method was not used to formulate the ACLs.

Response: NMFS and the Council have considered NS 2 in the development of ACLs. Although the reported landings data has areas in need of improvement, this is the best scientific information available. Those landings data are provided by the fishers on an island-specific basis. The SEFSC, along with participating state, Federal, private, and fishing interests conducted analyses of port sampling data and determined they were inadequate with respect to the requirements for randomness and temporal consistency. Therefore, reported landings data is the best scientific information available, as required by NS 2.

Comment 4: The establishment of management measures in the 2011 Caribbean ACL Amendment is not consistent with National Standard 6, which requires that conservation and management measures take into account, and allow for, variations among fisheries, fishery resources, and catches. The variability in the fishery of St. Thomas/St. John is low and almost entirely because of normal year-to-year fluctuations in environmental variables, and that variability should be considered in the establishment of management measures for that island group.

Response: The landings variability for all island groups was analyzed with respect to NS 6. The data used for all islands for establishing management measures has the same limitations and were therefore treated in the same manner to account for both expected and unpredictable variations. This is done by applying a buffer to reduce OY and ACL from the OFL. Management reference points were set for the U.S. Caribbean, then allocated among the three island groups (St. Thomas/St. John, St. Croix, Puerto Rico) according to the proportional contribution by each island group to the total average landings used to set the MSY proxy and OFL.

Comment 5: The designation of Puerto Rico and the U.S. Virgin Islands (USVI) as fishing communities under the terms of National Standard 8 (NS 8) is questionable. NS 8 requires that conservation and management measures take into account the importance of fishery resources to fishing communities by using economic and social data to provide for the sustained participation of the communities and minimize adverse economic impacts to the community to the extent practicable. The passage of recent ACLs in 2010 and 2011 should have been accompanied by in-depth analysis of the impacts of those actions upon the USVI fishing communities, and no ACLs should be approved until the analyses are completed and implications are considered.

Response: NMFS and the Council recognize the designation of St. Thomas/St. John, St. Croix, and coastal areas of Puerto Rico as fishing communities. However, for Puerto Rico, the fishing community designation does not apply to the entire island, but instead to the northern coastal, southern coastal, eastern coastal, and western coastal municipalities combined. The impacts of the provisions of 2011 Caribbean ACL Amendment are included within the Environmental Consequences—Direct and Indirect Effects on the Economic and Social Environments analysis (section 6) and in the Regulatory Impact Review (section 7) of the Final Environmental Impact Statement. Additionally, guidance on NS 8 requires that consideration of impacts to designated fishing communities be within the context of the conservation requirements of the Magnuson-Stevens Act. Those conservation requirements must be maintained during any considerations regarding the importance of fishery resources to the affected fishing communities. Discussion of all of the alternatives to the actions implemented by this final rule that were considered by the Council and which may have resulted in reduced social and economic benefits to fishing communities was provided in the proposed rule and is not repeated here.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within the amendment and is consistent with the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866. However, ACLs are a controversial issue in the U.S. Caribbean, which is a region with populations characterized by large percents of racial/ethnic minorities, high poverty rates, and low median household incomes. Moreover, commercial fishermen of St. Croix and St. Thomas/St. John will experience a substantially disproportionate adverse economic impact relative to their counterparts in Puerto Rico.

NMFS prepared a final regulatory flexibility analysis (FRFA) that includes a statement of need for, and objectives of, the final rule; a summary and assessment of significant issues raised by public comments; a description and estimate of the number of small entities; a description of the compliance requirements, including estimates of the adverse economic impacts; and a description of steps taken to minimize significant adverse economic impact on small entities. The description of the action, why it is being considered, and the objectives of this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the FRFA follows.

This final rule, which consists of several actions, will establish recreational bag limits for spiny lobster and specified reef fish species; specify ACLs and AMs for Caribbean spiny lobster, reef fish, and aquarium trade species not determined to be undergoing overfishing; and establish framework measures to facilitate regulatory modifications. This final rule will not alter existing reporting or record-keeping requirements.

The Magnuson-Stevens Act provides the statutory basis for the rule.

This final rule is expected to directly affect businesses that harvest spiny lobster, reef fish, and aquarium trade species from Federal waters off Puerto Rico and the USVI. These businesses are in the finfish fishing (NAICS 114111), shellfish fishing (NAICS 114112) and charter fishing (NAICS 487210) industries. A business is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts or number of employees not in excess of the Small Business Administration's (SBA) size standards. The finfish and shellfish fishing industries have an SBA size standard of $4.0 million in annual receipts, and the charter fishing industry's size standard is $7.0 million in annual receipts. In its FRFA, based on available revenue information, NMFS has determined that all commercial (finfish and shellfish) and charter fishing businesses that operate in the U.S. Caribbean have annual receipts less than these size standards and are small businesses.

In 2008, there were from 868 to 874 active commercial fishermen in Puerto Rico; 74 percent of these fishermen were captains and the remaining 26 percent

were crew members. NMFS assumes each captain represents a small business in the finfish fishing and shellfish fishing industries and each member of the crew is an employee of one of those businesses. Therefore, NMFS concludes that there are 642 to 644 small businesses in the finfish fishing and shellfish fishing industries in Puerto Rico and potentially all of these businesses will be directly affected by the rule. In 2008, there were 223 licensed commercial fishermen in St. Croix and 160 in St. Thomas/St. John. There is a moratorium on the number of USVI commercial fishing licenses, so NMFS assumes the 223 commercial fishermen in St. Croix and 160 commercial fishermen in St. Thomas/St. John represent 383 small businesses in the finfish fishing and shellfish fishing industries in the USVI that will be directly affected by the final rule.

There are an estimated 9 small businesses in the charter fishing industry in Puerto Rico, 12 such businesses in St. Thomas/St. John and 1 in St. Croix. This final rule will apply to all of these small businesses.

The final rule will apply to all small businesses in Puerto Rico, St. Croix and St. Thomas/St. John within the finfish fishing, shellfish fishing, and charter fishing industries. Therefore, the final rule applies to a substantial number of small entities in the U.S. Caribbean in these industries.

Charter fishing operations in Puerto Rico and the USVI target pelagic species and tend not to target spiny lobster or reef fish species in Federal waters. Consequently, it is expected that small businesses in the charter fishing industry in Puerto Rico, St. Croix or St. Thomas/St. John will experience little to no adverse economic impact because of the final rule.

This final rule is expected to result in one shortened Federal fishing season in the Puerto Rico EEZ, eight shortened fishing seasons in the St. Croix EEZ, and nine shortened fishing seasons in the St. Thomas/St. John EEZ. This final rule is expected to have a substantially greater adverse economic impact on small businesses in the finfish fishing and shellfish fishing industries in St. Croix and St. Thomas/St. John than in Puerto Rico.

A comparison of the Puerto Rico commercial ACLs for aquarium trade species, angelfish, boxfish, goatfish, grunts, jacks, scups and porgies, spiny lobster, surgeonfish, tilefish, squirrelfish and triggerfish/filefish to average annual commercial landings from 2006 to 2007 suggests the commercial ACLs for these complexes will not require reductions in the lengths of the Federal commercial fishing seasons for these complexes in the Puerto Rico EEZ. Therefore, there is expected to be no adverse economic impact on small businesses in Puerto Rico that harvest these species.

The Puerto Rico commercial hogfish/wrasses ACL is less than the average of annual landings of hogfish/wrasses from 2006 to 2009, which suggests there will be an overage of hogfish/wrasses landings in 2011 of 1,076 lb (488 kg), assuming the ACL is implemented by early 2012, that would require a shortened Federal fishing season in the Puerto Rico EEZ in 2012 by approximately 7 days and similarly thereafter. Puerto Rico's commercial fishermen could mitigate for the potentially shortened hogfish/wrasses fishing season in the Puerto Rico EEZ by targeting other species during the time that the Federal hogfish/wrasses fishing season is closed or they could move into territorial waters to harvest hogfish/wrasses species during the time the Federal season is closed. Approximately 95 percent of fishable area off Puerto Rico is in territorial waters. It is expected that small businesses would mitigate for the potential loss of 1,076 lb (488 kg) of hogfish/wrasses by relocating into territorial waters during the approximately 7 days the hogfish/wrasses fishing season is closed in the Puerto Rico EEZ with little to no displacement costs. However, if small businesses are unable to mitigate, although unlikely, they would incur an annual loss of hogfish/wrasses landings of 1,076 lb (488 kg) with a value of $3,228. The average loss per small business would be less than $6 per year, assuming all land these species.

The St. Croix ACLs for boxfish, grunts, hogfish/wrasses, scups and porgies, spiny lobster, squirrelfish, surgeonfish and triggerfish are less than baseline average annual landings, which indicates fishing seasons for these units will be reduced. Assuming ACLs are implemented early in 2012, St. Croix commercial fisherman are expected to lose 21 days of boxfish, 68 days of grunts, 253 days of hogfish/wrasses, 54 days of scups and porgies, 112 days of spiny lobster, 242 days of squirrelfish, 101 days of surgeonfish, and 50 days of triggerfish fishing in the EEZ in 2012, and thereafter. St. Croix small businesses will incur annual losses of landings of as much as 24.3 percent of their average annual landings of all species that are the subject of this action, which represent losses of ex-vessel revenues up to $0.46 million annually. When estimated losses of revenues from Amendment 2 to the Queen Conch FMP and Amendment 5 to the Reef Fish FMP (Amendments 2 and 5, proposed rule published October 27, 2011, 76 FR 66675), St. Croix small businesses lose collectively up to $1.19 million annually.

The St. Thomas/St. John ACLs for boxfish, grunts, hogfish/wrasses, scups and porgies, spiny lobster, surgeonfish triggerfish, angelfish and jacks are less than baseline average annual landings, which indicates fishing seasons for these units will be reduced. Assuming the ACLs are implemented in 2012 and there will be shortened commercial seasons beginning in 2012, St. Thomas/St. John commercial fisherman will lose 90.8 days of boxfish, 20 days of grunts, 193 days of hogfish/wrasses, 25 days of scups and porgies, 52 days of spiny lobster, 84 days of surgeonfish, and 5.5 days of triggerfish, 93.5 days of angelfish, and 56 days of jacks fishing in the EEZ in 2012, and thereafter.

St. Thomas/St. John small businesses will incur annual losses of landings of up to 12.6 percent of their average annual landings of all species that are the subject of this action, which represent losses of ex-vessel revenues up to $0.24 million annually. When estimated losses of revenues from Amendments 2 and 5 are added, St. Thomas/St. John small businesses lose collectively up to $0.51 million annually.

The percent of fishable area in the USVI's territorial waters is significantly less than the percent of fishable area in Puerto Rico's territorial waters. Thirty-eight percent of fishable area off the USVI lies within the U.S. Caribbean EEZ, and a larger share of landings in St. Croix and St. Thomas/St. John derive from fishing in the EEZ than in Puerto Rico. Therefore, it is more difficult for USVI fishermen to substitute fishing in territorial waters for fishing in Federal waters.

Discussion of all of the alternatives considered for this rule is provided in the IRFA and is not repeated here. Although this rule establishes ACLs for the respective species, adverse economic impacts to small entities are expected to only occur as the AMs are applied, *i.e.,* as corrective action is taken in the event of a harvest overage. Based on the ACLs and the likelihood that an AM will be triggered, only the implementation of AMs for some species in the USVI, as described above are expected to result in potentially significant reduction in revenues to small entities. To minimize any adverse economic impacts, NMFS evaluated three harvest evaluation-period scenarios (evaluation based on a single year, a moving 2-year average, and a moving 3-year average) and determined that the economic impact would be

expected to increase as the period of evaluation decreases. This rule establishes a moving 3-year average. As a result, among the alternatives considered, this rule will establish AMs which are expected to achieve the necessary biological objectives at the smallest economic cost to small entities.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 23, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622, is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.39, paragraph (g)(2) is revised and paragraph (h) is added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(g) * * *

(2) *Bag limits.* (i) Groupers, snappers, and parrotfishes combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day; but not to exceed 2 parrotfish per person per day or 6 parrotfish per vessel per day.

(ii) Other reef fish species combined—5 per person per day or, if 3 or more persons are aboard, 15 per vessel per day, but not to exceed 1 surgeonfish per person per day or 4 surgeonfish per vessel per day.

(h) *Caribbean spiny lobster*—(1) *Applicability.* Paragraph (a)(1) of this section notwithstanding, the bag limit of paragraph (h)(2) of this section does not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands.

(2) *Bag limit.* The bag limit for spiny lobster in or from the Caribbean EEZ is 3 per person per day, not to exceed 10 per vessel per day, whichever is less.

■ 3. In § 622.48, paragraphs (n) and (o) are added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(n) *Caribbean spiny lobster.* Fishery management unit (FMU), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), overfishing limit (OFL), acceptable biological catch (ABC) control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

(o) *Caribbean corals and reef associated plants and invertebrates.* Fishery management units (FMUs), quotas, trip limits, bag limits, size limits, closed seasons or areas, gear restrictions, fishing years, MSY, OY, TAC, MFMT, MSST, OFL, ABC control rules, ACLs, AMs, ACTs, and actions to minimize the interaction of fishing gear with endangered species or marine mammals.

■ 4. In § 622.49, the introductory text of paragraph (c) is revised and paragraphs (c)(1)(i)(H) through (R), (c)(1)(ii)(H) through (Q), (c)(2)(i)(E) through (O), (c)(3)(i)(E) through (O), and (c)(4) are added to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(c) *Caribbean island management areas/Caribbean EEZ.* If landings from a Caribbean island management area, as specified in Appendix E to part 622, except for landings of queen conch (see § 622.33(d)), or landings from the Caribbean EEZ for tilefish and aquarium trade species, are estimated by the SRD to have exceeded the applicable ACL, as specified in paragraph (c)(1) for Puerto Rico management area species or species groups, paragraph (c)(2) for St. Croix management area species or species groups, paragraph (c)(3) for St. Thomas/St. John management area species or species groups, or paragraph (c)(4) for the Caribbean EEZ, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to reduce the length of the fishing season for the applicable species or species groups that year by the amount necessary to ensure landings do not exceed the applicable ACL. If NMFS determines the ACL for a particular species or species group was exceeded because of enhanced data collection and monitoring efforts instead of an increase in total catch of the species or species group, NMFS will not reduce the length of the fishing season for the applicable species or species group the following fishing year. Landings will be evaluated relative to the applicable ACL based on a moving multi-year average of landings, as described in the FMP. With the exceptions of Caribbean queen conch in Puerto Rico and St. Thomas/St. John management areas, goliath grouper, Nassau grouper, midnight parrotfish, blue parrotfish, and rainbow parrotfish, ACLs are based on the combined Caribbean EEZ and territorial landings for each management area. The ACLs specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section are given in round weight. (See § 622.32 for limitations on taking prohibited and limited harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a valid commercial fishing license issued by Puerto Rico or the U.S. Virgin Islands or by a person subject to the bag limits.)

(1) * * *

(i) * * *

(H) *Angelfish*—8,984 lb (4,075 kg).

(I) *Boxfish*—86,115 lb (39,061 kg).

(J) *Goatfishes*—17,565 lb (7,967 kg).

(K) *Grunts*—182,396 lb (82,733 kg).

(L) *Wrasses*—54,147 lb (24,561 kg).

(M) *Jacks*—86,059 lb (39,036 kg).

(N) *Scups and porgies, combined*—24,739 lb (11,221 kg).

(O) *Squirrelfish*—16,663 lb (7,558 kg).

(P) *Surgeonfish*—7,179 lb (3,256 kg).

(Q) *Triggerfish and filefish, combined*—58,475 lb (26,524 kg).

(R) *Spiny lobster*—327,920 lb (148,742 kg).

(ii) * * *

(H) *Angelfish*—4,492 lb (2,038 kg).

(I) *Boxfish*—4,616 lb (2,094 kg).

(J) *Goatfishes*—362 lb (164 kg).

(K) *Grunts*—5,028 lb (2,281 kg).

(L) *Wrasses*—5,050 lb (2,291 kg).

(M) *Jacks*—51,001 lb (23,134 kg).

(N) *Scups and porgies, combined*—2,577 lb (1,169 kg).

(O) *Squirrelfish*—3,891 lb (1,765 kg).

(P) *Surgeonfish*—3,590 lb (1,628 kg).

(Q) *Triggerfish and filefish, combined*—21,929 lb (9,947 kg).

(2) * * *

(i) * * *

(E) *Angelfish*—305 lb (138 kg).

(F) *Boxfish*—8,433 lb (3,825 kg).

(G) *Goatfishes*—3,766 lb (1,708 kg).

(H) *Grunts*—36,881 lb (16,729 kg).

(I) *Wrasses*—7 lb (3 kg).

(J) *Jacks*—15,489 lb (7,076 kg).

(K) *Scups and porgies, combined*—4,638 lb (2,104 kg).

(L) *Squirrelfish*—121 lb (55 kg).

(M) *Surgeonfish*—33,603 lb (15,242 kg).

(N) *Triggerfish and filefish, combined*—24,980 lb (11,331 kg).

(O) *Spiny lobster*—107,307 lb (48,674 kg).

(3) * * *

(i) * * *

(E) *Angelfish*—7,897 lb (3,582 kg).

(F) *Boxfish*—27,880 lb (12,646 kg).

(G) *Goatfishes*—320 lb (145 kg).

(H) *Grunts*—37,617 lb (17,063 kg).

(I) *Wrasses*—585 lb (265 kg).

(J) *Jacks*—52,907 lb (23,998 kg).

(K) *Scups and porgies, combined*—21,819 lb (9,897 kg).

(L) *Squirrelfish*—4,241 lb (1,924 kg).

(M) *Surgeonfish*—29,249 lb (13,267 kg).

(N) *Triggerfish and filefish, combined*—74,447 lb (33,769 kg).

(O) *Spiny lobster*—104,199 lb (47,264 kg).

(4) *Caribbean EEZ.* (i) *ACLs.* The following ACLs apply to landings of species or species groups throughout the Caribbean EEZ.

(A) *Tilefish*—14,642 lb (6,641 kg).

(B) *Aquarium trade species*—8,155 lb (3,699 kg).

(ii) [Reserved]

■ 5. Table 5 of Appendix A to part 622 is revised to read as follows:

Appendix A to Part 622—Species Tables

* * * * *

Table 5 of Appendix A to Part 622—Caribbean Conch Resources

Queen conch, *Strombus gigas.*

[FR Doc. 2011–33515 Filed 12–29–11; 8:45 am]

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H.R. 2055/P.L. 112–74
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H.R. 2867/P.L. 112–75
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H.R. 3765/P.L. 112–78
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S. 278/P.L. 112–79
Sugar Loaf Fire Protection District Land Exchange Act of 2011 (Dec. 23, 2011; 125 Stat. 1294)

S. 384/P.L. 112–80
To amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research. (Dec. 23, 2011; 125 Stat. 1297)

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