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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2007–0117]

RIN 0579–AC90

Importation of Wooden Handicrafts From China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to provide for the importation of wooden handicrafts from China under certain conditions. From 2002 to 2005, the Animal and Plant Health Inspection Service (APHIS) issued more than 300 emergency action notices and conducted national recalls to remove infested Chinese-origin wooden handicrafts from the U.S. marketplace. In 2005, APHIS suspended the importation of certain wooden handicrafts until we could more fully analyze the pest risks associated with those articles. Based on evidence from a pest risk analysis, APHIS has determined that these articles can be safely imported from China, provided certain conditions are met. This action allows for trade in Chinese wooden handicrafts to resume while continuing to protect the United States against the introduction of plant pests.

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

FOR FURTHER INFORMATION CONTACT: Mr. John Tyrone Jones, Trade Director (Forestry Products), Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8860.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart-Logs, Lumber, and Other Unmanufactured Wood Articles'' (7 CFR 319.40–1 through 319.40–11, referred to below as the regulations) govern the importation of various logs, lumber, and other unmanufactured wood products into the United States. Under § 319.40–9 of the regulations, all regulated articles must be inspected at the port of first arrival. If a regulated article shows any signs of pest infestation, the inspector may require treatment, if an approved treatment exists, or refuse entry of the consignment.

Prior to 2005, wood decorative items and craft products (wooden handicrafts) from China had been entering the United States in increasing quantities. However, between 2002 and 2005, the Animal and Plant Health Inspection Service (APHIS) issued more than 300 emergency action notices for wooden handicrafts from China. Moreover, in 2004, the United States Department of Agriculture (USDA) intercepted live wood-boring beetles, *Callidiellum villosulum* (Coleoptera: Cerambycidae), on articles manufactured from wood components and imported from China. Subsequent to these interceptions, shipments of the articles were recalled from retail stores. Based on these pest interceptions, in 2005, we suspended the importation of most wooden handicrafts (i.e., all handicrafts made from wooden logs, limbs, branches, or twigs greater than 1 centimeter in diameter) from China until a more thorough evaluation of the pest risks associated with those articles could be conducted.

APHIS prepared a pest risk assessment, titled ''Pests and mitigations for manufactured wood décor and craft products from China for importation into the United States,'' to evaluate the risks associated with the importation of such wooden handicrafts into the United States from China. We also prepared a risk management document, titled ''Pests and mitigations for manufactured wood décor and craft products from China for importation into the United States,'' to determine mitigations necessary to prevent pest entry, introduction, or establishment associated with imported wooden handicrafts from China. Based on the conclusions in the pest risk assessment and the accompanying risk management document, we determined that wooden handicrafts could be imported from China provided they met certain requirements for treatment, issuance of a phytosanitary certificate, inspection, and box identification.

Accordingly, on April 9, 2009, we published in the **Federal Register** (74 FR 16146–16151, Docket No. APHIS–2007–0117) a proposal [1] to authorize the importation of wooden handicrafts from China under those conditions. We solicited comments concerning the proposed rule for 60 days ending June 8, 2009. We received eight comments by that date. They were from the national plant protection organization (NPPO) of China, a State department of agriculture, manufacturers of Chinese wooden handicrafts, a public advocacy organization, and private citizens.

One of the commenters urged us to finalize the proposed rule without change. The remaining commenters provided comments on the rule in general, and requested modifications to certain of its provisions.

Based on one of the comments received on the proposed rule, on September 23, 2010, we published in the **Federal Register** a supplemental proposal (75 FR 57864–57866, Docket No. APHIS–2007–0117) to modify the heat treatment requirements of the proposed rule. We solicited comments concerning the supplemental proposal for 60 days ending November 22, 2010. We received six comments by that date. They were from State Departments of Agriculture, a manufacturer of wooden picture frames, and two private citizens.

The comments on both the proposed rule and the supplemental proposal are discussed below by topic.

General Comments on the Proposed Rule

One commenter stated that the measures that we proposed for Chinese wooden handicrafts were not the least restrictive necessary to mitigate the plant pest risk associated with such articles. As a result, the commenter stated that the proposed rule violated World Trade Organization principles.

The provisions of the proposed rule reflect the substantive plant pest risk that wooden handicrafts from China

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2007-0117.*

have historically presented, our analysis of the quarantine pests currently known to exist in China, and our determination regarding the likelihood that the importation of wooden handicrafts from China will present a pathway for introducing or disseminating these pests within the United States. Accordingly, the provisions represent the least restrictive measures that we considered possible at the time that we initiated rulemaking for the proposed rule.

That said, in response to comments received on the proposed rule, we issued the supplemental proposal mentioned above to propose to modify the heat treatment requirements of the proposed rule. We have also determined that one other provision of the proposed rule, which would have required the handicrafts to be accompanied by a phytosanitary certificate issued by the NPPO of China and containing an additional declaration stating that the handicrafts were treated in accordance with the regulations and found free from quarantine pests, is unnecessary. We discuss this change in greater detail later in this document, in the section titled ''Comments Regarding Phytosanitary Certificates.''

One commenter stated that it appeared that the greatest remedial measure APHIS would take in response to violations of the proposed rule would be to prohibit the importation of wooden handicrafts from certain manufacturers into the United States. The commenter expressed concern that this would not be a sufficient incentive for manufacturers to adhere to the provisions of the proposed rule, given that these manufacturers currently have little to no access to the U.S. market.

Under the regulations, all wooden handicrafts from China would have to be accompanied by a permit stating the intended treatment for the articles, as well as an importer document or certificate stating that the intended treatment has in fact been applied to the articles. In response to inaccuracies on a permit, importer document, or certificate, APHIS may determine not to accept any further certificates from China, or may not allow the importation of any further wooden handicrafts or regulated articles from China until corrective action acceptable to APHIS establishes that certificates issued in China are accurate. We consider the possibility of such general prohibitions a sufficient incentive for Chinese manufacturers to adhere to the provisions of this rule.

We discuss these possible remedial measures at greater length later in this document, in the section titled ''Comments Regarding Phytosanitary Certificates.''

One commenter suggested that the scope of the final rule be expanded to include wooden handicrafts from other countries. The commenter asserted that many countries have plant pests that are identical or similar to those found in China.

To date, only wooden handicrafts from China have been determined to be infested with quarantine pests as a result of an inspection at a port of first arrival. If, in the future, an inspector discovers quarantine pests in or on handicrafts from another country, he or she will prohibit their entry into the United States subject to remedial measures. As a result of such a detection, APHIS may prohibit further importation of all such handicrafts from that country, pending completion of a pest risk analysis. If this analysis concludes that subjecting the handicrafts to the same mitigation measures that we are requiring for wooden handicrafts from China will adequately mitigate the risk associated with their importation, we will initiate rulemaking to amend the regulations accordingly.

One commenter stated that we should take into consideration the potential environmental impact associated with the importation of wooden handicrafts from China.

We evaluated these possible impacts in the environmental assessment that accompanied the proposed rule. Based on the comments we received, we are issuing a finding of no significant impact along with this final rule.

Finally, the NPPO of China requested that we delay the effective date of this rule for one year in order to give the NPPO sufficient time to establish internal policies and procedures to facilitate manufacturers' compliance with the rule's provisions. The NPPO also requested that, during this delay, we authorize the importation of wooden handicrafts from China under the conditions for importation that were in effect prior to 2005.

Because of the significant plant pest risk associated with the importation of wooden handicrafts from China, as evidenced by the more than 300 emergency action notices we issued for such handicrafts between 2002 and 2005, we cannot authorize the importation of wooden handicrafts from China under conditions other than those of this final rule, and, accordingly, cannot grant such a delayed implementation date.

Comments Regarding Proposed Definitions

Section 319.40–1 contains definitions for certain terms used in the regulations pertaining to logs, lumber, and other wood articles. We proposed to add a new definition to this section for *wooden handicraft.* We proposed to define a wooden handicraft as a commodity class of regulated articles derived or made from natural components of wood, twigs, and vines, and including bamboo poles and garden stakes. The proposed definition provided that handicrafts included the following products where wood is present: Carvings, baskets, boxes, bird houses, garden and lawn/patio furniture (rustic), potpourri, artificial trees (typically artificial ficus trees), trellis towers, garden fencing and edging, and other items composed of wood.

We also proposed to revise the definition of *regulated article* so that articles that contain parts that are either unprocessed or have received only primary processing and are not feasibly separable from the other parts of the articles would be considered regulated articles for the purposes of the regulations. We stated that wooden handicrafts, as we proposed to define them, would always contain such unprocessed or partially processed parts.

It was within the framework of these definitions that we proposed to add a new paragraph (o) to § 319.40–5, which contains importation requirements for specified regulated articles, to authorize the importation of wooden handicrafts from China.

One commenter stated that the definition of *wooden handicraft* was too broad, and would subject wooden handicrafts from China that are currently authorized for importation into the United States to the provisions of the proposed rule. The commenter suggested that we modify the proposed definition to include only those wooden handicrafts currently prohibited importation into the United States from China, that is, handicrafts more than 1 centimeter in diameter.

We agree with the commenter that the proposed rule would have regulated handicrafts 1 centimeter or less in diameter, and that such handicrafts are currently authorized for importation into the United States.

However, we do not consider it necessary to revise our definition of *wooden handicraft* in the manner requested by the commenter. The definitions in § 319.40–1 are intended to have general applicability within the subpart, and it is possible that we will

initiate rulemaking at some future point to restrict the importation of wooden handicrafts from another country in which quarantine pests are determined to infest handicrafts less than 1 centimeter in diameter. Moreover, if we revised the definition of *wooden handicraft* to state that it only includes items more than 1 centimeter in diameter, this could be construed to exempt handicrafts less than 1 centimeter in diameter from the definition of *regulated article.* This is not the case; although such handicrafts are exempt from the requirements of § 319.40–5(o), they are regulated articles, and thus are subject to all other applicable provisions of the subpart.

Accordingly, we have instead decided to modify proposed § 319.40–5(o) to state that the provisions of that paragraph apply only to wooden handicrafts from China that are more than 1 centimeter in diameter, and that articles less than 1 centimeter in diameter, although exempt from the requirements of § 319.40–5(o), are still subject to all other applicable provisions of 7 CFR chapter III.

Two commenters stated that they manufactured wooden handicrafts that fell within the definition of *wooden handicrafts,* but not the definition of *regulated article.* The commenters stated that these articles had wooden parts, but that the parts were fully, rather than partially, processed. Both commenters asked if their products would be regulated under the provisions of the proposed rule.

Wooden handicrafts are a class of regulated articles. Accordingly, we will consider an article to be a wooden handicraft only if it also meets the definition of *regulated article.* Thus, the commenters' products would be exempt from the provisions of this rule.

The same commenters stated that they manufactured handicrafts that fell within the scope of both *wooden handicraft* and *regulated article,* but that these handicrafts presented a minimal pest risk and should therefore be exempt from the requirements of § 319.40–5(o).

As we pointed out in our proposed rule, Chinese wooden handicrafts have historically been a pathway for the introduction of quarantine pests into the United States. Based on this plant pest risk and the findings of our pest risk assessment, it would be not be appropriate to exempt certain wooden handicrafts from China from the provisions of the regulations. Indeed, one of these commenters implied that quarantine pests are occasionally discovered on wooden handicrafts at its production facility.

Comments Regarding Heat Treatment

In proposed § 319.40–5(o)(1)(i), we stated that wooden handicrafts would have to be treated with heat treatment in accordance with § 319.40–7(c) or heat treatment with moisture reduction in accordance with § 319.40–7(d). At the time the proposed rule was published, § 319.40–7(c) provided that heat treatment may take place only at a facility where APHIS or an inspector authorized by the Administrator and the national government of the country in which the facility is located has inspected the facility and determined that its operation complies with the treatment specifications as follows: Heat treatment procedures may employ steam, hot water, kilns, exposure to microwave energy, or any other method (e.g., the hot water and steam techniques used in veneer production) that raises the temperature of the center of each treated regulated article to at least 71.1 °C (160 °F) and maintains the regulated article at that center temperature for at least 75 minutes.

Similarly, at the time our proposed rule was published, § 319.40–7(d) provided that heat treatment with moisture reduction may include kiln drying conducted in accordance with the schedules prescribed for the regulated article in the Dry Kiln Operator's Manual, Agriculture Handbook 188, which we have incorporated by reference at § 300.2, or dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 71.1 °C (160 °F), maintains the regulated articles at that center temperature for at least 75 minutes, and reduces the moisture content of the regulated article to 20 percent or less as measured by an electrical conductivity meter.

A commenter suggested that APHIS authorize the NPPO of China to approve heat treatment facilities.

Under § 305.8, which contains general heat treatment requirements for 7 CFR chapter III, all heat treatment facilities must be certified by APHIS and facilities located outside the United States must operate in accordance with workplan signed by a representative of the heat treatment facilities located outside the United States, the NPPO of the country of origin, and APHIS. The workplan must contain requirements for equipment, temperature, water quality, circulation, and other measures to ensure that heat treatments are administered properly. Workplans for facilities outside the United States must include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Workplans must also allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations. Given these requirements, the NPPO of China will play a significant role, along with APHIS, in the process of certifying heat treatment facilities.

Two commenters stated that the moisture of a regulated article can be reduced to 20 percent or less by a number of means other than heat treatment with moisture reduction, such as drying the article for 24 hours. The commenters suggested that we modify the regulations to incorporate these alternate moisture reduction techniques.

Moisture reduction, in and of itself, is not an adequate mitigation measure for wooden articles. It is efficacious only in conjunction with heat treatment.

One commenter asked whether handicrafts made entirely from lumber that has been treated with heat treatment prior to processing would have to be treated a second time, while another stated that handicrafts that have been treated with heat treatment as part of their partial processing should not have to be treated a second time prior to exportation.

Provided that the lumber or handicrafts have been treated in an approved facility according to an authorized treatment schedule and provided that they have been stored, handled, and safeguarded since treatment in a manner that excludes infestation of the lumber or handicrafts by plant pests, the handicrafts would not have to be treated a second time.

Finally, a commenter pointed out that the proposed rule would require most wooden handicrafts to be treated at a significantly higher temperature and for a longer duration than the temperature and duration recommended by International Standard for Phytosanitary Measures (ISPM) 15, which recommends that wood packaging material (WPM) be treated according to a heat treatment schedule that raises the temperature at the center of the WPM to at least 56 °C and maintains the WPM at that center temperature for at least 30 minutes.[2] The commenter suggested that we should modify the proposed heat treatment requirement for Chinese wooden handicrafts to make it consistent with ISPM 15.

In response to this comment, we reviewed the relevant scientific literature, and determined that

[2] To view ISPM 15, go to: *https://www.ippc.int/index.php?id=13399&tx_publication_pi1*showUid]=133703&frompage=13399&type=publication&subtype=&L=0#item.*

treatment consistent with ISPM 15, although effective in neutralizing most of the pests of greatest concern identified in the pest risk assessment as likely to follow the pathway on imported wooden handicrafts from China, would not be effective for emerald ash borer (EAB). Because EAB is an extremely destructive pest, we determined that treatment consistent with ISPM 15 would not adequately mitigate the pest risk.

However, an article by Scott Myers *et al.* titled ''Evaluation of Heat Treatment Schedules for Emerald Ash Borer (Coloeptera: Buprestidae)'' in the December 2009 issue of *Journal of Economic Entomology*[3] led us to reevaluate the treatment schedule in the proposed rule. Myers *et al.* documented four independent experiments to determine the minimum core temperature and time duration necessary to neutralize EAB on firewood via heat treatment or heat treatment with moisture reduction. As part of the experiments, researchers obtained ash wood from trees showing visible signs of EAB infestation, split the wood, and stored it. They then heat-treated the articles in laboratory facilities (a drying oven and an environmental chamber) at temperatures and durations ranging from 45 to 65 °C and 15 to 60 minutes, respectively. Myers *et al.* found that the experiments suggested that ''a minimum heat treatment of 60 °C for 60 minutes * * * would provide >99.9% control (for EAB) based on probit estimates.''

Since firewood presents similar or greater plant pest risks than wooden handicrafts, we determined that the Myers *et al.* findings were applicable to wooden handicrafts from China.

This determination led us to issue the September 2010 supplemental proposal. In it, we proposed to modify proposed § 319.40–5(o)(1)(i) to state that wooden handicrafts would have to be treated as specified in the PPQ Treatment Manual[4] in accordance with 7 CFR part 305, and to add heat treatment that raises the core temperature of handicrafts to 60 °C for a duration of 60 minutes to the PPQ Treatment Manual as an approved treatment schedule for wooden handicrafts from China.

One commenter agreed that Myers *et al.* did in fact provide a basis for such a modification.

In contrast, another commenter raised numerous concerns regarding the appropriateness of our use of Myers *et al.* as the basis for modifying our proposed heat treatment requirements for wooden handicrafts from China. The commenter pointed out that Myers *et al.* only sought to determine the minimum heat treatment necessary to neutralize EAB. The commenter stated that, because of its morphology and burrowing patterns, EAB is more susceptible to heat treatment than other plant pests in the families Cerambycidae and Siricidae identified in the pest risk assessment as possibly following the pathway on wooden handicrafts from China.

The commenter provided no information in support of this assertion. Moreover, as documented in the treatment evaluation document that accompanied the supplemental proposal, all scientific evidence available to APHIS suggests that heat treatment consistent with ISPM 15—that is, treatment at a lower temperature and duration than that specified in our supplemental proposal—will kill all other pests identified in the pest risk assessment as likely to follow the pathway on wooden handicrafts from China.

The commenter pointed out that the kilns used by Myers *et al.* were relatively small, as was the volume of firewood heat-treated in the experiments. The commenter then referred to an article in the October 2010 issue of the *Journal of Economic Entomology* by P. Charles Goebel *et al.*[5] as providing evidence that larger volumes of wood products in larger kilns tend to heat more unevenly than smaller products in smaller kilns, and stated that Chinese wooden handicrafts would likely be treated en masse in large-scale kilns. For this reason, the commenter stated that the treatment methods and apparati employed by Myers *et al.* fundamentally differed from those that manufacturers of Chinese handicrafts are likely to employ, and that the results of Myers *et al.* could therefore not be considered a reliable indicator of the efficacy of heat treatment of Chinese handicrafts under the provisions of the supplemental proposal.

Our supplemental proposal to modify the heat treatment requirements was based not on an assumption that Chinese manufacturers will reduplicate the methods of Myers *et al.* but on the conclusion of Myers *et al.* that heat treatment that ''achieves a temperature of 60 °C for 60 minutes * * * would provide >99.9% control (for EAB),'' and on our evaluation of the accuracy of the probit estimates that led to this conclusion. (A probit refers to a unit of measurement of statistical probability based on deviations from the normal distribution of results. Probit estimates are often used within statistics to assess the risk of an event occurring in comparison to the likelihood that it will not occur.)

Moreover, as we mentioned above, the regulations require all heat treatments that occur in a foreign country to take place in a facility certified by APHIS, and specify that certification is, in part, predicated upon a facility's having equipment able to meet treatment schedule parameters. This aspect of the certification process would include evaluating the suitability of any large-scale kilns at the facility for conducting the requisite heat treatment.

The same commenter pointed out that the conclusion of Myers *et al.* was based on probit estimates and mathematical regression, rather than on the actual results of a full range of experiments. The commenter pointed out that Myers *et al.* did not repeatedly treat firewood at 60 °C for 60 minutes in order to establish the efficacy of such a treatment and questioned the reliability of probit estimates.

In evaluating heat treatment schedules, probit estimates are intended to provide, not the minimum temperature and time duration that may achieve 100 percent mortality of a quarantine pest, but the minimum temperature and time duration that will prove efficacious in doing so with a high degree of statistical reliability. In other words, treatment schedules established through probit estimates are, by design, more conservative, both in temperature and duration, than schedules established through simple reduplication of a particular experiment in order to achieve a minimal efficacious treatment schedule.

The commenter stated that, based on their experiments, Goebel *et al.* determined that heat treatment at 56 °C for a duration of 82 minutes was not an effective treatment schedule for EAB. The commenter asserted that this determination called into question the efficacy of heat treatment at 60 °C for a duration of 60 minutes for EAB.

[3] Myers, Scott, Ivich Fraser, and Victor Mastro, ''Evaluation of Heat Treatment Schedules for Emerald Ash Borer (Coloeptera: Buprestidae)'', *Journal of Economic Entomology,* 102:6 (December 2009), 2048–2055. Referred to below as ''Myers *et al.*''

[4] The Treatment Manual is available on the Internet, at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.*

[5] Goebel, P. Charles, Matthew Bumgardner, Daniel Herms, and Andrew Sabula, ''Failure to Phytosanitize Ash Firewood Infested with Emerald Ash Borer in a Small Dry Kiln Using ISPM 15 Standards,'' *Journal of Economic Entomology,* 103:3 (October 2010), 597–602. Available on the Internet at *http://www.nrs.fs.fed.us/pubs/jrnl/2010/nrs_2010_goebel_001.pdf.* Referred to below as ''Goebel *et al.*''

The efficacy of heat treatment as a mitigation for a particular pest is dependent not only on the duration of the treatment, but also on the temperature it achieves in the treated article. Accordingly, Goebel *et al.*'s determination does not necessarily contradict the determination of Myers *et al.* Moreover, the commenter provided no scientific basis for considering the determinations contradictory.

The same commenter stated that heat treatment at 60 °C for a duration of 60 minutes would not be effective in killing certain types of phytopathogenic fungi.

Phytopathogenic fungi were determined to be likely to follow the pathway on wooden handicrafts from China only if they were introduced by an arthropod vector. Arthropods that could serve as such vectors were considered in the pest risk assessment.

Finally, the commenter stated that heat treatment consistent with ISPM 15 would not be efficacious in treating wooden handicrafts from China for all quarantine pests likely to follow the pathway on the handicrafts.

We agree with the commenter. That is why we proposed to require a more stringent treatment.

As we mentioned in the supplemental proposal, we published a final rule in the **Federal Register** on January 26, 2010 (75 FR 4228–4253, Docket No. APHIS–2008–0022), that was effective on February 25, 2010, and that, among other things, removed all treatment schedules found in 7 CFR chapter III, including those in § 319.40–7(c) and (d). It replaced all such schedules with a reference to 7 CFR part 305, which contains our regulations governing phytosanitary treatments. Last, it amended 7 CFR part 305 itself to state that all approved treatment schedules for regulated articles are found not in the regulations but in the PPQ Treatment Manual, and to establish a process for adding new treatment schedules for regulated articles to the Treatment Manual.

In accordance with this process, we are modifying proposed § 319.40–5(o)(1) to state that wooden handicrafts from China must be treated as specified in the PPQ Treatment Manual in accordance with 7 CFR part 305. We have also added the relevant treatment schedules for the handicrafts to the Treatment Manual; the schedules for heat treatment and heat treatment with moisture reduction specify that the treatment must raise the core temperature of the handicrafts to 60 °C for a duration of 60 minutes.

Comments Regarding Treatment With Methyl Bromide

In proposed § 319.40–5(o)(1)(ii), we stated that wooden handicrafts that are less than 6 inches in diameter may be treated with methyl bromide fumigation in accordance with 7 CFR part 305, instead of with heat treatment or heat treatment with moisture reduction.

Several commenters stated that methyl bromide is known to deplete the stratospheric ozone layer, and that authorizing its use for treating Chinese wooden handicrafts violates the Montreal Protocol, in which the United States agreed to gradually reduce and ultimately eliminate use of methyl bromide. Another commenter stated that, while the number of applications of methyl bromide that would initially occur under the provisions of the proposed rule would likely be minimal, as the U.S. market for Chinese wooden handicrafts became more established and trade in those commodities increased, the number of applications would also increase. The same commenter stated that such an increase in trade with China could lead other countries to request that APHIS authorize the use of methyl bromide for similar regulated articles. All these commenters asked APHIS not to authorize the use of methyl bromide for wooden handicrafts from China, and to pursue alternate treatment options.

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. As stated in the proposed rule, APHIS would allow fumigation only for a certain type of wooden handicrafts from China, those less than 6 inches in diameter. All other handicrafts would have to be treated with heat treatment or heat treatment with moisture reduction. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment caused by methyl bromide emissions.

However, paragraph 5 of Article 2H of the Montreal Protocol does allow for quarantine and preshipment uses of methyl bromide, and does not specify a maximum number of such applications. Therefore, the provisions of this rule are not in conflict with the protocol.

Finally, in accordance with the overarching objectives of the protocol, APHIS is currently examining the efficacy of other treatment options for Chinese wooden handicrafts. If we determine that treatments exist that are equally efficacious and are available within China, we will amend the Treatment Manual.

One commenter expressed concerns about the human health impacts associated with the use of methyl bromide. The commenter stated that methyl bromide is known to be a carcinogen, skin and lung irritant, and neurotoxin if persons are exposed to it for prolonged periods of time. In a similar manner, another commenter suggested that we modify the proposed rule so that methyl bromide fumigation may only take place in an approved facility that adheres to stringent human health standards.

APHIS' statutory authority extends only to establishing regulations to mitigate the plant pest risk associated with the importation of plants and plant products into the United States. Accordingly, it is the responsibility of the Chinese government to establish and enforce human health standards regarding the safe use of methyl bromide.

Accordingly, based on our evaluation of the issue, we have decided to approve methyl bromide fumigation as a treatment for wooden handicrafts from China that are less than 6 inches in diameter, and have added this treatment to the Treatment Manual. However, because, as we mentioned above, we are currently examining the efficacy of other treatment options for Chinese wooden handicrafts, § 319.40–5(o)(1), as finalized, does not make explicit reference to any one treatment option for the handicrafts. Such a modification will allow us to use the approach established by the January 26, 2010, final rule to add any new treatment schedules that we determine to be efficacious for Chinese wooden handicrafts to the Treatment Manual through publishing notices in the **Federal Register,** rather than through rules.

Comments Regarding Phytosanitary Certificates

In proposed § 319.40–5(o)(2), we stated that all consignments of wooden handicrafts would have to be accompanied by a phytosanitary certificate issued by the NPPO of China, and that the certificate would have to contain an additional declaration stating that the handicrafts were treated in accordance with § 319.40–5 and inspected and found free from quarantine pests.

Two commenters stated that the certificate would duplicate existing documentation required under the

regulations, and therefore should not be required.

In response to these comments, we reexamined the proposed provision in light of existing regulations within the subpart. In § 319.40–2(a), we require a specific permit to be issued in accordance with § 319.40–4 prior to the importation of a regulated article, unless the article is imported for propagation or human consumption, or is authorized importation under a general permit. Section 319.40–4 sets forth the procedure for applying for a specific permit. As part of this procedure, we require that each application include a description of any treatment to be performed prior to importation, including the location where the treatment will be performed, as well as the name and address of the importer of record.

Similarly, in § 319.40–2(b), we require an importer document or certificate to accompany all regulated articles, unless the article is imported for propagation or human consumption, or is authorized importation under a general permit. This importer document or certificate must state the treatment performed on the article prior to arrival at the point of first arrival.

Wooden handicrafts from China are not imported for propagation or human consumption, and are not authorized importation under a general permit. Hence, each importation of wooden handicrafts from China must be authorized under a specific permit and accompanied by an importer document or certificate.

Finally, § 319.40–7 sets forth treatment requirements for regulated articles. Paragraph (a) of that section provides that, in response to inaccuracies on a document accompanying a regulated article, APHIS may determine not to accept any further certificates for the importation of regulated articles from that country, or may not allow the importation of any or all regulated articles from the country until corrective action acceptable to APHIS establishes that certificates issued in the country are accurate.

Collectively, these requirements provide APHIS with information regarding the treatment applied to wooden handicrafts from China, a responsible party in the event that any imported handicrafts are determined to be infested with quarantine pests, and sufficiently stringent remedial measures to deter parties from providing inaccurate information on documents associated with the importation. As a result, we do not consider a phytosanitary certificate necessary, and are not including that requirement in this final rule.

Three commenters stated that China has repeatedly authorized the export of contaminated or infested commodities in recent years. One of these commenters stated that Chinese officials are not concerned with the veracity of information on documents pertaining to the importation of these commodities. All the commenters stated that APHIS should not allow the NPPO of China to issue phytosanitary certificates, but should instead station personnel in China to monitor all treatments of wooden handicrafts and inspect all consignments destined for export to the United States.

As we stated above, we consider the regulations to provide sufficient remedial measures to deter parties from providing inaccurate information on any document pertaining to the importation of wooden handicrafts from China. Moreover, we note that, under § 319.40–9, all regulated articles must be inspected at the port of first arrival. If a regulated article shows any signs of pest infestation, the inspector may require treatment, if an approved treatment exists, or refuse entry of the consignment.

Comment Regarding Identification Tags

In proposed § 319.40–5(o)(3), we stated that all individual packages of wooden handicrafts would have be labeled with a merchandise tag containing the identity of the product manufacturer. We further stated that the tag would have to be applied to each package in China prior to exportation and remain attached to the package until it reaches the location at which the wooden handicraft would be sold in the United States.

Two commenters stated that they manufacture wooden handicrafts that are packaged in a manner that prevents an identification tag from being applied to the package. One of these commenters requested that APHIS provide guidance regarding how manufacturers could apply the tag to packaging in a manner that would not deter consumers from purchasing their product.

The tag must be applied to each shipping package containing wooden handicrafts, rather than to the packaging for any particular handicraft. For example, if a wooden train containing partially processed parts were sealed in a blister package in China, and a box containing several dozen of these trains were exported to the United States for sale at a toy store, the identification tag would have to be applied to the box that is shipped to the store, rather than to the individual blister packages. We have modified proposed § 319.40–5(o)(3) to clarify that it refers to shipping packages, rather than packaging.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see footnote 1 at the beginning of this document for a link to *Regulations.gov*).

This rule will allow for the resumption of imports of wooden handicrafts from China, provided certain conditions are met. In 2005, APHIS suspended the importation of certain wooden handicrafts until we could more fully analyze the pest risks associated with those articles. We have determined that the heat, heat with moisture reduction, and methyl bromide fumigation treatment options prescribed in this rule will sufficiently mitigate these pest risks.

Protection of U.S. forests against the introduction and spread of invasive pests is vital to the economic well-being of the forestry industries as well as to maintaining the forests' environmental and aesthetic benefits for the general public. The hundreds of millions of dollars that have been spent to control the spread of EAB and the Asian longhorned beetle exemplify the enormous cost to the United States when invasive pests become

established. This rule will establish safeguards against further incursions of wood-boring pests such as these via the importation of infested handicrafts from China, while allowing the importation of such handicrafts to resume.

U.S. entities are expected to be minimally affected by this rule. Wooden handicrafts comprised a very small fraction of wood products imported from China prior to April 2005, and similar levels of importation are expected following promulgation of this rule. Nonetheless, U.S. consumers of wooden handicrafts will benefit from reestablished access to these products from China. Treatment costs, representing on average less than 2 percent of the value of the products shipped, will be borne by firms in China, and any fraction of those costs that may be passed on to U.S. buyers will be negligible. In addition, benefits are expected to exceed costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the importation of wooden handicrafts from China under the conditions specified in the rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[6] Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This final rule does not include an information collection requirement that had been included in the proposed rule. Specifically, for the reasons described earlier in this document, this final rule does not include a requirement for the completion of phytosanitary certificates.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0357.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

[6] Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2007-0117*. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. The subpart heading for ''Subpart-Logs, Lumber, and Other Unmanufactured Wood Articles'' is amended by removing the word ''Unmanufactured''.

■ 3. Section 319.40–1 is amended by revising the definition of *regulated article* and adding, in alphabetical order, a definition for *wooden handicraft* to read as follows:

§ 319.40–1 Definitions.

* * * * *

Regulated article. The following articles, if they are unprocessed, have received only primary processing, or contain parts that are either unprocessed or have received only primary processing and are not feasibly separable from the other parts of the article: Logs; lumber; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; litter; and wooden handicrafts.

* * * * *

Wooden handicraft. A commodity class of articles derived or made from natural components of wood, twigs, and vines, and including bamboo poles and garden stakes. Handicrafts include the following products where wood is present: Carvings, baskets, boxes, bird houses, garden and lawn/patio furniture (rustic), potpourri, artificial trees (typically artificial ficus trees), trellis towers, garden fencing and edging, and other items composed of wood.

■ 4. Section 319.40–5 is amended by adding a new paragraph (o) and revising the OMB citation at the end of the section to read as follows:

§ 319.40–5 Importation and entry requirements for specified articles.

* * * * *

(o) *Wooden handicrafts from China.* Wooden handicrafts more than 1 centimeter in diameter may be imported into the United States from China only in accordance with this paragraph and all other applicable provisions of this title. Wooden handicrafts less than 1 centimeter in diameter are exempt from the requirements of this paragraph, but

are still subject to all other applicable provisions of this chapter.

(1) *Treatment.* Wooden handicrafts must be treated in accordance with part 305 of this chapter.

(2) *Identification tag.* All packages in which wooden handicrafts are shipped must be labeled with a merchandise tag containing the identity of the product manufacturer. The identification tag must be applied to each shipping package in China prior to exportation and remain attached to the shipping package until it reaches the location at which the wooden handicraft will be sold in the United States.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0257, 0579–0319, and 0579–0367)

Done in Washington, DC, this 27th day of February 2012.

Edward Avalos,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2012–4962 Filed 2–29–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0982; Directorate Identifier 2011–NE–09–AD; Amendment 39–16954; AD 2012–03–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all GE CF6–80C2 model turbofan engines, including engines marked on the engine data plate as CF6–80C2B7F1. This AD was prompted by a report of a supplier shipping a batch of nonconforming No. 3 bearing packings that had incorrect cooling holes and by subsequent reports of nonconforming No. 3 bearing packings being installed on engines in service. This AD requires a one-time inspection of the No. 3 bearing packing for an incorrect cooling hole size and, if it is found nonconforming, removing the packing and removing certain engine rotating life-limited parts (LLPs), if they were operated with unacceptable rotor bore cooling flow for a specified number of cycles. We are issuing this AD to prevent an uncontained failure of the high-pressure compressor (HPC) rotor or the low-pressure turbine (LPT) rotor, or both, which could cause damage to the airplane.

DATES: This AD is effective April 5, 2012. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 5, 2012.

ADDRESSES: For service information identified in this AD, contact GE Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *geae.aoc@ge.com.* 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: Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *tomasz.rakowski@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 October 18, 2011 (76 FR 64291). That NPRM proposed to require a one-time inspection of the No. 3 bearing packing for an incorrect cooling hole size and, if it is found nonconforming, removing the packing and removing certain engine rotating LLPs, if they were operated with the wrong packing for a specified number of cycles.

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.

Support for the NPRM as Written

Commenters the Boeing Company and Federal Express support the NPRM as written.

Request To Correct Part Number

Commenters GE and Delta Airlines (Delta) indicated that the part number noted in the Discussion section of the NPRM (76 FR 64291, October 18, 2011) was incorrect and should be ''1471M25P04'' rather than ''1292M70P04'' as listed in the NPRM.

We agree. However, the Applicability section of the final rule is correct. We did not change the AD.

Request To Clarify Incorrect Shipping Versus Installing Wrong Seal

Commenter Lufthansa Technik AG (Lufthansa) asked that we state more clearly the difference between the issues of packings shipped in a batch of nonconforming parts and nonconforming packings installed in engines in service.

We disagree. The AD sufficiently describes the difference between nonconforming packings shipped by the supplier and those in service. We did not change the AD.

Request To Correct Cost

Commenter Lufthansa suggested that the cost of compliance estimate in the NPRM covers only the cost of shipped nonconforming parts and does not include the cost of replacing nonconforming packings that are installed in engines in service. Lufthansa also noted that the installed parts are covered by a different service bulletin and are not covered by warranty.

We disagree. Our cost estimate covers the inspection and installed parts and is independent of any possible warranty coverage. We did not change the AD.

Request To Update GE Service Bulletin (SB) Reference

Commenter Lufthansa requested that we provide full instructions for compliance for engine models CF6–80C2L1F and CF6–80C2K1F. Lufthansa noted that neither the NPRM (76 FR 64291, October 18, 2011) nor GE SB CF6–80C2 S/B 72–1405 provide enough information for these engines to comply with the proposed rule. Lufthansa requested that we refer to Revision 01 of GE SB CF6–80C2 S/B 72–1405 rather than to the original version.

We agree. We changed the AD by updating the GE service bulletin references in the AD to GE SB CF6–

80C2 S/B 72–1405, Revision 01, dated December 16, 2011.

Request To Revise Cost of Compliance Estimate

Commenter Atlas Air requested that we revise the cost estimate by including cost to replace LLPs.

We agree. We revised the cost of compliance section in the AD to include our estimate for the total fleet replacement cost of LLPs with unacceptable cooling flows.

Request for a Cut-Off Date

Commenter Presidential Flights requested that we specify a date after which the batch of non-conforming No. 3 bearing packings with incorrect cooling holes was supplied, and that we limit applicability to engines that had a shop visit after this specified date. Commenter Japan Airlines requested that the AD not apply to engines with a last shop visit prior to November 30, 2009, if there have not been reports of non-conforming packings for these engines. Commenter Atlas Air commented that applicability should only apply to engines with packings from the affected batch of nonconforming parts shipped from a supplier.

We do not agree. The AD applies to all CF6–80C2 engines, regardless of the date of the last shop visit, the service location, or the engine serial number. The explanation for inspecting the entire fleet is provided in the Discussion section of the NPRM (76 FR 64291, October 18, 2011). We did not change the AD.

Request To Limit AD by Engine Serial Number

Commenter Atlas Air also asked that applicability be changed to specific affected engine serial numbers. Commenter TES Aviation Group requested clarification regarding whether the AD applied only to engines with certain serial numbers or maintained in certain service locations.

We disagree. The AD applies to all CF6–80C2 engines, regardless of engine serial number or last service location. We did not change the AD.

Request Regarding Shop Visit

Commenter GE requested that the applicability be changed to apply to only those engines that have had a shop visit where the fan was removed from the engine core and GE SB CF6–80C2 S/B 72–1405 was not completed during or since that visit. GE indicated that no new production engines are affected by the nonconformance and engines that already complied with the GE SB CF6–80C2 S/B 72–1405 shop inspection have accomplished the requirements of the proposed rule.

We disagree. Excluding all engines that have not yet had a shop visit where the fan was removed from the core leaves an engine population in service that might be susceptible to installation of the nonconforming packing. We did not change the AD.

Credit for Previous Inspection

Commenter All Nippon Airways (ANA) asked that credit be given to engines inspected in accordance with GE SB CF6–80C2 S/B 72–1405 before the effective date of this AD.

We agree. We changed the AD to indicate that a previous inspection meets the one-time inspection requirements of this AD.

Request To Add Additional Engine Models for Compliance

Commenter Lufthansa requested that we include CF6–45/50, CF6–80A, and CF6–80E1 engines, as applicable, to the AD.

We disagree. We have not received reports of nonconforming packing installed in any engine other than the CF6–80C2. We did not change the AD.

Request To Mandate Compliance of Spare Parts

An unidentified commenter requested that we mandate compliance of spare parts.

We do not agree. This AD affects assembled engines in service on the effective date of the AD. Parts installed in an engine after the effective date of this AD must be airworthy per § 43.13 of Title 14 of the Code of Federal Regulations. Operators may choose to perform inspections in accordance with this AD before returning engines from shop into service, although these inspections are not required by this AD before specified compliance times. In order to avoid confusion, we added a prohibition statement, paragraph (i), which does not allow re-installation of the LLPs removed from service in accordance with this AD.

Request To Clarify Terminating Action

Commenter ANA requested that we clarify the terminating action to the AD.

We disagree. The AD mandates a one-time inspection and disposition. Terminating action does not apply. We did not change the AD.

Request To Allow Borescope Inspection (BSI) To Determine Packing Configuration

Eight commenters requested that we approve a BSI to determine the No. 3 bearing packing configuration either on-wing or in the shop and to determine if further actions are necessary.

We partially agree. We agree that a BSI may be used to measure packing hole diameters to determine acceptable cooling flows. We disagree with using a BSI to determine the part number of the packing or the need for further actions as a BSI cannot be used to make such a determination on all affected engines.

We changed the AD to allow the one-time No. 3 bearing packing inspection to occur at the next shop visit if a successful optional BSI is performed within 500 cycles in service (CIS) from the effective date of the AD.

Request To Modify Compliance Time

Commenters GE and Delta requested that we change the compliance time of the one-time inspection to be performed at the next shop visit in which the fan is separated from the HPC. GE indicated that it has not determined that removal from service prior to 5,500 CIS is required. GE regards 5,500 CIS as an economic threshold not a hard life removal threshold.

We disagree. We do not agree with unconditional deferral to the next shop visit as unacceptable cooling flow could affect the lives of the LLPs. We did not change the AD.

Request To Address Fan Frames With Small Cooling Holes

Commenter Atlas Air asked that the service information incorporated by reference be revised to address certain fan frame part numbers with small cooling holes. Atlas Air indicated that certain small fan frame hole diameters may affect cooling flows, even though the packing configuration is determined to provide acceptable flows.

We do not agree. The cooling flow assessment addressed the worst case configuration. Cooling flow acceptability should be determined from the packing hole diameter, not the fan frame hole diameter. We did not change the AD.

Request for Action for Engines That Have 5,500 CIS Since Last Shop Visit

Six commenters requested that a drawdown schedule be provided for engines that have accumulated 5,500 or more CIS since the last engine shop visit when the fan was removed from the core. Some of these commenters reported that some of their engines were already past 5,500 CIS since the last engine shop visit in which the fan was removed from the core.

We agree. We changed the AD to require the inspection within 500 CIS of

the effective date of this AD for those post-5,500-cycle engines.

Request on LLP Pass/Fail Criteria

Commenters Air Canada and TES Aviation Group requested that growth checks, hardness checks, or calculations be allowed to determine the disposition of LLPs affected by the unacceptable cooling flows instead of removing the parts from service if they were operated for 5,500 CIS or more with a No. 3 bearing packing determined to be ''UNACCEPTABLE FLOW.''

We do not agree. We have no technical substantiation that supports pass/fail criteria for determining if LLPs have operated with an unacceptable flow packing configuration. We did not change the AD.

Request on LLP Determination

Commenter Presidential Flight requested that LLP determination be based on CIS since first shop visit after supply of the affected batch, not the last shop visit because, they noted, an engine may have had multiple shop visits since the affected batch of nonconforming packings was shipped. Commenters Air Canada, Atlas Air, and TES Aviation Group indicated that it is impossible to determine how many cycles the LLPs have operated with nonconforming packings, because the packings are not serialized or tracked. In addition, the commenters noted that, if an engine is inspected and found to have a conforming packing, there is no guarantee that a nonconforming packing had not been used on that engine between earlier shop visits. Also, the commenters observed that it is impossible to estimate the effect on life of the LLPs that had operated with a nonconforming packing and were later removed from the engine.

We do not agree. Installation dates when nonconforming packings might have been installed into engines in service are unknown. Similarly, engine operation with nonconforming packing cannot be determined other than via inspection of the currently installed packing. We did not change the AD.

Request for Disposition of LLPs for Unacceptable Flows

Commenters GE, American Airlines, and Delta requested that we provide the requirement for LLP disposition in the case of the cooling flows determined not to be ''CORRECT FLOW'' in accordance with GE SB CF6–80C2 S/B 72–1405, dated June 30, 2011.

We agree. Unacceptable cooling flows are now addressed in Revision 01 of GE SB CF6–80C2 S/B 72–1405, dated December 16, 2011, and GE SB CF6–80C2 S/B 72–1427, dated December 16, 2011. Therein, cooling flows not affecting the LLPs in the rotors are described as ''acceptable flow.'' We revised the AD in paragraph (h) to remove from service those LLPs that had been operated for 5,500 CIS or more with unacceptable flow and added paragraph (g) to define criteria for acceptable flows determined during an optional borescope inspection.

Request To Revise Criteria for Shop Visit

Commenters GE and KLM Royal Dutch Airlines requested that the induction of an engine into a shop solely for a core vibration trim balance procedure that requires separation of a major engine flange not be considered an engine shop visit. Another commenter, Lufthansa, requested that the induction of an engine into a shop solely for the removal or replacement of the stage 1 fan disk or the fan forward case also not be considered an engine shop visit.

We partially agree. We agree that the induction of an engine into a shop solely for core vibration balance should not be considered an engine shop visit for the purposes of this AD, because it does not require separation of the fan from the core. We disagree that the induction of an engine into a shop solely for removal or replacement of the stage 1 fan disk or fan forward case should not be considered an engine shop visit for the purposes of this AD, because these procedures require maintenance to the fan module.

We changed the AD to define a shop visit as not including induction of an engine into a shop solely for core vibration trim balance procedures that require separation of a major engine flange.

Request To Revise Reference to Fan and Core Module

Commenter Delta requested that we use the phrase ''fan module removed from the core module'' instead of ''fan removed from the core.''

We do not agree. The current language is consistent with service documents that we incorporate by reference in this AD. We did not change the AD.

Explanation of Additional Changes to This AD

We provided incorrect contact information for GE in the NPRM (76 FR 64291, October 18, 2011). We have updated the contact information.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 64291, October 18, 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 64291, October 18, 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 will affect 688 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 work-hour per engine to perform the borescope inspection, about 1 work-hour per engine to perform the shop inspection, and 1 work-hour to replace the No. 3 bearing packing, if found nonconforming. The average labor rate is $85 per work-hour. Required parts cost about $488 per engine for the estimated 21 engines that will require new No. 3 bearing packing. We estimate that one set of LLPs will need replacement, and the total replacement cost is $1,201,200. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $1,330,193. Our estimate is exclusive of any possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–03–12 General Electric Company (GE): Amendment 39–16954; Docket No. FAA–2011–0982; Directorate Identifier 2011–NE–09–AD.

(a) Effective Date

This AD is effective April 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD is applicable to all GE CF6–80C2 model turbofan engines, including engines marked on the engine data plate as CF6–80C2B7F1.

(d) Unsafe Condition

This AD was prompted by a report of a supplier shipping a batch of nonconforming No. 3 bearing packings that had an incorrect size of cooling holes and by several subsequent reports of nonconforming No. 3 bearing packings being installed on engines in service. The nonconformance of No. 3 bearing packings will result in incorrect high-pressure compressor (HPC) rotor and low-pressure turbine (LPT) rotor bore cooling and, if not corrected, could result in a reduced parts life of the life-limited rotating parts. We are issuing this AD to prevent an uncontained failure of the HPC rotor or the LPT rotor, or both, which could cause damage to the airplane.

(e) Compliance

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

(f) One-Time Inspection and Disposition of the No. 3 Bearing Packing

(1) Perform a one-time inspection of the No. 3 bearing packing. Use paragraphs 3.A.(1) through 3.A.(1)(b) of the Accomplishment Instructions of GE Service Bulletin (SB) No. CF6–80C2 S/B 72–1405, Revision 01, dated December 16, 2011, to do your inspection. Inspect as follows:

(i) Before 5,500 engine cycles-in-service (CIS) since the last engine shop visit where the fan was removed from the core, or within 500 CIS from the effective date of this AD, whichever occurs later; or

(ii) At the next shop visit, if the engine passes an optional borescope inspection (BSI) within 500 CIS from the effective date of this AD.

(2) Remove the packing from service before further flight if the wrong packing part number (P/N) is found on the engine during the inspection of paragraph (f)(1) of this AD.

(g) Optional BSI

The optional BSI identified in paragraph (f)(1)(ii) of this AD must determine an ''ACCEPTABLE FLOW'' packing is installed. Use paragraph 3.A, excluding subparagraphs 3.A.(4)(a)*6* through 3.A.(4)(a)*9* and 3.A.(4)(b)*5,* of the Accomplishment Instructions of GE SB CF6–80C2 S/B 72–1427, dated December 16, 2011, to do your BSI.

(h) Disposition of Affected Rotating Parts

Remove the following rotating parts from service, if they were operated for 5,500 CIS or more with a packing determined to be an ''UNACCEPTABLE FLOW'' packing using paragraph 3.A.(1)(c) of the Accomplishment Instructions of GE SB CF6–80C2 S/B 72–1405, Revision 01, dated December 16, 2011:

(1) HPC rotor stage 10-through-14 spool, any P/N,

(2) HPC rotor stage 11-through-14 spool, any P/N,

(3) LPT rotor stage 3 disk, P/N 9373M53P05, and

(4) LPT rotor stage 4 disk, P/N 9373M54P03.

(i) Installation Prohibition

After the effective date of this AD, do not install or reinstall in any engine any rotating part that has been removed from service in accordance with paragraph (h) of this AD.

(j) Definition

For the purposes of this AD, an engine shop visit is the induction of an engine into the shop after the effective date of this AD, where the separation of a major engine flange occurs; except the following maintenance actions, or any combination, are not considered engine shop visits:

(1) Induction of an engine into a shop solely for removal of the compressor top or bottom case for airfoil maintenance or variable stator vane bushing replacement.

(2) Induction of an engine into a shop solely for replacement of the turbine rear frame.

(3) Induction of an engine into a shop solely for replacement of the accessory gearbox or transfer gearbox, or both.

(4) Induction of an engine into a shop solely for core vibration trim balance procedure that requires separation of a major engine flange.

(k) Credit for Previous Action

An inspection of the No. 3 bearing packing performed before the effective date of this AD using GE SB CF6–80C2 S/B 72–1405 satisfies the requirements of paragraph (f)(1) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

(m) Related Information

(1) For more information about this AD, contact Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *tomasz.rakowski@faa.gov.*

(2) GE SB CF6–80C2 S/B 72–1405, Revision 01, dated December 16, 2011, and GE SB CF6–80C2 S/B 72–1427, dated December 16, 2011, pertain to the subject of this AD. Contact GE Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *geae.aoc@ge.com;* for a copy of this service information.

(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:

(i) General Electric Company (GE) Service Bulletin (SB) CF6–80C2 S/B 72–1405, dated June 30, 2011;

(ii) GE SB CF6–80C2 S/B 72–1405, Revision 01, dated December 16, 2011; and

(iii) GE SB CF6–80C2 S/B 72–1427, dated December 16, 2011.

(2) For service information identified in this AD, contact GE Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *geae.aoc@ge.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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–

6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on February 7, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–4747 Filed 2–29–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0944; Directorate Identifier 2011–NE–11–AD; Amendment 39–16960; AD 2012–04–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Pratt & Whitney PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines, including models with any dash number suffix. This AD was prompted by an engine overspeed event that occurred during taxi and resulted in a high-pressure compressor surge and tailpipe fire. This AD requires replacing Pratt & Whitney fuel metering units (FMUs), part numbers (P/Ns) 53T335 (HS 801000–1), 55T423 (HS 801000–2), and 50U150 (HS 801000–3) at the next shop visit after the effective date of this AD. We are issuing this AD to prevent engine overspeed on these engines, which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD is effective April 5, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 5, 2012.

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108, phone: 860–565–8770. 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: James Gray, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on November 7, 2011 (76 FR 68660). That NPRM proposed to require replacing the FMU, P/N 50U150, at the next shop visit after the effective date of the proposed AD.

Comments

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

Request To Specify the Replacement FMU

Delta Airlines, Inc. requested that we specify replacing affected FMUs with FMU P/N 53U044, or later FAA-approved P/Ns. The commenter stated that doing this would help avoid potential alternative methods of compliance questions, and issues with specifying compliance to a service bulletin.

We do not agree. We only identify the affected parts requiring removal in the AD, and the modification that is required to correct the design. If we identified the replacement part by P/N, then, if and when that part gets replaced by another P/N, the AD would have to be superseded. We did not change the AD.

Request To Extend the Compliance Time

FedEx Express requested that we extend the compliance time from 60 months from the issue date of the proposed AD. The additional time is needed to plan forced removals of the installed FMUs and implement an effective modification planning program.

We do not agree. The compliance time specified in the AD is at the next shop visit. The commenter is referring to an outdated version of the service bulletin. We did not change the AD.

Request To Reference Hamilton Sundstrand Alert Service Bulletin (ASB) No. JFC131–2–73–A24

Martinair Holland and United Airlines, Inc. requested that we also reference Hamilton Sundstrand ASB No. JFC131–2–73–A24, Revision 1, dated May 18, 2011, in the AD compliance, as that SB contains information required to perform the FMU modification required by the AD.

We agree. We changed the AD to incorporate by reference (IBR) only that Hamilton Sundstrand ASB. That Hamilton Sundstrand ASB is also included within the Pratt & Whitney ASB No. PW4ENG A73–220, Revision 1, dated May 18, 2011, which we listed under Related Information.

Request To Add FMU Part Numbers

Martinair Holland, United Airlines, Inc. and United Parcel Service Co. requested that we include Pratt & Whitney FMU P/Ns 53T335 and 55T423 with the existing P/N 50U150, in the AD, and also include the equivalent Hamilton Sundstrand FMU P/Ns 801000–3, 801000–1, and 801000–2.

We agree and added those P/Ns to the AD. The equivalent Hamilton Sundstrand P/Ns are included in parentheses.

Request To Change Paragraph (f)

United Airlines, Inc. requested that we change paragraph (f) from ''install a modified FMU,'' to ''install a new or modified FMU.''

We agree. The intent of the AD is to install an FMU incorporating the improvements of the modification, whether a new or modified FMU. We changed paragraph (f) in the AD.

Request To Not Incorporate by Reference the Alert SB

United Airlines, Inc. requested that we not IBR Pratt & Whitney ASB No. PW4ENG A73–220, Revision 1, dated May 18, 2011, but to instead simply reference the ASB in the AD. The commenter stated that this would allow them flexibility to perform the FMU modification using their normal maintenance program and shop procedures.

We partially agree. We agree to change the AD to not IBR Pratt & Whitney ASB No. PW4ENG A73–220, Revision 1, dated May 18, 2011. We do not agree with the AD having no procedure IBRed to support use of a normal maintenance program and shop procedures. We changed the AD to IBR the portion of the Hamilton Sundstrand ASB No. JFC131–2–73–A24, Revision 1, dated May 18, 2011, that contains the unique procedures required to modify the FMUs.

Comment About a Potential Shortage of Parts

United Airlines, Inc. commented that a potential shortage of parts could affect compliance with the AD.

We do not agree. Hamilton Sundstrand has worked to build up the FMU inventory to support the expected demand, so meeting the compliance time in the AD should not be a problem.

Request To Withdraw the Proposed AD

United Parcel Service Co. requested that we withdraw the proposed AD. The commenter stated that since the overspeed incident occurred in 2006, there were several maintenance actions initiated by Pratt & Whitney and implemented by operators to minimize the risk of further incidents. The actions include reducing the overhaul soft time in the maintenance planning guide for main fuel pumps, including in the engine manual additional inspections of the FMU servo wash filter and transfer fuel tubes, and clarifying the trouble shooting instructions in the aircraft fault isolation manual to identify symptoms of clogged servo wash filters.

We do not agree. The unsafe condition exists in the design of the FMU, which must be addressed to prevent overspeed, potential uncontained engine failure, and damage to the airplane. The actions mentioned by the commenter were an interim plan to mitigate the risk of an unsafe condition. However, they do not represent the final corrective action. A servo wash filter clog followed by an overspeed event represents a single point failure in the engine design which can reasonably be expected to occur and which can result in a hazardous engine effect (uncontained engine failure). Because of this, the engine no longer meets the airworthiness standards to which it was certified. The intent of this AD action is to return the engine to the same level of safety provided by the airworthiness standards of its original certification. We did not withdraw the AD.

Request To Change the Compliance Time

United Parcel Service Co. requested that we change the compliance time to the next component shop visit or at the next engine shop visit if the OEM recommended soft time is reached or exceeded. The commenter stated that operators with a low hour-to-cycle ratio would typically only overhaul the FMU at every other shop visit. The proposed AD compliance would require removal at the next shop visit, which could force removal of otherwise serviceable FMUs and add significant incremental labor and repair costs to operators.

We do not agree. Performing the FMU replacement or modification at the next component shop visit interval would not provide an acceptable level of safety. We did not change the AD.

Request To Adjust the Cost of Compliance

United Parcel Service Co. requested that we adjust the cost of compliance to include incremental costs for FMUs that will be forced out of service before reaching the recommended overhaul soft time of 12,000 hours. The commenter states that the labor cost in the proposed AD assumes that the FMU is already in the shop and disassembled for normal FMU maintenance. It does not include labor hours that will be required for receiving inspection, disassembly, test, and preparation for shipment. The incremental cost of FMUs that are replaced before reaching its soft time are also not taken into account.

We do not agree. FMUs can be modified to comply with the AD. They do not need to be replaced with a new FMU. The cost of the AD includes the required labor to perform the modification as well as the parts cost for the upgrade kit. We consider only the actual cost of the AD; not other costs. We did not change the AD.

Request To Replace FMUs On-Wing

United Parcel Service Co. requested that we include in the AD the option to perform on-wing replacements of unmodified FMUs with new or modified FMUs. The commenter stated that the proposed AD only requires replacement at time of shop visit. Operators would then have to apply for an alternative method of compliance to replace an FMU on-wing.

We partially agree. We agree that the operator could comply with the AD before the engine reaches the shop if the operator chooses to replace the FMU on-wing. We do not agree that a change to the AD is required because the operator can take credit for actions already done. Paragraph (e) of the AD states that you must comply with the AD within the compliance times specified, unless already done. We did not change the AD.

Request To Change the Installation Prohibition Paragraph

United Parcel Service Co. requested that we change the installation prohibition paragraph (g) to prohibit installation of an unmodified FMU within the 3-year compliance period after a modified FMU has been installed. The commenter acknowledged that installation of an unmodified FMU is prohibited once a modified FMU is installed, but this is not explicitly stated in the proposed AD.

We do not agree. Once you comply with the AD by installing a modified FMU in accordance with the AD at the next engine shop visit after the effective date of the AD, or elect to comply with the AD by installing a modified FMU before the next engine shop visit after the effective date of this AD, the engine is in compliance with the AD and you cannot undo that compliance. We did not change 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.

Costs of Compliance

We estimate that this AD affects 750 engines installed on airplanes of U.S. registry. We also estimate that it will take about 3.2 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $10,698 per engine. Based on these figures, we estimate the cost of the AD to U.S. operators to be $8,227,500.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–04–04 Pratt & Whitney: Amendment 39–16960; Docket No. FAA–2011–0944; Directorate Identifier 2011–NE–11–AD.

(a) Effective Date

This AD is effective April 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Division PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines, including models with any dash number suffix, with a Pratt & Whitney fuel metering unit (FMU) part number (P/N) 53T335 (HS 801000–1), 55T423 (HS 801000–2), or 50U150 (HS 801000–3) installed.

(d) Unsafe Condition

This AD was prompted by an engine overspeed event that occurred during taxi and resulted in a high-pressure compressor surge and tailpipe fire. We are issuing this AD to prevent engine overspeed on these engines, which could result in an uncontained engine failure and damage to the airplane.

(e) Compliance

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

(f) Replacement of Affected FMUs

At the next shop visit after the effective date of this AD, remove FMU P/Ns 53T335 (HS 801000–1), 55T423 (HS 801000–2), and 50U150 (HS 801000–3) and install an FMU that incorporates the modification in paragraphs 3.C through 3.E of the Accomplishment Instructions of Hamilton Sundstrand Alert Service Bulletin (ASB) No. JFC131–2–73–A24, Revision 1, dated May 18, 2011.

(g) Installation Prohibition

After three years from the effective date of this AD, do not install or reinstall an FMU P/N 53T335 (HS 801000–1), 55T423 (HS 801000–2), or 50U150 (HS 801000–3) onto any engine.

(h) Definition of Shop Visit

For the purpose of this AD, a shop visit is when the engine is inducted into the shop for any maintenance involving the separation of pairs of major mating engine flanges (lettered flanges). However, the separation of engine flanges solely for the purposes of transporting the engine without subsequent engine maintenance is not an engine shop visit.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

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

(2) Pratt & Whitney ASB No. PW4ENG A73–220, Revision 1, dated May 18, 2011, also pertains to this AD.

(k) Material Incorporated by Reference

(1) You must use Hamilton Sundstrand Alert Service Bulletin No. JFC131–2–73–A24, Revision 1, dated May 18, 2011, to do the modifications required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Hamilton Sundstrand, Technical Publications, Mail Stop 302–9, 4747 Harrison Avenue, P.O. Box 7002, Rockford, Illinois 61125–7002; telephone 860–654–3575; fax 860–998–4564; email *tech.solutions@hs.utc.com;* Internet *http://www.hamiltonsundstrand.com,* and Pratt & Whitney, 400 Main St. East Hartford, CT 06108, phone: 860–565–8770.

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

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

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–4745 Filed 2–29–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0126; Directorate Identifier 2012–NE–07–AD; Amendment 39–16959; AD 2012–04–03]

RIN 2120–AA64

Airworthiness Directives; BRP-Powertrain GmbH & Co KG Rotax Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for BRP-Powertrain GmbH & Co KG Rotax 912 S2, 912 S3, and 914 F2 reciprocating engines. This AD requires performing a one-time inspection of the oil system for leaks and a torque check of the oil pump attachment bolts, and if leaks are detected, performing a one-time inspection of the oil pump and engine valve train, on certain serial number (S/N) BRP-Powertrain GmbH & Co KG Rotax 912 S2, 912 S3, and 914 F2 reciprocating engines. This AD was prompted by the discovery that during engine production, some engines may not have had the oil pump attachment bolts torqued to specification. We are issuing this AD to prevent oil leaks,

which could result in an in-flight engine shutdown and forced landing.

DATES: This AD becomes effective March 16, 2012.

We must receive comments on this AD by April 16, 2012.

The Director of the Federal Register approved the incorporation by reference of BRP-Powertrain GmbH & Co KG, Rotax Aircraft Engines Mandatory Alert Service Bulletins (ASBs) No. ASB–912–060 and ASB No. 914–043 (combined in one document), dated January 26, 2012 listed in the AD, as of March 16, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

For service information identified in this AD, contact BRP-Powertrain GmbH & Co KG, Welser Strasse 32, A–4623 Gunskirchen, Austria, or go to: *http://www.rotax-aircraft-engines.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 Operations office 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 street address for the Docket Operations office (phone: 800–647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *alan.strom@faa.gov*; phone: 781–238–7143; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD 2012–0019–E, dated January 26, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a production quality review, a deviation in the assembly process of the oil pump attachment bolts has been detected, which may have resulted in a latent defect on a limited number of engines. The affected bolts may not have been tightened to the correct torque value, i.e. not in accordance with the specification. This condition, if not corrected, could lead to oil leaks and irregularities in the oil supply, possibly resulting in uncommanded in-flight engine shutdown and forced landing, damage to the aeroplane and injury to occupants.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BRP-Powertrain GmbH & Co KG has issued Mandatory ASBs No. ASB–912–060 and No. ASB–914–043 (combined in one document), dated January 26, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of Austria, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires performing a one-time inspection of the oil system for leaks and a torque check of the oil pump attachment bolts, and if leaks are detected, performing a one-time inspection of the oil pump and engine valve train, on certain S/N BRP-Powertrain GmbH & Co KG Rotax 912 S2, 912 S3, and 914 F2 reciprocating engines.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because no domestic operators use these engines. Therefore, we determined that notice and opportunity for public comment before issuing this AD are unnecessary and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0126; Directorate Identifier 2012–NE–07–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–04–03 BRP-Powertrain GmbH & Co. KG (formerly BRP-Rotax GmbH & Co KG, Bombardier-Rotax GmbH & Co. KG, and Bombardier-Rotax GmbH): Amendment 39–16959; Docket No. FAA–2012–0126; Directorate Identifier 2012–NE–07–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 16, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BRP–Powertrain GmbH & Co KG:

(1) Rotax 912 S2 and 912 S3 reciprocating engines, serial numbers (S/Ns) 4,924.287 to 4,924.295 inclusive, 4,924.300 to 4,924.304 inclusive, 4,924.342 to 4,924.350 inclusive, 4,924.352, and 4,924.353.

(2) Rotax 914 F2 reciprocating engines, S/Ns 4,421.079, 4,421.080, and 4,421.081.

(d) Reason

This AD was prompted by the discovery that during engine production, some engines may not have had the oil pump attachment bolts torqued to specification. We are issuing this AD to prevent oil leaks, which could result in an in-flight engine shutdown and forced landing.

(e) Actions and Compliance

Unless already done, do the following actions within four flight hours or 30 days after the effective date of this AD, whichever occurs first.

(1) Inspect the oil pump and engine valve train for oil leaks in accordance with paragraph 3.1) step 1. of BRP–Powertrain GmbH & Co KG, Rotax Aircraft Engines Mandatory Alert Service Bulletins (ASBs) No. ASB–912–060 and No. ASB–914–043 (combined in one document), dated January 26, 2012.

(2) If no leaks are found during the inspection, tighten the four oil pump attachment bolts with lock washers installed to 10 Nm (90 in. lb.).

(3) If any leaks are found during the inspection specified in paragraph (e)(1) of this AD, do the following:

(i) Remove the oil pump and inspect all surfaces for wear, cracks, or damage. If any measurable wear, cracking, or damage is found, reject the oil pump. If no measurable wear, cracking, or damage is found, replace the three o-rings and the four gasket rings and reinstall the oil pump.

(ii) Inspect the engine valve train washers for increased wear, in accordance with paragraph 3.1.3) steps 19. through 21. of BRP-Powertrain GmbH & Co KG, Rotax Aircraft Engines Mandatory ASBs No. ASB–912–060 and No. ASB–914–043 (combined in one document), dated January 26, 2012.

(f) 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.

(g) Related Information

(1) 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; email: *alan.strom@faa.gov;* phone: 781–238–7143; fax: 781–238–7199.

(2) Refer to European Aviation Safety Agency Emergency AD 2012–0019–E, dated November 15, 2011, for related information.

(h) Material Incorporated by Reference

(1) You must use BRP–Powertrain GmbH & Co KG, Rotax Aircraft Engines, Mandatory Alert Service Bulletins Nos. ASB–912–060 and ASB–914–043 (combined in one document), dated January 26, 2012, to do the actions required by this AD, unless the AD specifies otherwise.

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

(3) For service information identified in this AD, contact BRP–Powertrain GmbH & Co KG, Welser Strasse 32, A–4623 Gunskirchen, Austria, or go to: *http://www.rotax-aircraft-engines.com.*

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

(5) You may also review copies of the service information that is 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/cfr/ibr-locations.html.*

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

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–4746 Filed 2–29–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30828 ; Amdt. No. 3466]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 1, 2012. The compliance date for each SIAP, associated Takeoff Minimums,

and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 1, 2012.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on February 17, 2012.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective 5 APR 2012*

Petersburg, AK, Petersburg James A Johnson, RNAV (GPS)-B, Orig-A

Burbank, CA, Bob Hope, ILS OR LOC Z RWY 8, Amdt 37

Burbank, CA, Bob Hope, LOC Y RWY 8, Amdt 4

Colorado Springs, CO, City of Colorado Springs Muni, Takeoff Minimums and Obstacle DP, Amdt 10

Craig, CO, Craig-Moffat, Takeoff Minimums and Obstacle DP, Amdt 4

Durango, CO, Durango-La Plata County, VOR/DME RWY 3, Amdt 5

Pueblo, CO, Pueblo Memorial, Takeoff Minimums and Obstacle DP, Amdt 5

Dunnellon, FL, Marion County, GPS RWY 23, Orig-B, CANCELLED
Dunnellon, FL Marion County, RNAV (GPS) RWY 23, Orig
Inverness, FL, Inverness, RNAV (GPS) RWY 1, Orig
Inverness, FL, Inverness, RNAV (GPS) RWY 19, Orig
Inverness, FL, Inverness, Takeoff Minimums & Obstacle DP, Orig
Jacksonville, FL, Herlong Recreational, GPS RWY 25, Orig, CANCELLED
Jacksonville, FL, Herlong Recreational, RNAV (GPS) RWY 25, Orig
Jacksonville, FL, Herlong Recreational, Takeoff Minimums and Obstacle DP, Amdt 2
Miami, FL, Miami Intl, ILS OR LOC RWY 8R, Amdt 30B
Hilo, HI, Hilo Intl, ILS OR LOC RWY 26, Amdt 13
Mapleton, IA, James G Whiting Memorial Field, NDB RWY 20, Amdt 5
Osceola, IA, Osceola Muni, GPS RWY 18, Orig, CANCELLED
Osceola, IA, Osceola Muni, GPS RWY 36, Orig, CANCELLED
Osceola, IA, Osceola Muni, RNAV (GPS) RWY 18, Orig
Osceola, IA, Osceola Muni, RNAV (GPS) RWY 36, Orig
De Kalb, IL, De Kalb Taylor Muni, ILS OR LOC RWY 2, Orig-B
De Kalb, IL, De Kalb Taylor Muni, NDB RWY 27, Orig, CANCELLED
Hazard, KY, Wendell H. Ford, Takeoff Minimums and Obstacle DP, Amdt 3
Somerset, KY, Lake Cumberland Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Dexter, ME, Dexter Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Grand Ledge, MI, Abrams Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Billings, MT, Billings Logan Intl, ILS OR LOC RWY 10L, Amdt 25
Billings, MT, Billings Logan Intl, RNAV (GPS) RWY 10L, Amdt 2
Billings, MT, Billings Logan Intl, RNAV (GPS) RWY 28R, Amdt 2
Billings, MT, Billings Logan Intl, Takeoff Minimums & Obstacle DP, Amdt 6
Billings, MT, Billings Logan Intl, VOR–A, Amdt 2
Billings, MT, Billings Logan Intl, VOR/DME RWY 28R, Amdt 14
Pinehurst/Southern Pines, NC, Moore County, RNAV (GPS) RWY 5, Orig
Gordon, NE., Gordon Muni, NDB RWY 22, Amdt 4
Grant, NE., Grant Muni, VOR/DME RWY 15, Amdt 1
Saratoga Springs, NY, Saratoga County, RNAV (GPS) RWY 5, Amdt 1B
Kenton, OH, Hardin County, VOR–A, Amdt 4, CANCELLED
Shelby, OH, Shelby Community, Takeoff Minimums and Obstacle DP, Amdt 2
Carlisle, PA, Carlisle, RNAV (GPS)—C, Orig
Carlisle, PA, Carlisle, Takeoff Minimums and Obstacle DP, Amdt 1
Dubois, PA, Dubois Rgnl, ILS OR LOC RWY 25, Amdt 9A
Lancaster, PA, Lancaster, RNAV (GPS) RWY 13, Amdt 1
Philadelphia, PA, Northeast Philadelphia, RNAV (GPS) RWY 15, Amdt 1
Philadelphia, PA, Northeast Philadelphia, RNAV (GPS) RWY 33, Amdt 1
Dallas-Fort Worth, TX, Dallas/Fort Worth International, Takeoff Minimums and Obstacle DP, Amdt 5
Mexia, TX, Mexia-Limestone Co, GPS RWY 36, Orig-A, CANCELLED
Mexia, TX, Mexia-Limestone Co, NDB–A, Amdt 4
Mexia, TX, Mexia-Limestone Co, RNAV (GPS) RWY 36, Orig
Monahans, TX, Roy Hurd Memorial, VOR/DME RWY 12, Amdt 1B
Rockport, TX, Aransas County, NDB RWY 14, Amdt 1, CANCELLED
Vernon, TX, Wilbarger County, NDB RWY 20, Amdt 1, CANCELLED
Milford, UT, Milford Muni/Ben and Judy Briscoe Field, RNAV (GPS) RWY 16, Orig
Milford, UT, Milford Muni/Ben and Judy Briscoe Field, RNAV (GPS) RWY 34, Orig
Milford, UT, Milford Muni/Ben and Judy Briscoe Field, Takeoff Minimums and Obstacle DP, Amdt 2
Milford, UT, Milford Muni/Ben and Judy Briscoe Field, VOR/DME–A, Amdt 4
Emporia, VA, Emporia-Greensville Rgnl, LOC RWY 33, Amdt 1
Emporia, VA, Emporia-Greensville Rgnl, RNAV (GPS) RWY 15, Amdt 1
Emporia, VA, Emporia-Greensville Rgnl, RNAV (GPS) RWY 33, Amdt 1
Luray, VA, Luray Caverns, NDB–A, Amdt 7
Luray, VA, Luray Caverns, RNAV (GPS) RWY 4, Orig
Luray, VA, Luray Caverns, RNAV (GPS) RWY 22, Amdt 1
Luray, VA, Luray Caverns, VOR/DME–B, Amdt 3
Norfolk, VA, Norfolk Intl, ILS OR LOC RWY 5, Amdt 26
Norfolk, VA, Norfolk Intl, RNAV (GPS) Z RWY 5, Amdt 1A
Norfolk, VA, Norfolk Intl, RNAV (RNP) Y RWY 5, Orig-A
Warrenton, VA, Warrenton-Fauquier, LOC/DME RWY 15, Orig
Warrenton, VA, Warrenton-Fauquier, RNAV (GPS) RWY 15, Amdt 1
Warrenton, VA, Warrenton-Fauquier, RNAV (GPS) RWY 33, Orig
Charlotte Amalie, VQ, Cyril E King, RNAV (GPS) RWY 10, Amdt 1B

[FR Doc. 2012–4638 Filed 2–29–12; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30829; Amdt. No. 3467]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 1, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 1, 2012.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500

South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on February 17, 2012.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
5–Apr–12	WY	Torrington	Torrington Muni	1/0250	2/6/12	GPS RWY 10, Orig-A
5–Apr–12	WY	Torrington	Torrington Muni	1/0251	2/6/12	GPS RWY 28, Orig-A
5–Apr–12	VA	Orange	Orange County	1/4651	2/6/12	VOR/DME OR GPS A, Amdt 2B
5–Apr–12	MT	Great Falls	Great Falls	1/6398	1/31/12	RNAV (RNP) Z RWY 03, ORIG
5–Apr–12	CA	Carlsbad	McClellan-Palomar	1/6680	2/6/12	ILS OR LOC/DME RWY 24, Amdt 9
5–Apr–12	RM	Majuro Atoll	Marshall Islands Intl	1/9429	2/6/12	RNAV (GPS) RWY 7, Orig-B
5–Apr–12	RM	Majuro Atoll	Marshall Islands Intl	1/9430	2/6/12	RNAV (GPS) RWY 25, Orig-B
5–Apr–12	FL	Destin	Destin-Fort Walton Beach	2/2695	2/13/12	RNAV (GPS) RWY 14, Amdt 1
5–Apr–12	TN	Memphis	Memphis Intl	2/3103	2/6/12	RNAV (GPS) RWY 36L, Amdt 1A
5–Apr–12	TN	Memphis	Memphis Intl	2/3105	2/6/12	RNAV (GPS) RWY 36R, Amdt 1B
5–Apr–12	TN	Memphis	Memphis Intl	2/3107	2/6/12	ILS OR LOC RWY 18C, Amdtr 1A
5–Apr–12	TN	Memphis	Memphis Intl	2/3108	2/6/12	ILS OR LOC RWY 18L, Amdt 2A
5–Apr–12	TN	Memphis	Memphis Intl	2/3109	2/6/12	ILS RWY 36C (CAT III), Amdt 3A
5–Apr–12	TN	Memphis	Memphis Intl	2/3110	2/6/12	ILS OR LOC RWY 18R, Amdt 14
5–Apr–12	TN	Memphis	Memphis Intl	2/3111	2/6/12	ILS OR LOC RWY 36C, Amdt 3A
5–Apr–12	TN	Memphis	Memphis Intl	2/3115	2/6/12	ILS RWY 36C (CAT II), Amdt 3A
5–Apr–12	IA	Keokuk	Keokuk Muni	2/3217	2/13/12	ILS OR LOC/DME RWY 26, Orig-A

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
5–Apr–12	TN	Memphis	Memphis Intl	2/3247	2/6/12	ILS OR LOC RWY 36L, Amdt 14B
5–Apr–12	MT	Missoula	Missoula Intl	2/3336	1/17/12	ILS Z RWY 11, AMDT 12B
5–Apr–12	MT	Missoula	Missoula Intl	2/3337	1/17/12	RNAV (RNP) Z RWY, ORIG–B
5–Apr–12	MT	Ronan	Ronan	2/3464	1/18/12	RNAV (GPS) RWY 34, ORIG
5–Apr–12	MT	Ronan	Ronan	2/3465	1/18/12	RNAV (GPS) RWY 16, ORIG
5–Apr–12	TN	Memphis	Memphis Intl	2/3737	2/6/12	RNAV (GPS) RWY 36C, Amdt 1A
5–Apr–12	WI	Milwaukee	General Mitchell Intl	2/4326	2/13/12	Takeoff Minimums and Obstacle DP, Amdt 7
5–Apr–12	MA	Fitchburg	Fitchburg Muni	2/4813	2/13/12	NDB A, Amdt 4B
5–Apr–12	MA	Fitchburg	Fitchburg Muni	2/4814	2/13/12	RNAV (GPS) RWY 32, Orig-A
5–Apr–12	CA	Ontario	Ontario Intl	2/6170	2/6/12	ILS OR LOC RWY 26L, Amdt 7C
5–Apr–12	WA	Spokane	Spokane Intl	2/6827	2/2/12	ILS OR LOC/DME RWY 21, ILS RWY 21 (SA CAT I), ILS RWY 21 (CAT II), ILS RWY 21 (CAT III), AMDT 23
5–Apr–12	TN	Memphis	Memphis Intl	2/6832	2/6/12	ILS OR LOC RWY 36R, Amdt 3A
5–Apr–12	NC	Manteo	Dare County Rgnl	2/8655	12/22/11	RNAV (GPS) RWY 5, Orig

[FR Doc. 2012–4692 Filed 2–29–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2011–0286]

RIN 1625–AA00; 1625–AA08

Eighth Coast Guard District Annual Marine Events and Safety Zones

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; request for comments.

SUMMARY: The Coast Guard is amending and updating its special local regulations and safety zones relating to recurring marine parades, regattas, fireworks displays, and other events that take place in the Eighth Coast Guard District area of responsibility. This rule informs the public of regularly scheduled marine parades, regattas, fireworks displays, and other annual events. When these special local regulations and safety zones are enforced, marine traffic is restricted in specified areas. The purpose of this rule is to reduce administrative costs involved in producing a separate rule for each individual recurring event and to provide notice of the known recurring events requiring a special local regulation or safety zone throughout the year. This rule will also help to protect event participants and the public from the hazards associated with the listed events.

DATES: This rule is effective May 30, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before April 2, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by April 2, 2012, we will withdraw this direct final rule and publish a notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0286 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Shelley R. Miller, Eighth Coast Guard District Waterways Management Division, (504) 671–2139 or email, *Shelley.R.Miller@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage participation in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0286), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. Insert ''USCG–2011–0286'' in the ''Search''

box. Click ''Search'' then click on ''Submit a Comment'' in the ''Actions'' column.

If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*. Insert ''USCG–2011–0286'' in the Search box and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

We are publishing this direct final rule under 33 CFR 1.05–55 because we do not expect an adverse comment. If no adverse comment or notice of intent to submit an adverse comment is received by April 2, 2012, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

Basis and Purpose

The Coast Guard is amending and updating the special local regulations and safety zones under 33 CFR parts 100 and 165 to incorporate the numerous annual marine events held on or around navigable waters within the Eighth Coast Guard District. These events include marine parades, boat races, swim events, fireworks displays, and other marine related events. In the past, a special local regulation or safety zone for each individual event was established separately. Currently, there is a list of events located at 33 CFR part 100, establishing a special local regulation for each annually recurring marine event. That list requires amending and updating to include 136 new events expected to recur annually (and for which temporary rules have typically been enacted each year), remove 44 events that no longer occur, and to properly categorize 83 events requiring either a special local regulation or a safety zone. Issuing individual regulations for each new event, event requiring amendment, or removing or re-categorizing an event creates unnecessary administrative costs and burdens. This rule considerably reduces the administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring marine events and their accompanying special local regulations and safety zones.

Amending and updating the established permanent regulations for marine events eliminates the need to issue individual temporary rules for each recurring event. The Coast Guard encourages the public to participate in this rulemaking so that any changes necessary can be identified and implemented in a timely and efficient manner.

Discussion of Rule

33 CFR part 100 contains regulations to provide effective control over regattas and marine parades conducted on U.S. navigable waters to ensure safety of life in the regattas or marine parade area. Section 100.801 regulates events that take place in the Eighth Coast Guard District. This section requires amendment and update to properly reflect the annually recurring marine events requiring special local regulations in the Eighth Coast Guard District. The events listed in Table 1 of Section 100.801 are amended and updated to reflect current events as presented in this rule.

This rule also modifies 33 CFR part 165 which provides for the establishment of safety zones to ensure marine safety during fireworks displays, air shows and other marine events recurring annually and requiring a safety zone. A new table listing the annually recurring safety zones in the Eighth Coast Guard District is added to 33 CFR 165.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The marine parades, regattas, fireworks displays, and other events listed in this rule will restrict

vessel traffic transiting certain areas of Eighth Coast Guard District waters at specified times; however the effect of this regulation will not be significant because these events are short in duration and the special local regulation or safety zone restricting and governing vessel movements are also short in duration. Additionally, the public is given advance notification through the **Federal Register** and/or Notices of Enforcement and thus will be able to plan operations around the events in advance.

Small Entities

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

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit the regulated area during the marine parades, regattas, fireworks displays, and other events. The special local regulations and safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons. These regulations will be in effect for short periods of times. Before the effective period, the Coast Guard Captain of the Port will issue maritime advisories widely available to waterway users.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraphs (34)(g) and (34)(h) of the

Instruction because it involves establishment of safety zones and special local regulations for marine parades, regattas, fireworks displays, and other events. An Environmental analysis and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

PART 100—REGATTAS AND MARINE PARADES

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

Authority: 33 U.S.C. 1233.

■ 2. Amend § 100.801 by revising table 1 to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

* * * * *

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS

Table No.	Sector Ohio Valley	Date	Event/sponsor	Sector Ohio Valley location	Regulated area
1	1	Labor Day weekend	Wheeling Vintage Regatta/Wheeling Vintage Race Boat Association.	Ohio River, Wheeling, WV.	Ohio River, mile marker 90.4 to 91.5, Wheeling, WV.
2	2	The Saturday before Memorial Day weekend.	Venture Outdoors Festival/Venture Outdoors.	Allegheny River, Pittsburgh, PA.	Allegheny River, 0.0–1.0 Pittsburgh, PA.
3	3	One day during the fourth week in July.	Oakmont Yacht Club Regatta/Oakmont Yacht Club.	Allegheny River, Oakmont, PA.	Allegheny River, mile marker 10.8 to 12.5, Oakmont, PA.
4	4	One day during the last two weeks in July or first week of August.	Pittsburgh Triathlon/ Piranha Sports LLC.	Allegheny River, Pittsburgh, PA.	Allegheny River, mile marker 0.0 to 1.0, Pittsburgh, PA.
5	5	The second Sunday in August.	Spirit of Morgantown Triathlon/Greater Morgantown Convention and Visitors Bureau.	Monongahela River, Morgantown, WV.	Monongahela River, mile marker 101.0 to 102.0, Morgantown, WV.
6	6	One day in the first week of October.	Head of the Ohio/ Three Rivers Rowing Association.	Allegheny River, Pittsburgh, PA.	Allegheny River, mile marker 0.0 to 3.5, Pittsburgh, PA.
7	7	First Weekend in May	Kentucky Lake Sailing Club/Riddle Cup Regatta.	Grand Rivers, KY	No Regulated Area, Sailing vessels will not impede navigation.
8	8	First weekend in October.	Kentucky Lake Sailing Club/100K Distance Race.	Grand Rivers, KY	No Regulated Area, Sailing vessels will not impede navigation.
9	9	Second Weekend in September.	Kentucky Lake Sailing Club/Watkins Cup Regatta.	Grand Rivers, KY	No Regulated Area, Sailing vessels will not impede navigation.
10	10	Third Weekend In July.	Paducah Summer Festival/Cross River Swim.	Paducah, KY	The Ohio River From mile marker 934–936 will be closed to all traffic due to the hazardous conditions associated with personnel swimming across the Ohio River at mile marker 935. Estimated time of restriction is 2 hours.
11	11	First weekend in June	Kentucky Drag Boat Association/Pisgah Bay Boat Races.	Grand Rivers KY	No wake zone in Pisgah Bay, mile marker 30 Tennessee River. Zone is in a bay roughly ½ mile from navigation channel. No restrictions placed on navigation.
12	12	Second Weekend in July.	Kentucky Drag Boat Association/Pisgah Bay Boat Races.	Grand Rivers KY	No wake zone in Pisgah Bay, mile marker 30 Tennessee River. Zone is in a bay roughly ½ mile from navigation channel. No restrictions placed on navigation.
13	13	Last Weekend in July or First Weekend in August.	Kentucky Drag Boat Association/Pisgah Bay Boat Races.	Grand Rivers KY	No wake zone in Pisgah Bay, mile marker 30 Tennessee River. Zone is in a bay roughly ½ mile from navigation channel. No restrictions placed on navigation.
14	14	June through October	Common Wealth Yacht Club/CYC Sailing Series.	Grand River KY	No Regulated Area, Sailing vessels will not impede navigation.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

Table No.	Sector Ohio Valley	Date	Event/sponsor	Sector Ohio Valley location	Regulated area
15	15	Last Weekend in September.	Common Wealth Yacht Club/Commonwealth Cup Regatta.	Grand Rivers, KY	No Regulated Area, Sailing vessels will not impede navigation.
16	16	1 day—The last week of April or the first week of May.	Great Steam Boat Race/Kentucky Derby Festival.	Louisville, KY	Bank to Bank of the Ohio River, mile marker 597.0 to 604.3.
17	17	3 days Last weekend in June.	Thunder on the Ohio/Evansville Freedom Festival.	Evansville, IN	Bank to Bank Ohio River mile marker 792.0 to 93.0.
18	18	3 days—July 2–4	Madison Regatta/Madison Regatta Inc.	Madison, KY	Bank to Bank of the Ohio River mile marker 555.0 to 560.0.
19	19	1 day—The 3rd weekend in July.	Cardinal Harbour Triathlon.	Finchville, KY	Bank to Bank of the Ohio River at mile marker 589.0.
20	20	1 day—The 1st weekend of August.	Ducks On the Ohio/Evansville Goodwill Industries.	Evansville, KY	Bank to Bank of the Ohio River at mile marker 752.0.
21	21	1 day—The last weekend of August.	World Triathlon Corporation.	Louisville, KY	Bank to Bank of the Ohio River, mile marker 601.5 to 604.5.
22	22	Second Saturday in April.	Marietta Invitational Rowing Regatta.	West Marietta, Muskingum River.	Muskingum River mile marker 1.5 to .5.1.5 miles upriver from the confluence of the Muskingum and Ohio Rivers on the Muskingum River to 1 mile downriver on the Muskingum River.
23	23	Third or Fourth Saturday in April.	West Virginia Governor's Cup.	Charleston, WV, Kanawha River.	Kanawha River mile marker 59.4 to 61.9, downstream of Daniel Boone Boat Ramp to ½ mile downriver past the University of Charleston.
24	24	Second weekend in July.	Marietta Riverfront Roar.	Marietta, OH Ohio River.	Ohio River mile marker 172.6 to 171.6.
25	25	First weekend in August.	Summerfest	Guyandotte, WV. Ohio River.	Ohio River mile marker 305.5 to 304.2, ½ mile up and down river from the Proctorville Bridge, which crosses from Guyandotte, WV to Proctorville, OH.
26	26	Third Weekend in August.	Toyota Governor's Cup.	Charleston, WV. Kanawha River.	Kanawha River mile marker 56.7 to 57.6. From the I–64 bridge which is right below the confluence of the Elk and Kanawha Rivers to 1 mile down river.
27	27	Second or Third weekend in September.	Ohio Sternwheel Festival.	Parkersburg, WV Ohio River.	Restricted area for the sternwheel race reenactment extending from mile marker 172.4 to 170.3.2 on the Ohio River. Safety zone for the fireworks display, extending from mile marker 171.5 to 172.5 (about ½ mile up and down river from the confluence of the Ohio and Muskingum Rivers). (See 33 CFR 165).
28	28	First weekend in October.	Star USA Capital City Challenge.	Charleston, WV Kanawha River.	Kanawha River mile marker 62.2 to 57.2, ½ mile upriver from the Daniel Boone Boat Launch downriver ½ mile past the confluence of the Elk and Ohio Rivers.
29	29	Last weekend in September.	Waterworks half marathon and sprint races rowing regatta.	Charleston, WV Kanawha River.	Kanawha River mile marker 171.7 to 172.7. A regulated area will exist around the confluence of the Muskingum and Ohio Rivers—approximately ½ mile each way.
30	30	The 2nd weekend in September.	Clarksville Riverfest/City of Clarksville.	Clarksville, TN	Cumberland River mile marker 125.0 to 126.0.
31	31	The 3rd weekend in June..	The Great Kiwanis Duck Race/Kiwanis Club of Chattanooga.	Chattanooga, TN	Tennessee River mile marker 463.0 to 464.0.
32	32	1st weekend in May	Rev3 Triathlon Series/Rev3.	Knoxville, TN	Tennessee River mile marker 646.0 to 649.0.
33	33	2nd weekend in June	Chattanooga River Rats Open Water Swim/Chattanooga Parks and Recreation.	Chattanooga, TN	Tennessee River mile marker 464.0 to 469.0.

TABLE 1 OF § 100.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL MARINE EVENTS—Continued

Table No.	Sector Ohio Valley	Date	Event/sponsor	Sector Ohio Valley location	Regulated area
34	34	2nd weekend in July	Chattanooga Waterfront Triathlon/. Team Magic	Chattanooga, TN	Tennessee River mile marker 463.0 to 465.0.
35	35	4th weekend in July	Music City Triathlon/ Team Magic.	Nashville, TN	Cumberland River mile marker 190.0 to 192.0.
36	36	3rd weekend in August.	Pro Wakeboard Tour/ World Sports and Marketing.	Knoxville, TN	Tennessee River mile marker 647.0 to 648.0.
37	37	2nd weekend in August.	Dragon Boat and River Festival/Cumberland River Compact.	Nashville, TN	Cumberland River mile marker 190.0 to 192.0.
38	38	3rd weekend in September.	Great Nashville Duck Race/Boys and Girls Club of Middle Tennessee.	Nashville, TN	Cumberland River mile marker 190.0 to 192.0.
39	39	1st weekend in October.	Chattanooga Head Race/Lookout Rowing Club.	Chattanooga, TN	Tennessee River mile marker 464.0 to 467.0.
40	40	1st weekend in November.	Head of the Hooch Rowing Regatta/ Lookout Rowing Club.	Chattanooga, TN	Tennessee River mile marker 463.0 to 469.0.
41	41	The last weekend in August.	A Roar of Thunder/ Aurora Riverfront Beautification Committee.	Ohio River, Aurora, IN	Ohio River mile marker 496.0 to 499.0, Aurora, IN.
42	42	The last Saturday in June.	Ohio River Way Paddlefest/Ohio River Way Inc.	Ohio River, Cincinnati, OH.	Ohio River mile marker 459.5 to 471.5, Cincinnati, OH.
43	43	The fourth Saturday in July.	Great Ohio River Swim/Ohio River Way Inc.	Ohio River, Cincinnati, OH.	Ohio River mile marker 469.7 to 470.3, Cincinnati, OH.
44	44	The fourth Sunday of July.	Cincinnati Triathlon/ Tucson Racing.	Ohio River, Cincinnati, OH.	Ohio River mile marker 469.3 to 470.3, Cincinnati, OH.
45	45	Third Saturday in October.	Head of the Kanawha Rowing Regatta.	Kanawha River	From mile marker 62.4, half mile up river from the Daniel Boone public boat ramp down to mile marker 57.4, half mile downriver from the confluence of the Elk River and the Kanawha River.
	Sector Upper Mississippi River	Date	Event/sponsor	Sector Upper Mississippi River location	Regulated area
46	1	1 day—Third Saturday in May.	Clear Lake Chapter of the ACBS/That was then, This is Now Boat Show & Exhibition.	Quad Cities, IL	Upper Mississippi River mile marker 454.0 to 456.0 (Iowa).
47	2	1 day—Third Saturday in March.	Lake West Chamber of Commerce/St. Patrick's Water Parade.	Lake of the Ozarks, MO.	Lake of the Ozarks mile marker 5.0 to 10.0 (Missouri).
48	3	1 day—Third Saturday in July.	Marine Max/Aqua Plooza.	Lake of the Ozarks, MO.	Lake of the Ozarks Mile marker 18.7 to 19.3 (Missouri).
49	4	2 day—Third Weekend in July.	Champboat Series LLC/Aquatennial Power Boat Grand Prix.	Minneapolis, MN	Upper Mississippi River mile marker 854.8 to 855.8 (Minnesota).
50	5	2 day—Third weekend in June.	Lake City Chamber of Commerce/Water Ski Days.	Lake City, MN	Upper Mississippi River mile marker 772.4 to 772.8 (Minnesota).
51	6	2 days—First week of August.	River City Days Association/River City Days.	Red Wing, MN	Upper Mississippi River mile marker 791.4 to 791.8 (Minnesota).

	Sector Upper Mississippi River	Date	Event/sponsor	Sector Upper Mississippi River location	Regulated area
52	7	2 days—Second weekend of September.	St. Louis Drag Boat Association/New Athens Drag Boat Race.	New Athens, IL	Kaskaskia River mile marker 28.0 to 29.0 (Illinois).
53	8	2 day—Third weekend in July.	Havana Chamber of Commerce/Havana Boat Races.	Havana, IL	Illinois River mile marker 120.3 to 119.7 (Illinois).
54	9	3 days—Third weekend in August.	K.C. Aviation Expo & Air Show/K.C. Aviation Expo & Air Show.	Kansas City, MO	Missouri River mile marker 366.3 to 369.8 (Missouri).
55	10	3 days a week from May 4th–September 30th.	Twin City River Rats Organization/Twin City River Rats.	Twin Cities, MN	Upper Mississippi River mile marker 855.4 to 855.8 (Minnesota).

	Sector Houston-Galveston	Date	Event/sponsor	Sector Houston-Galveston location	Regulated area
56	1	A Saturday evening within the Mardi Gras Season (February or March).	Yachty Gras	Clear Lake, TX	Clear Creek Channel from approximate position Latitude 29°33′16.8″ N, Longitude 095°03′39.6″ W in Clear Lake thence east/northeast in the Clear Creek Channel to approximate position Latitude 29°32′58.8″ N, Longitude 095°00′30.6″ W in Galveston Bay. (NAD 83).
57	2	A Saturday morning in April.	Memorial Hermann Gateway to the Bay Triathlon.	Galveston Bay, TX	Galveston Bay within an area beginning at Latitude 29°32′38.02″ N, Longitude 095°00′58.30″ W thence east to Latitude 29°32′46.73''N, Longitude 094°59′50.36″ W, thence south to Latitude 29°32′36.98″ N, Longitude 094°59′50.32″ W, thence west to 29°32′30.86″ N, Longitude 095°00′56.91″ W thence along the shoreline to the point of beginning. (NAD 83).
58	3	The 1st Sunday afternoon in May.	Blessing of the Fleet	Clear Lake, TX	Clear Creek Channel from approximate position Latitude 29°33′16.8″ N, Longitude 095°03′39.6″ W in Clear Lake thence east/northeast in the Clear Creek Channel to approximate position Latitude 29°32′58.8″ N, Longitude 095°00′30.6″ W in Galveston Bay. (NAD 83).
59	4	3 days during the 1st weekend in May (including partial weekends).	RiverFest Power Boat Races/Port Neches Chamber of Commerce..	Neches River, Port Neches, TX.	Adjacent to Port Neches Park—all waters of the Neches River shoreline to shoreline south of 30°00′08″ N and west of 093°56′00″ W (NAD 83).
60	5	2nd or 3rd weekend in September.	SPORT Power Boat Races/City of Orange, TX Convention/Visitors Bureau.	Sabine River, Orange, TX.	Adjacent to the Orange, TX public boat ramp—all waters of the Sabine River, shoreline to shoreline, south of 30°05′33″ N and north of 30°05′45″ N (NAD 83).
61	6	The 2nd Saturday night in December.	Christmas Boat Parade on Clear Lake.	Clear Lake, TX	Clear Creek Channel from approximate position Latitude 29°33′16.8″ N, Longitude 095°03′39.6″ W in Clear Lake thence east/northeast in the Clear Creek Channel to approximate position Latitude 29°32′58.8″ N, Longitude 095°00′30.6″ W in Galveston Bay. (NAD 83).

	Sector Corpus Christi	Date	Event/sponsor	Sector Corpus Christi location	Regulated area
62	1	2nd, 3rd or 4th Wednesday thru Sunday in April.	Corpus Christi Yacht Club/World Kiteboarding Championship.	Corpus Christi Bay, Corpus Christi, TX.	All waters contained within 1-mile of McGee Beach where participants will race through course markers.
63	2	2nd, 3rd or 4th Thursday thru Saturday in April.	M.M.D. Communications Corporation/ Texas International Boat Show.	Corpus Christi Marina/ Corpus Christi, TX.	All waters inside the Corpus Christi Marina Breakwater, Corpus Christi, TX.

	Sector Corpus Christi	Date	Event/sponsor	Sector Corpus Christi location	Regulated area
64	3	2nd, 3rd or 4th Thursday thru Saturday in April OR 1st or 2nd Thursday thru Saturday in May.	American Power Boat Association/Power Boat Races.	Corpus Christi Bay, Corpus Christi, TX.	All waters of the Corpus Christi Marina contained between the People's Street T-Head on the west, the primary breakwater on the east, the southern boundary running from the southernmost tip of the People's Street T-Head (approx 27–47–43.4N 097–23–16W) along a line running due east to the breakwater (approx 27–47–43.8N 097–23–5.2W), and the northern boundary line running from the northern most tip of the secondary breakwater (approx 27–47–57N 097–23–21.7W) and the end of the primary breakwater (approx 27–47–59.1N 097–23–9.5W).
65	4	3rd or 4th Friday-Sunday in April.	Corpus Christi Yacht Club/Port Aransas Ladies Regatta.	Corpus Christi Bay, Corpus Christi, TX.	All waters south of the Corpus Christi Ship Channel and 5-miles East of the Corpus Christi Marina.
66	5	2nd, 3rd or 4th Thursday-Sunday in May.	Corpus Christi Yacht Club/Melges 24′ Championship Regatta.	Corpus Christi Bay, Corpus Christi, TX.	All waters south of the Corpus Christi Ship Channel and 5-miles East of the Corpus Christi Marina.
67	6	1st or 2nd Friday and Saturday in June.	Corpus Christi Yacht Club/Changes in L'Attitude Regatta.	Corpus Christi Bay, Corpus Christi, TX.	All waters south of the Corpus Christi Ship Channel and 5-miles East of the Corpus Christi Marina.
68	7	1st or 2nd Saturday and Sunday in August.	Corpus Christi Yacht Club/Navy Regatta.	Corpus Christi Bay, Corpus Christi, TX.	All waters south of the Corpus Christi Ship Channel and 5-miles East of the Corpus Christi Marina.
69	8	3rd or 4th Wednesday thru Saturday in August.	Corpus Christi Yacht Club/Corpus Christi Race Week.	Corpus Christi Bay, Corpus Christi, TX.	All waters south of the Corpus Christi Ship Channel and 5-miles East of the Corpus Christi Marina.
70	9	3rd or 4th Friday and Saturday in September.	Corpus Christi Yacht Club/Bill Best Regatta.	Corpus Christi Bay, Corpus Christi, TX.	All waters south of the Corpus Christi Ship Channel and 5-miles East of the Corpus Christi Marina.
71	10	1st Saturday in December.	City of Corpus Christi/Harbor Lights Boat Parade.	Corpus Christi Marina/Corpus Christi, TX.	All waters inside the Corpus Christi Marina Breakwater, Corpus Christi, TX.
72	11	1st or 2nd Friday and Saturday in December.	Aransas Pass Yacht Club/Christmas Lighted Boat Parade.	Conn Brown Harbor/Aransas Pass, TX.	All waters contained within Conn Brown Harbor in Aransas Pass, TX.
73	12	1st or 2nd Friday and Saturday in December.	Padre Island Yacht Club/La Posada Lighted Boat Parade.	Canals along the North Padre Island in Corpus Christi, TX.	All waters along the parade route contained within the North Padre Island canals in Corpus Christi, TX.
74	13	1st or 2nd Friday thru Sunday in December.	Corpus Christi Yacht Club/Frost Bite Regatta.	Corpus Christi Bay, Corpus Christi, TX.	All waters south of the Corpus Christi Ship Channel and 5-miles East of the Corpus Christi Marina.

	Sector New Orleans	Date	Event/sponsor	Sector New Orleans location	Regulated area
75	1	The Monday before Mardi Gras.	Riverwalk Marketplace, Lundi Gras Boat Parade.	Mississippi River, New Orleans, LA.	Lower Mississippi River, Above Head of Passes, from mile marker 93 to 96, extending the entire width of the river in the vicinity of the Riverwalk, New Orleans, LA.
76	2	One day during the last weekend of April.	Family Fun Festival Pirogue Race/Bayou Civic Club.	Larose, LA	In Bayou Lafourche, race begins at LA HWY 657 (Lat: 29°34′17.29″ N; Long: 090°22′58.60″ W) and ends at the Larose Locks (Lat: 29°34′06.20″ N; Long: 090°22′26.50″ W) Part of Bayou Lafourche will be closed for 30 minutes to vessel traffic for race to occur.
77	3	The 3rd Sunday in April.	Blessing of the Shrimp Fleet/St. Joseph's Catholic Church.	Chauvin, LA	Starts at Bayou Petit Caillou (Lat: 29°27′43.84″ N; Long: 090°35′19.50″ W) and continues to Lake Boudreaux/Boudreaux Canal (Lat: 29°23′30.83″ N; Long: 090°38′13.64″ W).

	Sector New Orleans	Date	Event/sponsor	Sector New Orleans location	Regulated area
78	4	The 1st weekend after Easter.	Blessing of the Fleet and Boat Parade/ Our Lady of Prompt Succor Catholic Church.	Golden Meadow, LA ..	Starts on Bayou Lafourche at Our Lady of Prompt Succor Catholic Church (Lat: 29°23′47.25″ N; Long: 090°16′17.72″ W) to the Parish Limits (Lat: 29°25′09.96″ N; Long: 090°17′12.26″ W) to the end of Golden Meadow Business District (Lat: 29°22′16.86″ N; Long: 090°15′32.46″ W) and returning to starting point.
79	5	The 2nd Sunday after Easter.	Grand Caillou Boat Blessing/Holy Family Church.	Dulac, LA	Bayou Grand Caillou, Starts 29°25′30.98″ N, 090°41′59.91″ W; to 29°14′42.13″ N, 090°44′03.57″ W; to 29°22′15.44″ N, 090°43′53.84″ W; and returning to starting point.
80	6	Month of July	Deep South Racing Association/Battle at the Butte.	Atchafalaya River at Butte La Rose, LA.	Atchafalaya River, Butte La Rose, LA.
81	7	Month of July or August.	Battle of the Basin Boat Races, Morgan City, LA.	Morgan City, LA	Morgan City Port Allen Route at mile marker 4.5, Morgan City, LA.
82	8	1st weekend of September.	LA Shrimp and Petroleum Festival Fleet Blessing, LA Shrimp and Petroleum Festival and Fair Association.	Morgan City, LA	Atchafalaya River at mile marker 118.5, Morgan City, LA.

	Sector Lower Mississippi River	Date	Event/sponsor	Sector Lower Mississippi River location	Regulated area
83	1	The 1st or 2nd Saturday in May.	Memphis in May Canoe & Kayak Race/Outdoor Inc.	Lower Mississippi River, Memphis, TN.	Regulated Area: Lower Mississippi River, mile marker 735.5 to 738.5, Memphis, TN.
84	2	Second Saturday in October.	Phatwater Kayak Challenge/ Phatwater Kayak Challenge Inc.	Lower Mississippi River, Natchez, MS.	Regulated Area: Lower Mississippi River, mile marker 363.0 to 405.0, Natchez, MS.
85	3	1st of January	Ski Freeze/The Dream Factory of Memphis.	Wolf River Chute, Memphis, TN.	Regulated Area: Wolf River Chute, mile marker 1.0 to 3.0, Memphis, TN.
86	4	3rd Saturday in April	BluzCruz Kayak Marathon/BluzCruz Race Committee.	Lower Mississippi River, Vicksburg, MS.	Regulated Area: Lower Mississippi River, mile marker 457.4 to 437.4, Vicksburg, MS.
87	5	3rd Saturday in April	Maria Montessori Regatta/Maria Montessori School.	Wolf River Chute, Memphis, TN.	Regulated Area: Wolf River Chute, mile marker 1.0 to 3.0, Memphis, TN.

	Sector Mobile	Date	Event/sponsor	Sector Mobile location	Regulated area
88	1	1 Day; Fat Tuesday (Mardi Gras Day).	Mardi Gras Boat Parade/Gulf Shores Homeport Marina.	Intracoastal Waterway, Orange Beach, AL to Gulf Shores, AL.	Intracoastal Waterway mile marker 155.0 to -159.0 (EHL), Starts at the Wharf Marina, Orange Beach, AL and heads west to Homeport Marina, Gulf Shores, AL.
89	2	1 Day; 1st weekend following Fat Tuesday.	Mobile Air Sea Rescue-Boat Show/Gulf Coast Shows.	Mobile River, Mobile, AL.	Mobile River, half a mile down river and half a mile upriver from the Mobile Convention Center.
90	3	1 Day; 1st or 2nd Saturday in Mach.	Battle on the Bayou/ South Coast Paddling Company.	Old Fort Bayou, Ocean Springs, MS.	Old Fort Bayou, from Gulf Hills Hotel to the Shed Barbeque.
91	4	1 Day; Mid March to Mid April.	Rowing Competition/ University of South Alabama.	Black Warrior River, Tuscaloosa, AL.	Black Warrior River between river mile marker 339.0 to 341.5.
92	5	2 Days; 3rd weekend in March.	Chattahoochee Challenge/City of Chattahoochee.	Apalachicola River, Chattahoochee, GA.	Apalachicola River between mile marker 104.6 and 106.0.
93	6	1 Day; Last Saturday in March.	Blessing of the Fleet/ Panama City Marina.	Saint Andrew Bay, Panama City, FL.	Saint Andrew Bay, all waters extending 100 yards out from the Panama City Marina seawall.

	Sector Mobile	Date	Event/sponsor	Sector Mobile location	Regulated area
94	7	1 Day; 2nd or 3rd weekend in April.	USAT Triathlon/Tuscaloosa Tourism and Sports Commission.	Black Warrior River, Tuscaloosa, AL.	Black Warrior River mile marker 338.5 to 339.5.
95	8	2 Days; Between the 1st week in April to the last week in May.	Smokin the Sound/ Smokin the Sound.	Biloxi Ship Channel, Biloxi, MS.	Biloxi Ship Channel, Channel Marker 2 thru 35.
96	9	2 Days; Between the 1st week in April to the last week in May.	Smokin the Lake/ Smokin the Sound.	Lake Gulfport, Gulfport, MS.	Lake Gulfport, Bounded by the following coordinates: Eastern boundary; Latitude 30°25′36″ N, Longitude 089°03′8″ W to Latitude 30°25′26″ N, Longitude 089°03′8″ W. Western boundary; Latitude 30°25′32″ N, Longitude 089°03′59″ W, to Latitude 30°25′26″ N, Longitude 089°03′59″ W.
97	10	1 Day; Next to last or last weekend in April.	Dauphin Island Race/ Fairhope, Lake Forest, Mobile, and Buccaneer Yacht Clubs.	Mobile Bay, Mobile, AL.	Mobile Bay Mobile Ship Channel, Channel Markers 37 & 38 thru Channel Markers 49 & 50.
98	11	1 Day; 1st or 2nd Sunday in May.	Blessing of the Fleet/ St. Margaret's Catholic Church.	Bayou La Batre, Bayou La Batre, AL.	All of Bayou La Batre.
99	12	2 Days; 1st weekend in June.	Billy Bowlegs Pirate Festival/Greater Fort Walton Beach Chamber of Commerce.	Santa Rosa Sound, Ft. Walton Beach, FL.	Santa Rosa Sound, including all waters between an eastern boundary represented by positions 30°24′22.5″ N, 086°35′14″ W; 30°23′51.4″ N, 086°35′14″ W, and a western boundary represented by positions 30°24′13.5″ N, 086°37′11″ W; 30°23′58.5″ N, 086°37′11″ W.
100	13	1 Day; 1st Sunday in June.	Blessing of the Fleet/ St. Michael's Catholic Church.	Biloxi Channel, Biloxi, MS.	All of Biloxi Channel.
101	14	4 Days; In October	Thunder on the Gulf/ Gulf Coast Power Boat Association.	Gulf of Mexico, Orange Beach, FL.	Gulf of Mexico for the waters off Orange Beach, AL, enclosed by a box starting at a point on the shore at approximately 30°15′39″ N, 087°36′42″ W, then south to 30°14′54″ N, 087°36′42″ W, then east, roughly parallel to the shore line to 30°15′22″ N, 087°33′31″ W, then north to a point on the shore at approximately 30°16′13″ N, 087°33′31″ W.
102	15	1 Day; Saturday following Thanksgiving.	Boat Parade of Lights/ City of Panama City & St. Andrews Waterfront Partnership.	St. Andrew Bay, Panama City, FL.	St Andrew Bay, Starts at St. Andrews Bay Yacht Club and ends at St Andrews Bay Marina.
103	16	1 Day; 1st Saturday in December.	Christmas on the River/Demopolis Area Chamber of Commerce.	Tombigbee River, Demopolis, AL.	Tombigbee River, from Mile 215.5 to Mile 217.0.
104	17	1 Day; 1st Saturday in December.	Christmas by the River/Moss Point Active Citizens.	Beardslee Lake & Robertson Lake, Moss Point, MS.	East Beardslee Lake near Hwy 613 bridge to West Robertson Lake parallel to Hwy 613, south to the Jackson County Ski Area.
105	18	1 Day; 1st Saturday in December.	Christmas on the Water/Christmas on the Water Committee.	Biloxi Channel, Biloxi, MS.	Biloxi Channel from Channel Marker 4 to Channel Marker 30.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 4. Add § 165.801 to read as follows:

§ 165.801 Annual Fireworks Displays and other events in the Eighth Coast Guard District requiring safety zones.

The Coast Guard is establishing safety zones for the annual fireworks displays and other events requiring safety zones listed in the table to § 165.801.

(a) In accordance with the general regulations in § 165 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative.

(b) Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port or a designated representative.

(c) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative.

Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

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

TABLE 1 OF § 165.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL SAFETY ZONES

Table No.	Sector Ohio Valley	Date	Sponsor/name	Sector Ohio Valley location	Safety zone
1	1	July 4th	Harrah's 4th of July Celebration.	Ohio River, Metropolis, Il	Ohio River mile marker 944.0 to 945.0 Metropolis, Il.
2	2	July 4th	Paducah Parks Department	Ohio River, Paducah, Ky	Ohio River, mile marker 934.0 to 936.0.
3	6	Third weekend in July	Paducah Summer Festival	Ohio River, Paducah, Ky	Ohio River, mile marker 934.0 to 936.0.
4	7	Every Saturday from April through September.	Pittsburgh Pirates/Pittsburgh Pirates Fireworks.	Allegheny River, Pittsburgh, PA.	Allegheny River, mile marker 0.4 to 0.7 Pittsburgh, PA.
5	8	July 4th	Wellsburg 4th of July Committee/Wellsburg 4th July.	Ohio River, Wellsburg, WV	Ohio River, mile marker 73.5 to 74.5 Wellsburg, WV.
6	9	One day during the fourth week in July.	Upper Ohio Valley Italian Festival/Upper Ohio Valley Italian Festival Fireworks Display.	Ohio River, Wheeling, WV	Ohio River, mile marker 90.0 to 90.6 Wheeling, WV.
7	10	One day during the first week of August.	Sharpsburg Borough/ Guyasuta Days.	Allegheny River, Sharpsburg Borough, Pittsburgh, PA.	Allegheny River, mile marker 5.5 to 6.0 Pittsburgh, PA.
8	11	One day during the fourth week of August.	Pittsburgh Foundation/Bob O'Connor Cookie Cruise.	Ohio River, Pittsburgh, PA	Ohio River, mile marker 0.0 to 0.1 Pittsburgh, PA.
9	12	The third Friday in November.	Pittsburgh Downtown Partnership/Light Up Night.	Allegheny River, Pittsburgh, PA.	Allegheny River, mile marker 0.4 to 1.0 Pittsburgh, PA.
10	13	December 31	Pittsburgh Cultural Trust/Pittsburgh First Night.	Allegheny River, Pittsburgh, PA.	Allegheny River, mile marker 0.6 to 0.8 Pittsburgh, PA.
11	14	2 days—3rd Friday and Saturday in April.	Kentucky Derby Festival/ Thunder over Louisville.	Ohio River, Louisville, KY	Bank to Bank of the Ohio River, mile marker 598.0 to 604.0.
12	15	The 3rd weekend in April.	Henderson Tri-Fest/Henderson Breakfast Lions Club.	Henderson, KY	Bank to Bank of the Ohio River, mile marker 803.5 to 804.5.
13	16	1 day—July 4th	Downtown Henderson Project/ Independence bank 4th of July Celebration.	Ohio River, Mile 803.5–804.5 Henderson, KY.	Bank to Bank of the Ohio River, mile marker 803.5 to 804.5.
14	17	1 day—July 4th	Louisville Waterfront Development Corp./Waterfront Independence Festival.	Ohio River, Louisville, KY	Bank to Bank of the Ohio River, mile marker 603.0 to 604.0.
15	18	1 day—July 3rd	Louisville Bats Baseball Club/ Louisville Bats Fireworks.	Louisville, KY Ohio River Mile 603.0–604.0.	Bank to Bank of the Ohio River, mile marker 603.0 to 604.0.
16	19	1 day—July 4th	Growth Alliance for Greater Evansville/ Evansville Festival.	Ohio River, M 792.0–793.5 Evansville, KY.	Bank to Bank of the Ohio River, mile marker 792.0 to 793.5.
17	20	1 day—July 4th	Owensboro Parks and Recreation/ Celebration of the American Spirit.	Owensboro, KY Mile 756.75	Bank to Bank of the Ohio River, mile marker 755.0 to 757.0.
18	21	1 day—July 4th	City of New Albany/Riverfront Independence Festival.	New Albany, KY Ohio River 608.0.	Bank to Bank of the Ohio River mile, marker 607.0 to 609.0.
19	22	First Friday in June	WV Special Olympics	Kanawha River, Charleston, WV.	Kanawha River, mile marker 57.9 to 58.9. A mile down from the Kanawha City bridge to the confluence of the Elk and Ohio Rivers.
20	23	First Sunday in June	WV Symphony Fireworks	Kanawha River, Charleston, WV.	Kanawha River, mile marker 59.5 to 60.5. Half a mile downriver and upriver from Charleston University.
21	24	Last Saturday in June	St. Albans	Kanawha River, St. Albans, WV.	Kanawha River, mile marker 46.0 to 47.0. From the 3rd St. Bridge to a mile up river from the 3rd St. Bridge.

TABLE 1 OF § 165.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL SAFETY ZONES—Continued

Table No.	Sector Ohio Valley	Date	Sponsor/name	Sector Ohio Valley location	Safety zone
22	25	July 4th	City of Charleston/City of Charleston Independence Day Celebration.	Kanawha River, Charleston, WV.	Kanawha River, mile marker 57.5 to 59.0, Charleston, WV. Quarter mile up river from the confluence with the Elk River to one mile up river near the Old C&P Boat Ramp.
23	26	July 4th	Summer Motion Inc./Summer Motion.	Ohio River, Ashland, KY	Ohio River, mile marker 322.1 to 323.1, Ashland, KY. Approximately 8/10 of a mile up river from the Ashland Bridge to approximately a quarter mile down river from the Ashland bridge.
24	27	July 4th	Big Sandy Superstore Arena/ Dawg Dazzle Fireworks Spectacular.	Ohio River, Huntington, WV	Ohio River, mile marker 307.8 to 308.8. One-half mile up and down river from the Harris Riverfront Park.
25	28	July 4th	Civic Forum	Ohio River, Portsmouth, OH	Ohio River, mile marker 355.5 to 356.5 Portsmouth, OH. From the confluence of the Scioto and Ohio Rivers, one mile upriver to the U.S. Highway Grant Bridge.
26	29	July 4th	Point Pleasant	Ohio River, Pt. Pleasant, WV	Ohio River, mile marker 266.2 to 265.2 and Kanawha River mile marker .5 to the confluence with the Ohio River. Safety zone starts down river from the Silver Memorial Bridge and runs a mile up river.
27	30	Third Saturday in August.	Parkersburg Homecoming Festival.	Ohio River, Parkersburg, WV	Ohio River, mile marker 184.0 to 185.0. One-half mile up and down river from the confluence of the Little Kanawha and the Ohio River.
28	31	First Sunday in September.	Portsmouth Riverdays	Ohio River, Portsmouth, OH	Ohio River, mile marker 355.5 to 356.5 Portsmouth, OH. From the confluence of the Scioto and Ohio Rivers, one mile upriver to the U.S. Highway Grant Bridge.
29	32	Second Saturday in October.	Rod Run Doo Wop	Kanawha River, Charleston, WV.	Kanawha River, mile marker 57.5 to 59.0. Downstream from the I–64 Bridge in Charleston, WV to one mile upriver.
30	33	July 4th	Spirit of Freedom Fireworks Urban Broadcasting.	Florence, TN	Tennessee River mile marker 255.0 to 257.0.
31	34	The Saturday before July 4th, or on July 4th if that day is a Saturday.	Lighting Up the Cumberland Fireworks/Town of Cumberland City.	Cumberland City, TN	Cumberland River mile marker 103.0 to 105.0.
32	35	July 4th	Lake Guntersville 4th of July Celebration/Lake Guntersville, AL Chamber of Commerce.	Guntersville, AL	Tennessee River mile marker 356.0 to 358.0.
33	36	July 4th	Clarksville Independence Day Fireworks/City of Clarksville.	Clarksville, TN	Cumberland River mile marker 125.0 to 127.0.
34	37	July 4th	Knoxville July 4th Fireworks City of Knoxville.	Knoxville, TN	Tennessee River mile marker 647.0 to 648.0.
35	38	July 4th	Music City July 4th Nashville CVB.	Nashville, TN	Cumberland River mile marker 190.0 to 192.0.

TABLE 1 OF § 165.801—EIGHTH COAST GUARD DISTRICT TABLE OF ANNUAL SAFETY ZONES—Continued

Table No.	Sector Ohio Valley	Date	Sponsor/name	Sector Ohio Valley location	Safety zone
36	39	1st weekend in September, usually aligns with University of Tennessee's 1st home football game.	Boomsday Festival Knoxville Tourism.	Knoxville, TN	Tennessee River mile marker 646.0 to 649.0.
37	40	Last weekend in November.	Grand Illumination Chattanooga Presents.	Chattanooga, TN	Tennessee River mile marker 463.0 to 469.0.
38	41	July 4th	Grand Harbor Marine July 4th Celebration Grand Harbor Marina.	Counce, TN	Tennessee River mile marker 214.0 to 216.0 at the mouth of Yellow Creek.
39	42	The Sunday before Labor Day.	WEBN/WEBN—Riverfest Fireworks.	Ohio River, Cincinnati, OH	Ohio River mile marker 464.0 to 476.0, Cincinnati, OH.
40	43	April through August (Needs Notice of Implementation via Local Notice to Mariners).	Cincinnati Reds/Cincinnati Reds Season Fireworks.	Ohio River, Cincinnati, OH	Ohio River mile marker 470.2 to 470.6, Cincinnati, OH.
41	44	The second Saturday in July.	City of Bellevue, KY/City of Bellevue Beach Park Concert Fireworks.	Ohio River, Bellevue, KY	Ohio River mile marker 469.2 to 470.2, Bellevue, KY.
42	45	May through September (Needs Notice of Implementation via Local Notice to Mariners).	Riverbend Music Center/ Riverbend Concerts Series.	Ohio River, Cincinnati, OH	Ohio River mile marker 461.1 to 461.4, Cincinnati, OH.
43	46	Second or Third weekend in September.	Ohio Sternwheel Festival	Parkersburg, WV Ohio River	Safety zone for the fireworks display, extending from mile marker 171.5 to 172.5 (about a ½ a mile up and down river from the confluence of the Ohio and Muskingum Rivers). Also a restricted area for the sternwheel race reenactment extending from mile marker 172.4 to 170.3.2 on the Ohio River. (See 33 CFR 100).
	Sector Upper Mississippi River	Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
45	1	1 day—4th weekend of July.	Marketing Minneapolis LLC/ Target Aquatennial Fireworks.	Minneapolis, MN	Upper Mississippi River mile marker 853.2 to 854.2 (Minnesota).
46	2	1 day—4th of July weekend.	Radio Dubuque/Radio Dubuque Fireworks and Airs Show.	Dubuque, IA	Upper Mississippi River mile marker 581.0 to 583.0 (Iowa).
47	3	2 days—2nd weekend of July.	City of Champlin/Father Hennepin Fireworks Display.	Champlin, MN	Upper Mississippi River mile marker 870.5 to 872.0 (Minnesota).
48	4	1 day—4th of July weekend.	Downtown Main Street/Mississippi Alumination.	Red Wing, MN	Upper Mississippi River mile marker 790.8 to 791.2 (Minnesota).
49	5	1 day—4th of July weekend.	Tan-Tar-A Resort/Tan-Tar-A 4th of July Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 025.8 to 026.2 (Missouri).
50	6	1 day—1st weekend of September.	Tan-Tar-A Resort/Tan-Tar-A Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 025.8 to 026.2 (Missouri).
51	7	1 day—Last Sunday in May.	Tan-Tar-A Resort/Tan-Tar-A Memorial Day Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 025.8 to 026.2 (Missouri).
52	8	1 day—4th of July weekend.	Lake City Chamber of Commerce/Lake City 4th of July Fireworks.	Lake City, MN	Upper Mississippi River mile marker 772.4 to 772.8 (Minnesota).

	Sector Upper Mississippi River	Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
53	9	1 day—4th of July weekend.	Greater Muscatine Chamber of Commerce/Muscatine 4th of July.	Muscatine, IA	Upper Mississippi River mile marker 455.0 to 456.0 (Iowa).
54	10	1 day—Last weekend in June/First weekend in July.	Friends of the River Kansas City/KC Riverfest.	Kansas City, KS	Missouri River mile marker 364.8 to 365.2 (Kansas).
55	11	1 day—4th of July weekend.	Louisiana Chamber of Commerce/Louisiana July 4th Fireworks.	Louisiana, MO	Upper Mississippi River mile marker 282.0 to 283.0 (Missouri).
56	12	1 day—2nd weekend in July.	Guttenderg Development and Tourism/Stars and Stripes River Day.	Guttenderg, IA	Upper Mississippi River mile marker 614.8 to 615.2 (Iowa).
57	13	4 days—1st or 2nd week of July.	Riverfest, Inc./La Crosse Riverfest.	La Crosse, WI	Upper Mississippi River mile marker 697.5 to 698.5 (Wisconsin).
58	14	1 day—4th of July weekend.	Hannibal Jaycees/National Tom Sawyer Days.	Hannibal, MO	Upper Mississippi River mile marker 308.0 to 309.0 (Missouri).
59	15	1 day—4th of July weekend.	Fort Madison Partner/Fort Madison Fourth of July Fireworks.	Fort Madison, WI	Upper Mississippi River mile marker 383.0 to 384.0 (Wisconsin).
60	16	5 days—Last week in June/First week in July.	Taste of Minnesota/Taste of Minnesota.	Minneapolis, MN	Upper Mississippi River mile marker 839.8 to 840.2 (Minnesota).
61	17	1 day—4th of July weekend.	John E. Curran/John E. Curran Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 008.8 to 009.2 (Missouri).
62	18	1 day—2nd weekend in July.	Prairie du Chien Area Chamber of Commerce/Prairie du Chien Area Chamber Fireworks.	Prairie du Chien, WI	Upper Mississippi River mile marker 633.8 to 634.2 (Wisconsin).
63	19	1 day—4th of July weekend.	JMP Radio/Red White and Boom Peoria.	Peoria, IL	Illinois River mile marker 162.5 to 162.1 (Illinois).
64	20	1 day—Last weekend in June/First weekend in July.	Hudson Boosters/Hudson Booster Days.	Hudson, WI	St. Croix River mile marker 016.8 to 017.2 (Wisconsin).
65	21	2 days—4th of July weekend.	City of St. Charles/St. Charles Riverfest.	St. Charles, MO	Missouri River mile marker 028.2 to 028.8 (Missouri).
66	22	1 day—4th of July weekend.	Minneapolis Park and Recreation Board/Red, White, and Boom Minneapolis.	Minneapolis, MN	Upper Mississippi River mile marker 853.5 to 854.5 (Minnesota).
67	23	1 day—4th of July weekend.	Davenport One Chamber/Red White and Boom.	Davenport, IA	Upper Mississippi River mile marker 482.0 to 482.7 (Iowa).
68	24	2 days—3rd weekend of July.	Amelia Earhart Festival Committee/Amelia Earhart Festival.	Kansas City, KS	Missouri River mile marker 422.0 to 424.5 (Kansas).
69	25	1 day—4th of July weekend.	Chillicothe Police Department/Chillicothe 4th of July.	Chillicothe, IL	Illinois River mile marker 179.1 to 180.0 (Illinois).
70	26	2 days—2nd weekend in July.	Clinton Riverboat Days/Clinton Riverboat Days.	Clinton, IA	Upper Mississippi River mile marker 518.0 to 519.0 (Iowa).
71	27	1 day—4th of July weekend.	Harrah's Casino and Hotel/Harrah's Fireworks Extravaganza.	Omaha, NE	Missouri River mile marker 615.0 to 615.6 (Nebraska).
72	28	1 day—4th of July weekend.	Alton Exposition Commission/Mississippi Fireworks Festival.	Alton, IL	Upper Mississippi River mile marker 202.5 to 203.0 (Illinois).
73	29	1 day—3rd Sunday in June.	Burlington Steamboat Days/Burlington Steamboat Days.	Burlington, IA	Upper Mississippi River mile marker 403.5 to 404.5 (Iowa).
74	30	1 day—Last Sunday in May.	Lodge of the Four Seasons/Lodge of the Four Seasons Memorial Day Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 013.8 to 014.2 (Missouri).
75	31	1 day—First weekend of September.	Lodge of the Four Seasons/Labor Day Fireworks.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 013.8 to 014.2 (Missouri).
76	32	1 day—4th of July weekend.	Lodge of the Four Seasons/Lodge of the Four Seasons 4th of July.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 013.8 to 014.2 (Missouri).

	Sector Upper Mississippi River	Date	Sponsor/name	Sector Upper Mississippi River location	Safety zone
77	33	2 days—3rd weekend in July.	Hasting Riverboat Days/ Rivertown Days.	Hasting, MN	Upper Mississippi River mile marker 813.7 to 815.2 (Minnesota).
78	34	1 day—3rd Sunday in June.	Winona Steamboat Days/Winona Steamboat Days Fireworks.	Winona, MN	Upper Mississippi River mile marker 725.4 to 725.7 (Minnesota).
79	35	2 days—4th of July weekend.	Fair of St. Louis/Fair St. Louis	St. Louis, MO	Upper Mississippi River mile marker 179.2 to 180.0 (Missouri).
80	36	Friday and Saturday, every weekend from the 2nd weekend of July until the 2nd weekend in August.	Fair of St. Louis/Live on the Levee.	St. Louis, MO	Upper Mississippi River mile marker 179.2 to 180.0 (Missouri).
81	37	1 day—Last weekend in June/First weekend in July.	Bellevue Heritage Days/Bellevue Heritage Days.	Bellevue, IA	Upper Mississippi River mile marker 556.0 to 556.5 (Iowa).
82	38	1 day—4th of July weekend.	Main Street Parkway Association/Parkville 4th of July Fireworks.	Parkville, MO	Missouri River mile marker 378.0 to 377.5 (Missouri).
83	39	1 day—4th of July weekend.	Hermann Chamber of Commerce/Hermann 4th of July.	Hermann, MO	Missouri River mile marker 099.0 to 098.0 (Missouri).
84	40	1 day—4th of July weekend.	Grafton Chamber of Commerce/Grafton Chamber 4th of July Fireworks.	Grafton, IL	Illinois River mile marker 001.5 to 000.5 (Illinois).
85	41	1 day—4th of July weekend.	Salute to America Foundation, Inc./Salute to America.	Jefferson City, MO	Upper Mississippi River mile marker 143.5 to 143.0 (Missouri).
86	42	1 day—4th of July weekend.	McGregor/Marquette Chamber Commerce/Independence Day Celebration.	McGregor, IA	Upper Mississippi River mile marker 635.7 to 634.2 (Missouri).
87	43	2 days—2nd weekend in August.	Tug Committee/Great River Tug.	Port Byron, IL	Upper Mississippi River mile marker 497.2 to 497.6 (Illinois).
88	44	1 day—4th of July weekend.	City of Stillwater/St. Croix Events/Stillwater 4th of July.	Stillwater, MN	St. Croix River mile marker 022.9 to 023.5 (Minnesota).
89	45	2 days—3rd weekend of September.	Riverside Riverfest Committee/Riverfest.	Riverside, MO	Missouri River mile marker 372.2 to 371.8 (Missouri).
90	46	4 days—3rd week of July.	St. Croix Events/Lumberjack Days.	Stillwater, MN	St. Croix River mile marker 022.9 to 023.5 (Minnesota).
91	47	1 day—3rd week in July.	Rivercade Association/Sioux City Rivercade.	North Sioux City, SD	Missouri River mile marker 732.2 to 732.6 (Iowa).
92	48	2 days—3rd weekend in August.	Lake of the Ozarks Shootout, Inc./Lake of the Ozarks Shootout.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 034.5 to 032.5 (Missouri).
93	49	1 day—1st weekend of September.	Camden on the Lakes Labor Day Fireworks/Camden on the Lake.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 007.1 to 006.9 (Missouri).
94	50	2 days—1st weekend of September.	City of Keithsburg/Keithsburg Fireworks Display.	Keithsburg, IL	Upper Mississippi River mile marker 427.5 to 427.3 (Missouri).
95	51	1 day—1st weekend of August.	New Piasa Chautauqua/New Piasa Chautauqua.	Elsah, IL	Upper Mississippi River mile marker 215.6 to 216.0 (Illinois).
96	52	1 day—last weekend in May.	Horny Toad, Inc./Horny Toad Fireworks Display.	Lake of the Ozarks, MO	Lake of the Ozarks mile marker 006.8 to 007.2 (Missouri).
97	53	1 day—4th of July weekend.	Omaha Royals/Omaha World Herald Fireworks.	Omaha, NE	Missouri River mile marker 612.1 to 613.9 (Nebraska).
98	54	1 day—Last weekend in July.	Great River Days, Inc./Great River Days.	Muscatine, IA	Upper Mississippi River mile marker 455.0 to 456.0 (Iowa).
99	55	1 day—4th of July weekend.	City of East Moline/City of East Moline Fireworks.	East Moline, IA	Upper Mississippi River mile marker 490.2 to 489.8 (Iowa).

	Sector Houston-Galveston	Date	Sponsor/Name	Sector Houston-Galveston location	Safety zone
100	1	1st Saturday (Rain date is 1st Sunday) in May.	RIVERFEST Fireworks Display/Port Neches Chamber of Commerce, Port Neches, TX.	Neches River, Port Neches, TX.	All waters within a 500-yard radius of the fireworks barge anchored in approximate position 29°59′51″ N 093°57′06″ W (NAD 83).
101	2	2nd Saturday in May ..	Contraband Days Fireworks Display/Contraband Days Festivities, Inc.	Lake Charles, Lake Charles, LA.	All waters within a 1000-foot radius of the fireworks barge anchored in approximate position 30°13′39″ N, 093°13′42″ W, Lake Charles, LA (NAD 83).
102	3	July 4th night and every Friday night in June and July.	Kemah Board Walk Summer Season Fireworks Display, Kemah, TX.	Clear Lake, TX	Clear Creek Channel, including the area within an 840-foot radius of the fireworks barge on the south side of the channel, 100 ft off of Kemah Boardwalk in Galveston, TX and an Rectangle extending 500 feet east, 500 feet west; 1000 feet north, and 1000 feet south, centered around fireworks barge at Light 19 on Clear Lake, Houston, TX.
103	4	July 4th	Sylvan Beach Fireworks	La Porte, TX	Rectangle Extending 250 feet east, 250 feet west; 1000 feet north, and 1000 feet south, centered around fireworks barge located at Sylvan Beach, Houston, TX.
104	5	July 4th (Rain date July 5th).	City of Beaumont 4th of July Celebration/City of Beaumont, TX.	Neches River at Riverfront Park, Beaumont, TX.	All waters of the Neches River, shoreline to shoreline, from the Trinity Industries dry dock to the northeast corner of the Port of Beaumont's dock No. 5.
105	6	1st Saturday in December.	Christmas Fireworks Display/City of Lake Charles, LA.	Lake Charles, Lake Charles, LA.	All waters within a 1000-foot radius of the fireworks barge anchored in approximate position 30°13′39″ N, 093°13′42″ W, Lake Charles, LA (NAD 83).

	Sector Corpus Christi	Date	Sponsor/Name	Sector Corpus Christi location	Safety zone
106	1	Memorial Day Weekend.	South Padre Island Convention & Visitors Bureau/Laguna Madre Memorial Day Firework.	Lower Laguna Madre, South Padre Island, TX.	All waters contained within a 1000-ft radius of the fireworks display barge moored at approximate location 26°06′19″ N 097°10′55.4″ W, South Padre Island, TX.
107	2	2nd, 3rd or 4th Monday in June.	Cameron County Clerk's Office/Texas District Court Clerk′s Convention Fireworks.	Lower Laguna Madre, South Padre Island, TX.	All waters contained within a 1,000-ft radius of the fireworks display barge moored at approximate position 26°06′19″ N 097°10′55.4″ W, South Padre Island, TX.
108	3	July 4th Rain dates of July 5th and July 6th.	City of Port Aransas/Port Aransas 4th of July Fireworks.	Corpus Christi Ship Chanel—Port Aransas, TX.	All waters contained within a 600-ft radius of a point halfway between Port Aransas Harbor Day Beacon 2 to Port Aransas Ferry Landing in the Corpus Christi Ship Channel, Port Aransas, TX.

	Sector Corpus Christi	Date	Sponsor/Name	Sector Corpus Christi location	Safety zone
109	4	July 4th Rain dates of July 5th and July 6th.	Buccaneer Commission/4th of July Big Bang Fireworks.	*USS LEXINGTON*/Corpus Christi, TX.	All waters contained within a 1,000-ft radius from the bow of the *USS LEXINGTON* located at approximate position 27°48′50″ N 097°23′18.2″ W, Corpus Christi, TX.
110	5	July 4th Rain dates of July 5th and July 6th.	City of Port O'Connor Chamber of Commerce/4th of July Fireworks.	King Fisher Park, Port O'Connor, TX.	All waters contained within a 1,120-ft radius of the furthest extent of the King Fisher Pier located at approximate position 28°27′15.6″ N 096°24′11.9″ W, Port O′Connor, TX.
111	6	July 4th Rain dates of July 5th and July 6th.	City of Point Comfort/4th of July Fireworks.	Bayfront Park, Point Comfort, TX.	All waters contained within a 1,000-ft radius of Bayfront Park located at approximate position 28°40′52.8″ W 096°33′49.2″ W, Point Comfort, TX.
112	7	July 4th Rain dates of July 5th and July 6th.	City of Rockport/Wendell Family Fireworks.	Rockport Beach Park/Rockport, TX.	All waters contained within a 700-ft radius of the northeast point of Rockport Beach Park located at approximate position 28°02′05.2″ N 097°02′048″ W, Rockport, TX.
113	8	Last Saturday in September.	Bayfest, Inc./Bayfest Fireworks.	*USS Lexington*/Corpus Christi, TX.	All waters contained within a 1,000-ft radius from the bow of the USS Lexington located at approximate position 27°48′50″ N 097°23′18.2″ W, Corpus Christi, TX.
114	9	Friday nights from May thru September.	Boys & Girls Club of Laguna Madre/Fireworks over the Bay.	Lower Laguna Madre, South Padre Island, TX.	All waters contained within a 1,000-ft radius of the fireworks display barge moored at approximate position 26°06′19″ N 097°10′55.4″ W, South Padre Island, TX.
115	10	Labor Day weekend ...	Laguna Madre Education Foundation/Laguna Madre Labor Day Fireworks.	Lower Laguna Madre, South Padre Island, TX.	All waters contained within a 1,000-ft radius of the fireworks display barge moored at approximate position 26°06′19″ N 097°10′55.4″ W, South Padre Island, TX.
116	11	1st or 2nd Friday and Saturday in December.	City of Rockport/Rockport "Tropical" Christmas Festival Fireworks.	Rockport Beach Park/Rockport, TX.	All waters contained within a 700-ft radius of the northeast point of Rockport Beach Park located at approximate position 28°02′05.2″ N 097°02′048″ W, Rockport, TX.
117	12	December 30th, 31st or Jan 1st.	South Padre Island Convention & Visitors Bureau/SPI New Year′s Fireworks.	Lower Laguna Madre, South Padre Island, TX.	All waters contained within a 1,000-ft radius of the fireworks display barge moored at approximate position 26°06′19″ N 097°10′55.4″ W, South Padre Island, TX.
118	13	Odd Week Fridays from April thru September.	Corpus Christi Hooks Baseball Team/Friday Night Fireworks.	Corpus Christi Ship Channel, Corpus Christi, TX.	All waters contained within a 1,000-ft radius of the Corpus Christi Hooks stadium parking lot located at approximate position 27°48′39.2″ N 097°23′55.2″ W, Corpus Christi, TX.

	Sector New Orleans	Date	Sponsor/Name	Sector New Orleans location	Safety zone
119	1	Monday before Mardi Gras.	Riverwalk Marketplace/Lundi Gras Fireworks Display.	Mississippi River, New Orleans, LA.	Mississippi River mile marker 93.0 to 96.0, New Orleans, LA.
120	2	July 3rd	St. John the Baptist/Independence Day celebration.	Mississippi River, Reserve, LA.	Mississippi River mile marker 175.0 to 176.0, Reserve, LA.
121	3	July 4th	Riverfront Marketing Group/Independence Day Celebration.	Mississippi River, New Orleans, LA.	Mississippi River mile marker 94.3 to 95.3, New Orleans, LA.
122	4	July 4th	Boomtown Casino/Independence Day Celebration.	Harvey Canal, Harvey, LA	Harvey Canal mile marker 4.0 to 5.0, Harvey, LA.
123	5	4th of July	Independence Day Celebration, Main Street 4th of July (Fireworks Display).	Morgan City, LA	Morgan City Port Allen Route mile marker 0.0 to 1.0, Morgan City, LA.
124	6	July 4th	WBRZ—The Advocate 4th of July Fireworks Display.	Baton Rouge, LA	In the vicinity of the *USS KIDD*, the Lower Mississippi River from mile marker 228.8 to 230.0, Baton Rouge, LA.
125	7	The Saturday before July 4th or on July 4th if that day is a Saturday.	Independence Day Celebration/Bridge Side Marine.	Grand Isle, LA	500 Foot Radius from the Pier located at Bridge Side Marine, 2012 LA Highway 1, Grand Isle, LA (Lat: 29°12′14″ N; Long: 090°02′28.47″ W).
126	8	1st Weekend of September.	LA Shrimp and Petroleum Festival Fireworks Display, LA Shrimp and Petroleum Festival and Fair Association.	Morgan City, LA	Atchafalaya River at mile marker 118.5, Morgan City, LA.
127	9	1st Weekend in December (Usually that Friday, subject to change due to weather).	Office of Mayor-President/Downtown Festival of Lights.	Baton Rouge, LA	Located on Left Descending Bank, Lower Mississippi River north of the *USS KIDD*, at mile marker 230, Baton Rouge, LA.
128	10	December 31st	Crescent City Countdown Club/New Year's Celebration.	Mississippi River, New Orleans, LA.	Mississippi River mile marker 93.5–95.5, New Orleans, LA.
129	11	December 31st	Boomtown Casino/New Year's Celebration.	Harvey Canal, Harvey, LA	Harvey Canal mile marker 4.0 to 5.0, Harvey, LA.
130	12	July 4th	*USS KIDD* Veterans Memorial/Fourth of July Star-Spangled Celebration.	Baton Rouge, LA	In the vicinity of the *USS KIDD,* the Lower Mississippi River from mile marker 228.8 to 230.0, Baton Rouge, LA.

	Sector Lower MS River	Date	Sponsor/Name	Sector Lower MS River location	Safety zone
131	1	The Sunday before Memorial Day.	Riverfest Inc./Riverfest Fireworks display.	Arkansas River, Little Rock, AR.	Regulated Area: Arkansas River mile marker 118.8 to 119.5, Main Street Bridge, Little Rock, AR.
132	2	The Saturday before Memorial Day.	Memphis in May/Sunset Symphony Fireworks Display.	Lower Mississippi River, Memphis, TN.	Regulated Area: Lower Mississippi River mile marker 735.0 to 736.0, Memphis, TN.
133	3	July 4th or the weekend before.	Fourth of July Fireworks/Memphis Center City Commission.	Lower Mississippi River, Memphis, TN.	Regulated Area: Lower Mississippi River mile marker 735.5 to 736.5, Mud Island, Memphis, TN.
134	4	July 4th or the weekend before.	Pops on the River Fireworks Display/Arkansas Democrat Gazette.	Arkansas River, Little Rock, AR.	Regulated Area: Arkansas River mile marker 118.8 to 119.5, Main Street Bridge, Little Rock, AR.
135	5	July 4th or the weekend before.	Uncle Sam Jam Fireworks, Alexandria, LA./Champion Broadcasting of Alexandria.	Red River, Alexandria, LA.	Regulated Area: Red River mile marker 83.0 to 87.0, Alexandria, LA.

	Sector Lower MS River	Date	Sponsor/Name	Sector Lower MS River location	Safety zone
136	6	July 4th or the weekend before.	Greenville Chamber of Commerce/Fourth of July Fireworks.	Lake Ferguson, Greenville, MS.	Regulated Area: Waters of Lake Ferguson extending 500 yards in all directions from the concrete pad, 33°24′34″ N, 091°03′58″ W, adjacent to the Lighthouse Casino, Greenville, MS.
137	7	July 4th or the weekend before.	Pyro Fire Inc./Fourth of July Celebration.	Yazoo River, Vicksburg, MS ..	Regulated Area: Yazoo River, mile marker 1.0 to 3.0, Vicksburg, MS.
138	8	July 4th or the weekend before.	Artisan Pyro Inc./Fourth of July Celebration.	Lower Mississippi River, Natchez, MS.	Regulated Area: Lower Mississippi River, mile marker 365.5 to 364.5, Natchez, MS.
139	9	Third Friday and Saturday in October.	The Great Mississippi River Balloon Race and Fireworks show/Great Mississippi River Balloon Race Committee.	Lower Mississippi River, Natchez, MS.	Regulated Area: Lower Mississippi River, mile marker 365.5 to 364.5, Natchez, MS.
140	10	Fourth Saturday in May.	Memphis in May Air Show, Memphis in May.	Lower Mississippi River, Memphis, TN.	Regulated Area: Lower Mississippi River, mile marker 733.0 to 735.5, Memphis, TN.
141	11	First Saturday in December.	Monroe Christmas Fireworks/Monroe Jaycee.	Ouachita River, Monroe, LA ..	Regulated Area: Ouachita River mile marker 168.0 to 169.0, Monroe, LA.
	Sector Mobile	**Date**	**Sponsor/Name**	**Sector Mobile location**	**Safety zone**
142	1	1 Day; 1st week of January.	GoDaddy.Com Bowl/GoDaddy.Com.	Mobile Channel, Mobile, AL ..	Mobile Channel, all waters extending 500 feet around position 30°41′27″ N, 088°02′06″ W.
143	2	Multiple displays from May to December.	Harbor Walk Seasonal Fireworks/Legendary, Inc.	East Pass to Choctawhatchee Bay, Destin, FL.	East Pass to Choctawhatchee Bay, all waters extending 700′ around position 30′23′17″ N, 086°30′54″ W.
144	3	2 Days; 1st weekend in June.	Billy Bowlegs Pirate Festival/Greater Fort Walton Beach Chamber of Commerce.	Santa Rosa Sound, Ft. Walton Beach, FL.	Santa Rosa Sound, all waters extending 150 yards around a fireworks barge that will be positioned between Fort Walton Beach Landing and the Gulf Intracoastal Waterway.
145	4	July 4th	Niceville July 4th Fireworks Show/City of Niceville, FL.	Boggy Bayou, Niceville, FL ...	Boggy Bayou, all waters extending 250 yards around a fireworks barge that will be positioned at approximately 30°30′46.5″ N, 086°29′13″ W.
146	5	July 4th	Fourth of July Celebration/City of Fort Walton Beach.	Santa Rosa Sound, Fort Walton Beach.	Santa Rosa Sound, all waters extending 100 yards around a fireworks barge that will be positioned between Fort Walton Beach Landing and the Gulf Intracoastal Waterway.
147	6	1 Day; 1st week of July.	Sound of Independence/Hurlburt Field AFB.	Santa Rosa Sound, Fort Walton Beach.	Santa Rosa Sound, all waters extending 200 yards around a fireworks barge that will be positioned at approximately 30°24′22″ N, 086°42′11″ W.
148	7	July 4th	Biloxi Bay Fireworks/Biloxi Bay Chamber of Commerce.	Biloxi Bay, Biloxi, MS	Biloxi Bay, all waters extending 200 yards around a fireworks barge that will be positioned at approximately 30°23′12″ N, 088°52′20″ W.

	Sector Mobile	Date	Sponsor/Name	Sector Mobile location	Safety zone
149	8	October	MS Gulf Coast Boaters Rendezvous/MS Gulf Coast Billfish Classic.	Biloxi Channel, Biloxi, MS	Biloxi Channel, all waters extending 200 yards around channel buoy No. 26.
150	9	December 31st	New Year's Eve Celebration/City of Mobile.	Mobile Channel, Mobile, AL ..	Mobile Channel, all waters extending 500 feet around position 30°41′50″ N, 088°02′13″ W.
151	10	2 Days; Mid March to end of April.	Angels Over the Bay/Keesler Air Force Base.	Back Bay Biloxi, Biloxi, MS ...	Back Bay Biloxi, Bounded by the following coordinates: Eastern boundary; Latitude 30°25′47.6″ N, Longitude 088°54′13.6″ W, to Latitude 30°24′43″ N, Longitude 088°54′13.6″ W. Western Boundary; Latitude 30°25′25.6″ N, Longitude 088°56′9″ W, to Latitude 30°24′55″ N, Longitude 088°56′9″ W.
152	11	4 Days; 2nd weekend in July.	Blue Angels Air Show/Naval Air Station Pensacola.	Gulf of Mexico & Santa Rosa Sound, Pensacola, FL.	Gulf of Mexico to include all waters 1.75 nautical miles east and 1.5 nautical miles west of position 30°19′36″ N, 087°08′23″ W and extending 1000 yards south of Pensacola Beach creating a box, referred to as the ''Show Box''. Santa Rosa Sound to include all waters from Deer Point to Sharp Point and all waters within Little Sabine Bay.

Dated: February 3, 2012.

Roy A. Nash,

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

[FR Doc. 2012–4930 Filed 2–29–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1168]

Drawbridge Operation Regulations; Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Cape Fear Memorial Bridge, across the Cape Fear River, mile 26.8, at Wilmington, NC. The deviation restricts the operation of the draw span to facilitate the structural repairs and painting of the bridge.

DATES: This deviation is effective from 7 a.m. on March 1, 2012 until 11 p.m. on May 31, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2011–1168 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–1168 in the ''Keywords'' box, and then clicking ''Search''. This material is also available for inspection or copying the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, email *Bill.H.Brazier@uscg.mil*. If you have questions on reviewing the docket, call Renne V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The North Carolina Department of Transportation, who owns and operates this vertical-lift type drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.5, to facilitate the structural repair of the bridge.

Under the regular operating schedule for this temporary deviation period, the bridge opens on signal as required by 33 CFR 117.5.

The Cape Fear Memorial Bridge across the Cape Fear River mile 26.8, at Wilmington NC has vertical clearances in the full open and closed positions of 135 feet and 65 feet above mean high water, respectively.

Under this temporary deviation to facilitate the structural repairs and painting, the drawbridge will operate as follows: Need not open from 7 a.m. on March 1, 2012 until and including 11 p.m. on May 31, 2012; except, vessel openings will be provided if at least three hours advance notice is given to the bridge tender at (910) 251–5773 or via marine radio on channel 18 VHF.

Typical vessel traffic on the Cape Fear River includes a variety of vessels from freighters, tug and barge traffic, and recreational vessels. Vessels that can pass under the bridge without a bridge opening may continue to do so at anytime. The drawbridge is able to open for emergencies.

The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users. The Coast Guard will inform all users of the waterway through our Local and Broadcast Notice to Mariners of the

closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its original operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 10, 2012.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–4918 Filed 2–29–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0012]

RIN 1625–AA09

Drawbridge Operation Regulation; Curtis Creek, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the I–695 Bridge, across Curtis Creek, mile 1.0, at Baltimore, MD. This deviation allows the bridge to operate on a restricted schedule including six (6) multi-day closures to complete structural repairs.

DATES: This deviation is effective from 6 a.m. on March 1, 2012, to 11:59 p.m. on July 17, 2012. The deviation has been enforced with actual notice since February 10, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0012 and are available online by going to www.regulations.gov, inserting USCG–2012–0012 in the ''Keyword'' box, and clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District; telephone 757–398–6422, email Bill.H.Brazier@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Maryland Transportation Authority, who owns and operates this double-leaf bascule drawbridge, has requested a temporary deviation from the current operating schedule set out in 33 CFR 117.557 which requires the bridge to open on signal if at least a one-hour advance notice is given to the Maryland Transit Authority in Baltimore.

The I–695 Bridge has a vertical clearance in the closed position of 58 feet, above mean high water.

Under this temporary deviation to facilitate the replacement of the grid deck, floor beams and stringers, the drawbridge will be closed for six (6) multi-day periods from 7 a.m. on February 10, 2012, through 7 a.m. May 17, 2012, as is more specifically set out below. During these closure periods no vessel openings will be provided. At all others times, vessel openings will be provided on signal if at least 24 hours advance notice is given.

This temporary deviation will not significantly disrupt vessel traffic because mariners can plan their trips to pass through the bridge between the closure periods when the bridge will be fully operational and vessels that can pass under the bridge without a bridge opening may do so at all times. There is no alternate route for vessels and the bridge will not be able to open in the event of an emergency during the stated closure periods.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

During this deviation, the bridge will operate as follows:

(1) From 6 a.m. on February 10 through 11:59 p.m. on July 17, 2012, will open on signal if at least 24 hours advance notice is given, except

(2) The bridge need not open during the following specified closure periods:

(i) From 7 a.m. on February 10, 2012 until 7 a.m. on February 15, 2012;

(ii) From 7 a.m. on February 18, 2012 until 7 a.m. on February 24, 2012;

(iii) From 7 a.m. on February 28, 2012 until 7 a.m. on March 10, 2012;

(iv) From 7 a.m. on April 12 until 7 a.m. on April 19, 2012;

(v) From 7 a.m. on April 28, 2012 until 7 a.m. on May 4, 2012; and

(vi) From 7 a.m. on May 7, 2012 until 7 a.m. on May 17, 2012.

Dated: January 30, 2012.

William D. Lee,

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

[FR Doc. 2012–4929 Filed 2–29–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0108]

Drawbridge Operation Regulation; Lake Pontchartrain, Between Jefferson and St. Tammany Parishes, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the north bascule span of the Greater New Orleans Expressway Commission Causeway across Lake Pontchartrain between Metairie, Jefferson Parish and Mandeville, St. Tammany Parish, Louisiana. This deviation allows the draws of the bridge to remain closed to navigation for four days to allow for the repair and maintenance of mechanical parts of the bascule.

DATES: This deviation is effective from 6 a.m. on Tuesday, March 13, 2012 until 6 p.m. on Friday, March 16, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0108 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0108 in the ''Keyword'' box and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jim Wetherington, Bridge Specialist, Eighth Coast Guard District Bridge Branch, U.S. Coast Guard; telephone 504–671–2128 or email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Greater New Orleans Expressway Commission requested a temporary deviation from the published regulation for the Greater New Orleans Expressway Commission Causeway bascule bridge across Lake Pontchartrain. The bridge provides 42.6 feet of vertical clearance when closed above mean high water, and unlimited clearance above MHW in the open-to-navigation position. Currently, according to 33 CFR 117.467(b), the draw of the Greater New Orleans Expressway Commission Causeway bascule bridge shall open on signal if at least three hours notice is given; except that the draw need not be open for the passage of vessels Monday through Fridays except Federal holidays, from 5:30 a.m. to 9:30 a.m. and 3 p.m. to 7 p.m.. The draw will open on signal for any vessel in distress or vessel waiting immediately following the closures listed above.

This deviation allows the bridge to remain closed to navigation for four (4) days from 6 a.m. on March 13, 2012 through 6 p.m. on March 16, 2012.

Navigation on the waterway consists mainly of recreational vessels. The Coast Guard has coordinated the closure with other Coast Guard units. These dates and this schedule were chosen to minimize the effects on vessel traffic; however, vessels that may pass under the bridge in the closed-to-navigation position can do so any anytime. The bridge will not be able to open for emergencies.

In accordance with 33 CFR 117.35, this work will be performed with flexibility in order to return the bridge to normal operations as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 10, 2012.

David M. Frank,

Bridge Administrator.

[FR Doc. 2012–4919 Filed 2–29–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2011–0068; FXFR13350700640L6–123–FF07J00000]

RIN 1018–AX95

Subsistence Management Regulations for Public Lands in Alaska—Subpart C-Board Determinations; Rural Determinations

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule; extension of compliance date and request for comments.

SUMMARY: This final rule extends the compliance date for the final rule that revised the list of nonrural areas identified by the Federal Subsistence Board (Board). On May 7, 2007, the Board published a final rule changing the rural determination for several communities or areas in Alaska. These communities had five years following the date of publication to come into compliance. In 2009 the Secretary of the Interior initiated a review of the Federal Subsistence Program. An ensuing directive was for the Federal Subsistence Board to review its processes for determining the rural and nonrural status of communities. As a result, the Board has initiated a review of the rural determination process and the rural determination findings. The Board finds that it is in the public's interest to extend the compliance date of the 2007 final rule until the review is complete or in 5 years, whichever comes first.

DATES: *Compliance:* The compliance date for the final rule revising 36 CFR 242.23 and 50 CFR 100.23 published May 7, 2007 (72 FR 25688), and effective June 6, 2007, is extended until either the rural determination process and findings review is completed or 5 years, whichever comes first. We will publish a document announcing the compliance date in the **Federal Register**.

Comments: Comments will be received until April 16, 2012.

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

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov* and search for FWS–R7–SM–2011–0068, which is the docket number for this rulemaking.
- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503–6199, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program (Program). This Program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940). These regulations have subsequently been amended several times. This Program is a joint effort between Interior and Agriculture, as a result these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Federal Subsistence Board

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair, appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Subsistence Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Meetings

The Regional Advisory Councils have a substantial role in reviewing subsistence issues and making recommendations to the Board. The Federal Subsistence Board, through the Councils, will hold meetings to accept comments and propose changes to the subsistence take of fish and shellfish during the winter meeting cycle. You may present comments on this rule during those meetings at the following locations in Alaska, on the following remainingdates:

Region 1—Southeast Regional Council	Juneau	March 20, 2012.
Region 2—Southcentral Regional Council	Anchorage	March 13, 2012.
Region 3—Kodiak/Aleutians Regional Council	Old Harbor	March 22, 2012.
Region 4—Bristol Bay Regional Council	Naknek	March 7, 2012.
Region 5—Yukon-Kuskokwim Delta Regional Council	Bethel	February 23, 2012.
Region 6—Western Interior Regional Council	McGrath	February 29, 2012.
Region 7—Seward Peninsula Regional Council	Nome	February 7, 2012.
Region 8—Northwest Arctic Regional Council	Kotzebue	March 8, 2012.
Region 9—Eastern Interior Regional Council	Fairbanks	February 29, 2012.
Region 10—North Slope Regional Council	Barrow	February 16, 2012.

Current Rule

In accordance with § ____.10(d)(4)(ii), one of the responsibilities given to the Federal Subsistence Board is to determine which communities or areas of the State are rural or nonrural.

The Board determines if a community or area is rural in accordance with established guidelines set forth in § ____.15(a). The Board reviews rural determinations on a 10-year cycle and may review determinations out-of-cycle in special circumstances. Once the Board makes a determination that a community or area has changed from rural to nonrural, a waiting period of 5 years is required for the residents to comply with the change. A change from nonrural to rural would be effective 30 days after publication of the rule.

In 2007, the Board published a final rule, Subsistence Management Regulations for Public Lands in Alaska, Subpart C; Nonrural Determinations (72 FR 25688; May 7, 2007). This rule revised the list of nonrural areas identified by the Board. Only residents of areas identified as rural are eligible to participate in the Federal Subsistence Management Program on Federal public lands in Alaska. The Board changed Adak's status to rural, added Prudhoe Bay to the list of nonrural areas, and adjusted the boundaries of the following nonrural areas: the Kenai Area; the Wasilla/Palmer Area, including Point McKenzie; the Homer Area, including Fritz Creek East (except Voznesenka) and the North Fork Road area; and the Ketchikan Area, including Saxman and portions of Gravina Island. The effective date was June 6, 2007, with a 5-year compliance date of May 7, 2012.

On October 23, 2009, Secretary of the Interior Salazar announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska; Secretary of Agriculture Vilsack later concurred with this course of action. The review focused on how the Program is meeting the purposes and subsistence provisions of Title VIII of ANILCA, and how the Program is serving rural subsistence users as envisioned when it began in the early 1990s.

On August 31, 2010, the Secretaries announced the findings of the review, which included several proposed administrative and regulatory changes to strengthen the Program and make it more responsive to those who rely on it for their subsistence uses. One proposal called for a review, with Council input, of the rural and nonrural determination process and, if needed, recommendations for regulatory changes.

Public Comments and Board Action

The public, Alaska Native organizations, the State, and other groups have had numerous opportunities to comment and consult on rural determinations. The numerous comments received are the foundation of this action, and this rule is in response to the myriad of comments received.

Starting in November of 2009, the Secretarial review was conducted by the Alaska Affairs Office within the Office of the Secretary. Meetings with more than 45 different stakeholder groups were held in 13 different communities throughout Alaska. More than 115 comments from individuals and interested organizations were received. Many of these comments addressed concerns relating to rural and nonrural determinations. These comments were posted on the Departmental Web site at *http://www.doi.gov/whatwedo/subsistencereview/index.cfm.*

During the January 18–20, 2011, and January 17–20, 2012, Federal Subsistence Board public meetings, the Board offered a comment period each day for members of the public to speak to any issues related to subsistence issues that were not on the meeting agenda. Several members of the public took the opportunity to voice their concerns and comments on rural and nonrural issues. On January 21, 2011, and January 17, 2012, the Board conducted tribal consultations with Alaska Native organizations to address proposed regulatory changes to the subsistence take of fish and wildlife regulations; a number of Alaska Native organizations again took the opportunity to also express their views on rural and nonrural issues and how they affected

their Tribes and communities. In addition, during Board work sessions held on May 3–4 and July 11, 2011, the Board provided opportunities for members of the public, Tribal representatives, and Council Chairs to comment on rural and nonrural issues. The transcripts for these Board meetings are posted at *http://alaska.fws.gov/asm/board.cfml.*

On January 20, 2012, the Board met to consider the Secretarial directive, consider the Council's recommendations and review all public, Tribal, and Native Corporation comments on rural determinations. After discussion and careful review, the Board voted unanimously to initiate a review of the rural determination process and the 2010 decennial review through publication of a proposed rule. Consequently, based on that action, the Board found that it was in the public's best interest to extend the compliance date of its 2007 final rule (72 FR 25688; May 7, 2007) on rural and nonrural determinations until the review of the rural determination process and decennial review are complete or in 5 years, whichever comes first.

The Board's justification for extending the compliance date is based on the following factors:

- With the overall review of the rural determination process and initiation of the decennial review, there exists the possibility that new rulemaking will be required. By extending the compliance date, the Board will be saving time and resources by avoiding the possibility of repetitive rulemaking; in addition, it will prevent confusion and undue hardship on affected rural users.
- This action would demonstrate a genuine commitment to listening and responding to what the Board heard through public comments, Tribal consultations, and Council recommendations.
- A recently published final rule (76 FR 56109, September 12, 2011) to expand the Board by two public members that represent rural Alaskan subsistence users; this action will give the Board additional perspective on the issues facing rural users.

The Board is publishing this rule without a prior proposal because this action is viewed as an administrative action. You may submit comment and materials on this rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment on *http://www.regulations.gov.* Before including personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Tribal Consultation and Comment

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010) and the relationship required by statute for consultation and coordination with Alaska Native corporations. Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

Title VIII of ANILCA provides rights to all Federally qualified rural residents for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence regulations, the Secretaries, through the Board, provides Federally recognized Tribes and Alaska Native corporations opportunities to consult on subsistence issues.

The Board engages in outreach efforts for the program to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board is committed to efficiently and adequately providing opportunities to Tribes and Alaska Native corporations for consultation with regard to subsistence rulemaking.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analyses and examined the environmental consequences of four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for a regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of a regulatory cycle for subsistence hunting and fishing regulations. The final rule for subsistence management regulations for public lands in Alaska, subparts A, B, and C, implemented the Federal Subsistence Management Program and included a framework for a regulatory cycle for the subsistence taking of wildlife and fish. The following **Federal Register** documents pertain to this rulemaking:

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: **Federal Register** DOCUMENTS PERTAINING TO THE FINAL RULE

Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29, 1992	Final Rule	''Subsistence Management Regulations for Public Lands in Alaska; Final Rule'' was published in the **Federal Register**.
64 FR 1276	January 8, 1999	Final Rule	Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Because no adverse comments were received on the direct final rule (67 FR 30559), the direct final rule was adopted.
69 FR 60957	October 14, 2004	Final Rule	Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of ''regulatory year'' from subpart A to subpart D of the regulations.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final Rule	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688	May 7, 2007	Final Rule	Revised nonrural determinations.
75 FR 63088	October 14, 2010	Final Rule	Amended the regulations for accepting and addressing special action requests and the role of the Regional Advisory Councils in the process.
76 FR 56109	September 12, 2011	Final Rule	Revised the composition of the Board.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretaries determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the following collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100: Subsistence hunting and fishing applications, permits, and reports, Federal Subsistence Regional Advisory Council Membership Application/Nomination and Interview Forms (OMB Control No. 1018–0075 expires January 31, 2013).

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. Therefore, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA provides rights to all Federally qualified rural residents for the subsistence taking of wildlife, fish, and shellfish. However, the Board provides Federally recognized Tribes and Alaska Native Corporations an opportunity to consult on all subsistence issues. Consultation with Alaska Native Corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native Corporations on the same basis as Indian tribes under Executive Order No. 13175.''

The Secretaries, through the Board, provide a variety of opportunities for tribal consultation: Commenting on proposed changes to an existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set forth in the preamble, the Federal Subsistence Board, under the authority at 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; and 43 U.S.C. 1733, announces that the compliance date for the nonrural determinations for Prudhoe Bay, and the adjusted boundaries of the nonrural areas of: the Kenai Area; the Wasilla/Palmer Area, including Point McKenzie; the Homer Area, including Fritz Creek East (except Voznesenka) and the North Fork Road area; and the Ketchikan Area, including Saxman and portions of Gravina Island contained in 36 CFR 242.23 and 50 CFR 100.23 as revised on May 7, 2007 (72 FR 25688) is delayed until either the review of the rural determination process and the rural determination findings are completed or 5 years, whichever comes first. A document announcing the compliance date will be published in the **Federal Register** at a later date.

Dated: February 23, 2012.

Peter J. Probasco,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: February 16, 2012.

Beth G. Pendleton,

Regional Forester, USDA—Forest Service.

[FR Doc. 2012–4786 Filed 2–29–12; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0100; FRL–9641–8]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Lead Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on November 24, 2010, to revise the Indiana State Implementation Plan (SIP) for lead (Pb) under the Clean Air Act (CAA). This submittal incorporates the National Ambient Air Quality Standards (NAAQS) for Pb promulgated by EPA in 2008.

DATES: This direct final rule will be effective April 30, 2012, unless EPA receives adverse comments by April 2, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0100 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312)408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0100. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
A. When and why did the State make this submittal?
B. Did the State hold public hearings for this submittal?
II. What is EPA's analysis of IDEM's submittal?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

A. When and why did the State make this submittal?

The November 24, 2010 submittal incorporates the current primary and secondary NAAQS for Pb, which were published in the **Federal Register** on November 12, 2008 (73 FR 66964) and codified at 40 CFR 50.16, ''National primary and secondary ambient air quality standards for lead.'' At the State level, these provisions became effective on October 24, 2010.

IDEM submitted the revisions to EPA for incorporation into the Indiana SIP to ensure consistency between the State and Federal definitions of the Pb NAAQS, as well as in the determination of attainment of those NAAQS.

B. Did the State hold public hearings for these submittals?

A public hearing for the Pb NAAQS revision was held on June 2, 2010. No comments were received at this hearing.

II. What is EPA's analysis of IDEM's submittal?

On November 12, 2008, revisions to the Pb NAAQS were published in the **Federal Register** (73 FR 66964) and codified at 40 CFR 50.16. The primary (health-based) Pb NAAQS was strengthened to 0.15 micrograms per cubic meter (μg/m^3), measured as a rolling 3-month average and evaluated over a 3-year period. The secondary (welfare-based) Pb NAAQS was revised to be identical to the primary Pb NAAQS.

Under 40 CFR 50.16(a), ambient Pb concentrations are to be measured by either: (1) A reference method based on appendix G to 40 CFR part 50 (''Reference Method for the Determination of Lead in Suspended

Particulate Matter Collected From Ambient Air'') and designated in accordance with 40 CFR part 53 (''Ambient Air Monitoring Reference and Equivalent Methods''); or (2) an equivalent method designated in accordance with 40 CFR part 53. In addition, under 40 CFR 50.16(b), determinations as to whether the Pb standards have been met are to be made in accordance with the data handling conventions and computations in 40 CFR part 50, appendix R, ''Interpretation of the National Ambient Air Quality Standards for Lead.''

In IDEM's November 24, 2010 submittal, the State requested that 326 Indiana Administrative Code (IAC) 1–3–4 (b)(6) be revised to reflect EPA's revised primary and secondary Pb NAAQS. IDEM's requested revisions are nearly identical to the provisions contained in 40 CFR 50.16. Specifically, the definition of the NAAQS, the calculations for determining attainment of the NAAQS, and the mechanism to measure ambient concentrations of Pb are consistent with 40 CFR 50.16.

IDEM's rule contains the primary and secondary NAAQS of 0.15 $\mu g/m^3$, which are achieved when the maximum arithmetic 3-month mean concentration for a 3-year period is equal to, or less than, 0.15 $\mu g/m^3$, as determined by appendix R to 40 CFR part 50. Indiana has incorporated appendix R by reference into the SIP.

IDEM's submittal also incorporates by reference appendix G to 40 CFR part 50, which contains the data handling conventions and computations for determining with the Pb NAAQS have been met. It should be noted, however, that a determination of what constitutes a ''Federal Equivalent Method'' under 40 CFR 50.16(a)(2) can only be made by the Administrator of EPA.

Aligning State and Federal ambient air quality standards, calculations for compliance, and ambient concentration collection methods ensures consistency between EPA's and IDEM's Pb NAAQS; therefore, EPA concludes that IDEM's requested revision is approvable.

III. What action is EPA taking?

EPA is approving a submittal from IDEM that incorporates the Federally promulgated NAAQS for Pb codified at 40 CFR 50.16. Aligning State and Federal ambient air quality standards ensures consistency between EPA's and IDEM's Pb NAAQS.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective April 30, 2012 without further notice unless we receive relevant adverse written comments by April 2, 2012. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective April 30, 2012.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action 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, Lead, Reporting and recordkeeping requirements.

Dated: February 21, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 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 P—Indiana

■ 2. In § 52.770 the table in paragraph (c) is amended by revising the entry for ''1–3–4'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
1–3–4	Ambient air quality standards	10/24/2010	3/1/2012, [Insert page number where the document begins].	
*	*	*	*	*

* * * * *

[FR Doc. 2012–4970 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0696–201202(a); FRL–9636–8]

Approval and Promulgation of Implementation Plans; Tennessee: Prevention of Significant Deterioration; Greenhouse Gases—Automatic Rescission Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environmental Conservation (TDEC), Air Pollution Control Division, to EPA on January 11, 2012, for the purpose of amending the State's New Source Review (NSR) Prevention of Significant Deterioration (PSD) regulations as they relate to greenhouse gases (GHGs). Specifically, Tennessee amended its PSD regulations to add automatic rescission provisions. These provisions provide that in the event that the U.S. Court of Appeals for the DC Circuit or the U.S. Supreme Court issues an order which would render GHGs not subject to regulation under the Clean Air Act's PSD permitting program, then GHGs shall not be subject to regulation under Tennessee's PSD regulations as of the effective date of EPA's **Federal Register** notice of vacatur. Further, the provisions provide that in the event that there is a change to Federal law that supersedes regulation of GHGs under the Clean Air Act's PSD permitting program, then GHGs shall not be subject to regulation under Tennessee's PSD regulations as of the effective date of the change in federal law. EPA took action to approve the GHG Tailoring Rule PSD provisions into the Tennessee SIP in a separate rulemaking. EPA is approving Tennessee's January 11, 2012, SIP revision because the Agency has made the determination that this SIP revision is not contrary to section 110 and part C of the Clean Air Act (CAA or Act) or EPA regulations regarding PSD permitting for GHGs.

DATES: This direct final rule is effective April 30, 2012 without further notice, unless EPA receives adverse comment by April 2, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number, ''EPA–R04–OAR–2010–0696,'' by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2010–0696,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID Number, ''EPA–R04–OAR–2010–0696.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9352. Ms. Bradley can be reached via electronic mail at *bradley.twunjala@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background
II. EPA's Analysis of the Approvability of Tennessee's Automatic Rescission Provisions
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On January 11, 2012, in response to EPA's GHG Tailoring Rule [1] and earlier GHG-related EPA rules,[2] TDEC submitted a final revision to EPA for approval into the Tennessee SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Tennessee's PSD permitting requirements for GHG emissions.[3] Specifically, Tennessee's January 11, 2012, SIP revision included changes to TDEC's Air Quality Regulations, Chapter 1200–03–09–.01(4)—*Construction and Operating Permits, Prevention of Significant Deterioration,* which became state-effective February 8, 2011. The changes to Chapter 1200–03–09–.01(4) addressed the thresholds for GHG permitting applicability. In a rulemaking separate from today's rulemaking, EPA took final action to approve TDEC's air quality regulations impacting the regulation of GHG under Tennessee's PSD program. Detailed background information and EPA's rationale for the proposed approval of Tennessee's GHG regulations under the State's PSD program are provided in EPA's November 5, 2010, **Federal Register** notice. *See* 75 FR 68265.

Also on January 11, 2012, TDEC submitted a SIP revision (the subject of today's rulemaking) to include changes to TDEC's air quality regulations at Chapter 1200–03–09–.01(4)(b)46(i) to add automatic rescission provisions related to EPA's GHG permitting requirements (state effective November 27, 2011). EPA's analysis of the approvability of Tennessee's automatic rescission provisions is provided in section II of this rulemaking.

II. EPA's Analysis of the Approvability of Tennessee's Automatic Rescission Provisions

Tennessee's January 11, 2012, SIP submittal adds automatic rescission provisions to the State's PSD regulations at Chapter 1200–03–09. The automatic rescission provisions at Chapter 1200–03–09–.01(4)(b)46(i) provide that in the event that the D.C. Circuit or the U.S. Supreme Court issues an order which would render GHG emissions not subject to regulation under the Clean Air Act's PSD permitting program, then GHGs shall not be subject to regulation under Tennessee's PSD regulations as of the effective date of the **Federal Register** notice of vacatur. Further, the provisions provide that in the event that there is a change to federal law that supersedes regulation of GHGs under the Clean Air Act's PSD permitting program, then GHGs shall not be subject to regulation under Tennessee's PSD regulations as of the effective date of the change in Federal law.

EPA has determined that Tennessee's automatic rescission provisions are approvable. In assessing the approvability of these provisions, EPA considered two key factors: (1) Whether the public will be given reasonable notice of any change to the SIP that occurs as a result of the automatic rescission provisions, and (2) whether any future change to the SIP that occurs as a result of the automatic rescission provisions would be consistent with EPA's interpretation of the effect of the triggering action on Federal GHG permitting requirements. These criteria are derived from the SIP revision procedures set forth in the CAA and Federal regulations.

Regarding public notice, CAA section 110(l) provides that any revision to a SIP submitted by a State to EPA for approval ''shall be adopted by such State after reasonable notice and public hearing.'' In accordance with CAA section 110(l), TDEC followed applicable notice-and-comment procedures prior to adopting the automatic rescission provisions. Thus, the public is on notice that the automatic rescission provisions approved into Tennessee's SIP by today's action will enable the SIP to update automatically to reflect any order by the D.C. Circuit or the U.S. Supreme Court or any change in federal law that renders GHGs not subject to regulation under the Clean Air Act's PSD permitting program. In addition, the automatic rescission provisions provide that no change to the SIP as a result of an order by the D.C. Circuit or the U.S. Supreme Court will occur until EPA publishes a **Federal Register** notice of vacatur. Likewise, a change to federal law that supersedes regulation of GHGs under the federal PSD program would not affect Tennessee's SIP until the effective date of the federal law change. Thus, the timing and extent of any future SIP change resulting from Tennessee's automatic rescission provisions will be clear to both the regulated community and the general public.

EPA's consideration of whether any SIP change resulting from Tennessee's automatic rescission provisions would be consistent with EPA's interpretation of the effect of the triggering action on federal GHG permitting requirements is based on 40 CFR 51.105. Under 40 CFR

[1] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

[2] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009); ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010); and ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[3] Tennessee's submittal also amends the State's title V regulations at Chapter 1200–03–09–.02, to add rescission provisions, however, title V regulations are not part of a state's federally approved SIP. EPA is not taking action to approve Tennessee's title V regulations at this time.

51.105, ''[r]evisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.'' 40 CFR 51.105. To be consistent with 40 CFR 51.105, any automatic SIP change resulting from a court order or federal law change must be consistent with EPA's interpretation of the effect of such order or Federal law change on GHG permitting requirements. EPA concludes that Tennessee's rescission provisions include sufficient safeguards to ensure that any resulting SIP change will be consistent with EPA's interpretation of the effect of the triggering action on federal GHG permitting requirements. Specifically, any automatic SIP change resulting from a court order pursuant to Chapter 1200–03–09–.01(4)(b)46(i)(I) would occur only after EPA's publication of a **Federal Register** notice of vacatur. Likewise, with respect to the revocation of GHG permitting requirements pursuant to Chapter 1200–03–09–.01(4)(b)46(i)(II) following ''a change to Federal law that supersedes regulation of GHGs'' under the CAA, EPA reads this provision to mean that Tennessee will wait for and follow EPA's interpretation as to the impact of any federal law change on Federal GHG permitting requirements before changing its own application of Tennessee's SIP. In the event of a court decision or Federal law change that triggers (or likely triggers) application of Tennessee's automatic rescission provisions, EPA intends to promptly describe the impact of the court decision or Federal law change on the enforceability of its GHG permitting regulations.

III. Final Action

EPA is taking direct final action to approve Tennessee's January 11, 2012, SIP revision to amend Tennessee's SIP-approved regulations to adopt automatic rescission provisions at Chapter 1200–03–09–.01(4)(b)46(i). Specifically, the provisions establish that GHGs would not be subject to regulation under TDEC's PSD program in the event that an order by the D.C. Circuit or the U.S. Supreme Court or a change in Federal law renders GHGs not subject to regulation under the CAA's PSD permitting program. EPA has made the determination that Tennessee's January 11, 2012, SIP revision is approvable because it is not contrary to section 110 and part C of the CAA or EPA regulations regarding PSD permitting for GHGs.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on April 30, 2012 without further notice unless the Agency receives adverse comment by April 2, 2012.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on April 30, 2012 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the

proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 10, 2012.

A. Stanley Meiburg,

Acting Regional Administrator; Region 4.

40 CFR part 52 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 RR—Tennessee

■ 2. Section 52.2220 (c) is amended under Table 1, Chapter 1200–3–9 by revising the entry for ''Section 1200–3–9–.01'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 1200–3–9 Construction and Operating Permits				
Section 1200–3–9–.01 ...	Construction Permits ...	11/27/2011	3/1/2012 [Insert citation of publication].	EPA is approving Tennessee's May 28, 2009 SIP revisions to Chapter 1200–3–9–.01 with the exception of the ''baseline actual emissions'' calculation revision found at 1200–3–9–.01 (4)(b)45(i)(III), (4)(b)45(ii)(IV), (5)(b)1(xlvii)(I)(III) and (5)(b)1(xlvii)(II)(IV) of the submittal.
*	*	*	*	*

* * * * *

[FR Doc. 2012–4892 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0050–201207(a); FRL–9639–4]

Approval and Promulgation of Implementation Plans; Georgia; Atlanta; Fine Particulate Matter 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory, portion of the State Implementation Plan (SIP) revision submitted by the State of Georgia on July 6, 2010. The emissions inventory is part of the Atlanta, Georgia (hereafter referred to as ''the Atlanta Area'' or ''Area''), $PM_{2.5}$ attainment demonstration that was submitted for the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective April 30, 2012 without further notice, unless EPA receives adverse comment by April 2, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0050, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0050,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0050. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or

viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of State's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/m³) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 annual $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2001–2003. These designations became effective on April 5, 2005. The Atlanta Area (which is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties and portions of Heard and Putnam Counties) was designated nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. *See* title 40 CFR 81.311.

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a SIP under title 1, part D of the CAA. This SIP must include, among other elements, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable but no later than the date required by the CAA. Under CAA section 172(b), a state has up to three years after an area's designation as nonattainment to submit its SIP to EPA. For the 1997 $PM_{2.5}$ NAAQS, these SIPs were due April 5, 2008. *See* 40 CFR 51.1002(a).

On July 6, 2010, Georgia submitted an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, a 2002 base year emissions inventory and other planning SIP revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Atlanta Area. Subsequently, on December 8, 2011 (76 FR 76620), EPA determined that the Atlanta Area attained the 1997 annual average $PM_{2.5}$ NAAQS. The determination of attainment was based upon complete, quality-assured and certified ambient air monitoring data for the 2007–2009 period, showing that the Area had monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. The requirements for the Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard were suspended as a result of the determination of attainment, so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1004(c).

On December 29, 2011, Georgia withdrew the Atlanta Area's attainment demonstration (except the emissions inventory) as allowed by 40 CFR 51.1004(c); however, such withdrawal does not suspend the emissions inventory requirement found in CAA section 172(c)(3). Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. EPA is now approving the emissions inventory portion of the SIP revision submitted by the State of Georgia on July 6, 2010, as required by section 172(c)(3).

II. Analysis of State's Submittal

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive, accurate and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area. Georgia selected 2002 as base year for the emissions inventory per 40 CFR 51.1008(b). Emissions contained in the Atlanta attainment plan cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. A detailed discussion of the emissions inventory development can be found in Appendix H of the Georgia submittal; a summary is provided below.

The tables below provide a summary of the annual 2002 emissions of nitrogen oxides (NO_X), sulfur dioxide (SO_2) and $PM_{2.5}$.

TABLE 1—2002 POINT AND AREA SOURCES ANNUAL EMISSIONS FOR THE ATLANTA AREA

[Tons per year]

County	Point sources			Area sources		
	NO_X	SO_2	$PM_{2.5}$	NO_X	SO_2	$PM_{2.5}$
Barrow	22.0	1.2	56.7	195.7	318.0	743.5
Bartow	37,155.1	162,286.8	2,327.0	552.7	1,002.7	1,574.2
Carroll	23.6	5.1	44.6	573.4	1,002.6	1,678.6
Cherokee	75.1	3.5	3.8	452.4	488.7	2,138.3
Clayton	109.1	0.0	0.7	632.3	768.3	768.6
Cobb	5,371.3	28,921.6	222.6	2,284.4	2,728.5	2,905.0
Coweta	9,044.5	41,546.3	283.6	467.5	647.2	1,653.8
DeKalb	179.3	3.8	4.9	2,244.1	2,739.0	2,534.4
Douglas	21.3	12.2	0.5	285.3	334.5	824.8

TABLE 1—2002 POINT AND AREA SOURCES ANNUAL EMISSIONS FOR THE ATLANTA AREA—Continued

[Tons per year]

County	Point sources			Area sources		
	NO_X	SO_2	$PM_{2.5}$	NO_X	SO_2	$PM_{2.5}$
Fayette	0.0	0.0	0.0	387.7	543.6	1,180.2
Forsyth	45.5	8.2	1.0	430.5	578.2	1,681.8
Fulton	1,993.9	1,973.8	597.2	3,495.8	3,797.6	2,717.9
Gwinnett	32.5	0.0	0.0	2,340.1	3,083.1	3,153.5
Hall	107.6	579.0	1.6	1,142.4	2,175.9	2,539.6
Heard	20,492.7	73,551.3	523.7	87.8	64.2	496.1
Henry	2,352.1	0.1	0.4	353.3	380.1	1,777.4
Newton	1.2	0.0	6.3	377.7	553.1	1,337.0
Paulding	0.0	0.0	0.0	197.0	151.2	1,426.5
Putnam	4,588.2	12,138.8	158.0	31.24	38.0	110.4
Rockdale	30.5	0.6	0.1	447.9	738.9	1,133.2
Spalding	1.8	0.3	2.4	368.7	595.9	1,006.9
Walton	4.0	0.0	0.2	245.6	272.8	1,108.7

TABLE 2—2002 NON-ROAD AND MOBILE SOURCES ANNUAL EMISSIONS FOR THE ATLANTA AREA

[Tons per year]

County	Non-road sources			Mobile sources		
	NO_X	SO_2	$PM_{2.5}$	NO_X	SO_2	$PM_{2.5}$
Barrow	504.1	42.1	31.5	1,916.7	69.3	34.8
Bartow	1,404.8	105.9	77.8	5,325.6	180.8	85.5
Carroll	857.0	77.4	63.6	3,895.3	135.9	65.7
Cherokee	1,238.1	135.9	133.6	4,399.0	176.6	79.6
Clayton	6,874.5	596.7	1,526.8	6,226.5	254.5	99.5
Cobb	4,415.6	384.2	384.2	14,544.5	600.7	231.4
Coweta	1,168.5	96.1	75.7	3,798.2	145.9	67.9
DeKalb	3,452.0	310.6	325.4	17,140.6	693.4	267.5
Douglas	667.5	60.2	47.2	3,697.7	148.4	60.3
Fayette	774.3	72.2	62.3	2,231.9	94.0	40.9
Forsyth	1,077.6	107.6	111.6	3,463.4	143.9	70.6
Fulton	7,160.4	676.1	573.1	27,066.9	1,087.0	422.7
Gwinnett	5,283.3	509.0	525.5	15,184.7	613.8	250.6
Hall	1,359.9	112.3	114.5	5,170.9	183.7	86.3
Heard (partial)	80.6	8.8	14.8	459.1	19.0	8.7
Henry	1,655.7	161.3	125.2	5,784.5	219.9	100.9
Newton	695.7	67.9	56.6	2,765.4	95.2	47.0
Paulding	945.7	84.5	61.4	2,034.3	84.4	41.4
Putnam (partial)	29.5	2.6	2.8	171.6	7.1	5.0
Rockdale	570.0	47.7	41.3	2,078.9	86.3	34.5
Spalding	316.1	25.0	24.9	2,103.9	74.5	35.4
Walton	589.9	60.6	53.2	2,294.7	84.1	42.6

The 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources and data. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule for all source categories (i.e., point, area, nonroad mobile and on-road mobile). This inventory often forms the basis of data that are updated with more recent information and data that also is used in their attainment demonstration modeling inventory. Such was the case in the development of the 2002 emissions inventory that was submitted in the state's attainment SIP for this Area. The 2002 emissions inventory was based on data developed with the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) contractors and submitted by the States to the 2002 National Emissions Inventory. Several iterations of the 2002 inventories were developed for the different emissions source categories resulting from revisions and updates to the data. This resulted in the use of version G2 of the updated data to represent the point sources' emissions. Data from many databases, studies and models (e.g., Vehicle Miles Traveled, fuel programs, the NONROAD 2002 model data for commercial marine vessels, locomotives and Clean Air Market Division, etc.) resulted in the inventory submitted in this SIP. The data were developed according to current EPA emissions inventory guidance ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (August 2005) and a quality assurance project plan that was developed through VISTAS and approved by EPA. EPA agrees that the process used to develop this inventory was adequate to meet the requirements of CAA Sec. 172(c)(3) and the implementing regulations.

EPA has reviewed Georgia's emissions inventory and finds that it is adequate for the purposes of meeting section 172(c)(3) emissions inventory requirement. The emissions inventory is approvable because the emissions were

developed consistent with the CAA, implementing regulations and EPA guidance for emission inventories.

III. Final Action

EPA is approving the 2002 base year emissions inventory portion of the SIP revision submitted by the State of Georgia on July 6, 2010. This action is being taken pursuant to section 110 of the CAA. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 30, 2012 without further notice unless the Agency receives adverse comments by April 2, 2012.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 30, 2012 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action 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, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements and Sulfur oxides.

Dated: February 10, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 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 L—Georgia

■ 2. Section 52.570(e) is amended by adding a new entry 31 to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/Effective date	EPA approval date
* *	* * *	*	*
31. Atlanta 1997 Fine Particulate Matter 2002 Base Year Emissions Inventory.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties and portions of Heard and Putnam Counties.	07/06/2010	3/1/2012. [Insert citation of publication].

[FR Doc. 2012–4988 Filed 2–29–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0020; FRL–9634–3]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) and oxides of sulfur source categories for the AVAQMD and SJVUAPCD. We are approving these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on April 30, 2012 without further notice, unless EPA receives adverse comments by April 2, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0020, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

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

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I. The State's Submittal

A. What negative declarations did the State submit?

Table 1 lists the negative declarations we are approving with the dates that they were adopted by the AVAQMD and SJVUAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1—NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
AVAQMD	Petroleum Coke Calcining Operations—Oxides of Sulfur	01/18/11	06/20/11
SJVUAPCD	Synthesized Pharmaceutical Products Manufacturing	04/16/09	06/18/09
SJVUAPCD	Coating Operations at Shipbuilding/Ship Repair Facilities	04/16/09	06/18/09
SJVUAPCD	Manufacture of Pneumatic Rubber Tire	12/16/10	06/20/11

On December 11, 2009, EPA determined that the SJVUAPCD Negative Declarations submitted on June 18, 2009, meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

On December 20, 2011, the submittal for Antelope Valley AQMD and SJVUAPCD Negative Declarations submitted on June 20, 2011, was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these negative declarations?

There are no previous versions of these negative declarations.

C. What is the purpose of the submitted negative declarations?

For SJVUAPCD, the negative declarations were submitted to meet the requirements of CAA section 182(b)(2). Nonattainment areas are required to adopt volatile organic compound (VOC) regulations for the published Control Techniques Guidelines (CTG) categories. If a nonattainment area does not have stationary sources covered under a CTG, then the area is required to submit a negative declaration. The negative declarations were submitted because there are no applicable sources within the SJVAPCD jurisdiction.

For AVAQMD, the negative declaration was submitted to rescind Rule 1119 because there are no sources within the jurisdiction of AVAQMD subject to the provisions of the rule.

EPA's technical support document (TSD) has more information about these negative declarations.

II. EPA's Evaluation and Action

A. How is EPA evaluating the negative declarations?

The negative declarations are submitted as SIP revisions and must be consistent with Clean Air Act requirements for Reasonably Available Control Technology (RACT) (see section 182(b)(2)) and SIP relaxation (see sections 110(1) and 193.) To do so, the submittal should provide reasonable assurance that no sources subject to Rule 1119 and the CTG requirements currently exist or are planned for the AVAQMD and SJVUAPCD.

B. Do the negative declarations meet the evaluation criteria?

We believe these negative declarations are consistent with the relevant policy and guidance regarding RACT and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted negative declarations as additional information to the SIP because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of these negative declarations. If we receive adverse comments by April 2, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 30, 2012.

III. Administrative Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not interfere with Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) because EPA lacks the discretionary authority to address environmental justice in this rulemaking.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds, oxides of sulfur.

Dated: February 9, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.222 is amended by adding paragraphs (a)(6)(ix) and (a)(8) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(6) * * *

(ix) Petroleum Coke Calcining Operations—Oxides of Sulfur submitted on June 20, 2011 and adopted on January 18, 2011.

* * * * *

(8) San Joaquin Valley Unified Air Pollution Control District.

(i) Synthesized Pharmaceutical Products Manufacturing and Coating Operations at Shipbuilding/Ship Repair Facilities submitted on June 18, 2009 and adopted on April 16, 2009.

(ii) Rubber Tire Manufacturing submitted on June 20, 2011 and adopted on September 20, 2010.

* * * * *

[FR Doc. 2012–4667 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0900; FRL–9626–3]

Revisions to the California State Implementation Plan, Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on December 6, 2011 and concerns oxides of nitrogen (NO_X) emissions from internal combustion engines. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs California to correct rule deficiencies.

DATES: *Effective Date:* This rule is effective on April 2, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0900 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

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

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I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On December 6, 2011 (76 FR 76115), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
FRAQMD	3.22 [1]	Internal Combustion Engines	06/01/09	01/10/10

[1] In some sections of the published proposal, we incorrectly used the number 2.33 instead of the correct 3.22 to refer to the rule on which we were proposing action. The name of the rule was correctly stated in the proposal and the correct rule was available in the docket for reviewing. We believe that this error did not negatively impact the public's opportunity to comment or the intent of our proposal.

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because the following rule provision conflicts with section 110 and part D of the Act which prevents full approval of the SIP revision. Section G.1.g allows for alternate testing without including sufficient QA/QC requirements to demonstrate compliance. This undermines enforceability of the rule which contradicts CAA requirements for enforceability.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. Neither sanctions nor a Federal Implementation Plan (FIP) will be imposed due to this limited disapproval. The limited disapproval also does not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing

programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on April 2, 2012.

L. Petitions for Judicial Review

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 April 30, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 13, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(378)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(378) * * *

(i) * * *

(E) Feather River Air Quality Management District.

(*1*) Rule 3.22, ''Internal Combustion Engines,'' adopted on June 01, 2009.

* * * * *

[FR Doc. 2012–4972 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0990; FRL–9626–4]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and Mojave Desert Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) and Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern recordkeeping for rules governing volatile organic compound (VOC) emissions from coatings, solvents and adhesives and rules governing VOC emissions from graphic arts and paper, film, foil and fabric coatings. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990(CAA or the Act).

DATES: This rule is effective on April 30, 2012 without further notice, unless EPA receives adverse comments by April 2, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0990, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov*.
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location

(e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov*.

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
AVAQMD	109	Recordkeeping for Volatile Organic Compound Emissions.	4/20/10	7/20/10
MDAQMD	1117	Graphic Arts and Paper, Film, Foil and Fabric Coatings.	9/28/09	7/20/10

On August 25, 2010, EPA determined that the two submittals met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of AVAQMD Rule 109 into the SIP on September 2, 2008 (73 FR 51226). The AVAQMD amended the SIP-approved version on April 20, 2010. We approved an earlier version of MDAQMD Rule 1117 into the SIP on April 30, 1996 (61 FR 18962). The MDAQMD amended the SIP-approved version on September 28, 2009. CARB submitted both rules to us on July 20, 2010. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. AVAQMD Rule 109 prescribes recordkeeping for several rules that limit emissions of VOC from various solvents, coating, adhesive, graphic arts and polyester resin operations and MDAQMD Rule 1117 limits emissions of VOC from graphic art and paper, film, foil and fabric coatings. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). AVAQMD and MDAQMD regulate ozone moderate nonattainment areas (see 40 CFR part 81). AVAQMD Rule 109 does not, in itself, control VOC emissions and therefore is not subject to RACT requirements. However, MDAQMD Rule 1117 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. CARB's Consumer Products Regulation, Title 17, California Code of Regulations (CCR), Division 3, Chapter 1, Subchapter 8.5, Article 2, Sections 94507–94517.
4. EPA's model VOC rule guidance titled, ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology'' (June 1992).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by April 2, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on April 30, 2012. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address 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. 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 rules, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 13, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(381)(i)(G)(*2*) and (c)(381)(i)(H) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(381) * * *

(i) * * *

(G) * * *

(*2*) Rule 109, ''Recordkeeping for Volatile Organic Compound Emissions,'' amended April 20, 2010.

(H) Mojave Desert Air Quality Management District

(*1*) Rule 1117, ''Graphic Arts and Paper, Film, Foil and Fabric Coatings,'' amended September 28, 2009.

* * * * *

[FR Doc. 2012–4974 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R08–RCRA–2011–0823; FRL–9640–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (''EPA,'' ''the Agency'' or ''we'' in this preamble) today is granting a petition submitted by the ConocoPhillips Billings, Montana Refinery (''ConocoPhillips'', ''Refinery'' or ''Petitioner'') to exclude or ''delist,'' from the list of hazardous wastes, a maximum of 200 cubic yards per year of residual solids from sludge removed from two storm water tanks at its Billings, Montana refinery and processed in accordance with the petition.

After careful analysis we have concluded that the petitioned waste is not a hazardous waste. This exclusion conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when processed in accordance with the petition and disposed in a Subtitle D landfill permitted, licensed, or otherwise authorized by a State to accept the delisted processed storm water tank sludge. This rule also imposes testing conditions for future processed storm water tank residuals to ensure they continue to qualify for delisting.

DATES: This final rule is effective on March 1, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No.: EPA–R08–RCRA–2011–0823. All documents in the docket are listed on the *http://www.regulations.gov* web site or in hard copy at the Environmental Protection Agency Region VIII, Office of Partnerships and Regulatory Assistance, Solid & Hazardous Waste Program, Mail Code: 8P–HW, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The docket is available for viewing from 8 a.m. to 3 p.m., Monday through Friday excluding Federal holidays. You may

copy material from any regulatory docket at a cost of $0.15 per page. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, 1595 Wynkoop Street, Mail Code 8P–HW, Denver, Colorado 80202, (303) 312–6231, *cosentini.christina@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
A. What is a delisting petition?
B. What regulation allow a waste to be delisted?
II. ConocoPhillips Petition
A. What waste did ConocoPhillips petition to delist?
B. What information was submitted in support of this petition?
III. EPA's Evaluation and Final Decision
A. What decision is EPA finalizing and why?
B. What are the terms of this exclusion?
C. When is the delisting effective?
D. How does this action affect states?
IV. Statutory and Executive Order Reviews

I. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which the EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity and must present sufficient information for the EPA to decide whether any factors, in addition to those for which the waste was listed, warrant retaining it as a hazardous waste. (*See* 40 CFR 260.22; 42 U.S.C. 6921(f).)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that future generated waste remains nonhazardous based on hazardous waste characteristics and to ensure that future generated wastes meet the conditions set forth in this final rule.

B. What regulations allow a waste to be delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their waste from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste from the lists of hazardous wastes on a ''generator-specific'' basis.

II. ConocoPhillips Petition

A. What waste did ConocoPhillips petition to delist?

On December 3, 2010, ConocoPhillips petitioned the EPA to exclude a maximum annual volume of 200 cubic yards of F037 residual solids from processing (for oil recovery) sludge removed from two storm water tanks at the Billings, Montana refinery, from the lists of hazardous waste contained in 40 CFR 261.31, because it believed that the petitioned wastes did not meet any of the criteria for which the waste was listed and there were no additional constituents or factors that would cause the waste to be hazardous. ConocoPhillips generates the waste through periodically removing and processing sludge accumulated in two storm water tanks through oil recovery and dewatering. The sludge is not accumulated at a constant rate and is currently removed from the tanks at approximately 18 month intervals and processed via centrifuge and/or filter press for oil recovery and dewatering. Recovered oil is reinserted into the refining process and water from dewatering is routed to the Refinery's on-site wastewater treatment plant.

B. What information was submitted in support of this petition?

ConocoPhillips submitted detailed descriptions of the process generating the waste and other information regarding the makeup of materials contributing to the sludge. ConocoPhillips asserted that the waste does not meet the criteria for the F037 waste code listing and that there are no other factors that might cause the waste to be hazardous.

To support its assertion that the waste is not hazardous, ConocoPhillips collected samples of the waste for analysis. Sample collection and chemical analysis were conducted in accordance with a pre-approved sampling and analysis plan. Details of the sampling and analysis plan and the analytical results are contained in the docket for the December 8, 2011 proposed rule.

III. EPA's Evaluation and Final Decision

A. What decision is EPA finalizing and why?

Today the EPA is finalizing an exclusion for up to 200 cubic yards of residual solids, generated annually, from processing (for oil recovery) sludge removed from two storm water tanks at the ConocoPhillips Billings, Montana Refinery from the lists of hazardous waste contained in 40 CFR 261.31. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See § 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

On December 8, 2011, the EPA proposed to exclude or delist the storm water tank process residual generated at the ConocoPhillips Billings, Montana Refinery from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (76 FR 76677). No public comments were received, and for reasons stated in both the proposed rule and this document, we believe that the storm water tank process residual from the ConocoPhillips Billings, Montana Refinery should be excluded from hazardous waste control.

B. What are the terms of this exclusion?

This exclusion applies only to a maximum annual generation of 200 cubic yards of process residual from treatment of sludge in two storm water tanks at the ConocoPhillips Billings, Montana Refinery. This exclusion is effective only if the storm water sludge is processed in accordance with this rule, and the accompanying petition, and if all conditions contained in this rule are satisfied. ConocoPhillips must dispose of this waste in a Subtitle D landfill permitted, licensed or regulated by the State of Montana, or other state subject to Federal RCRA delisting, to accept the delisted processed storm water tank sludge. ConocoPhillips must verify prior to disposal that the constituent concentrations in the residual solids do not exceed the allowable levels set forth in this exclusion.

C. When is the delisting effective?

This rule is effective March 1, 2012. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when

the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How does this action affect states?

Because the EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states who have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under RCRA 3009, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a federally-issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under applicable state law. Delisting petitions approved by the EPA Administrator or his delegate pursuant to 40 CFR 260.22 are effective in the State of Montana after the final rule has been published in the **Federal Register**.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, Oct. 4, 1993) this rule is not of general applicability and, therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'', (64 FR 43255, Aug. 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will apply to a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' (65 FR 67249, Nov. 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR. 19885, Apr. 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform'', (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: RCRA 3001(f), 42 U.S.C. 6921(f).

Dated: February 14, 2012.

James B. Martin,

Regional Administrator, Region 8.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
ConocoPhillips Billings Refinery.	Billings, Montana	Residual solids from centrifuge and/or filter press processing of storm water tank sludge (F037) generated at a maximum annual rate of 200 cubic yards per year must be disposed in a lined Subtitle D landfill, licensed, permitted or otherwise authorized by a state to accept the delisted processed storm water tank sludge. The exclusion becomes effective March 1, 2012.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		For the exclusion to be valid, the ConocoPhillips Billings Refinery must implement a verification testing program that meets the following Paragraphs: 1. *Delisting levels:* The constituent concentrations in a leachate extract of the waste measured in any sample must not exceed the following concentrations (mg/L TCLP): Acenaphthene-37.9; Antimony-.97; Anthracene-50; Arsenic-.301; Barium-100; Benz(a)anthracene-.25; Benzene-.5; Benzo(a)pyrene-1.1; Benzo(b)fluoranthene-8.7; Benzo(k) fluoranthene-50; Bis(2-ethylhexyl)phthalate-50; 2-Butanone-50; Cadmium-1.0; Carbon disulfide-36; Chromium-5.0; Chrysene-25.0; Cobalt-.763; Cyanide(total)-41.2; Dibenz(a,h)anthrancene-1.16; Di-n-octyl phthalate-50; 1,4-Dioxane-36.5; Ethylbenzene-12; Fluoranthene-8.78; Fluorene-17.5; Indeno(1,2,3-cd)pyrene-27.3; Lead-5.0; Mercury-.2; m&p -Cresol-10.3; Naphthalene-1.17; Nickel-48.2; o-Cresol-50; Phenanthrene-50; Phenol-50; Pyrene-15.9; Selenium-1.0; Silver-5.0; Tetrachloroethene-0.7; Toluene-26; Trichloroethene-.403; Vanadium-12.3; Xylenes (total)-22; Zinc-500. 2. *Verification Testing:* To verify that the waste does not exceed the specified delisting levels, ConocoPhillips must collect and analyze two composite samples of the residual solids from the processed sludge to account for potential variability in each tank. Composite samples must be collected each time cleanout occurs and residuals are generated. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. If oil and grease comprise less than 1 percent of the waste, SW–846 Method 1311 must be used for generation of the leachate extract used in the testing for constituents of concern listed above. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1 percent or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. As applicable, the SW–846 methods might include Methods 1311, 3010, 3510, 6010, 6020, 7470, 7471, 8260, 8270, 9014, 9034, 9213, and 9215. If leachate concentrations measured in samples do not exceed the levels set forth in paragraph 1, ConocoPhillips can dispose of the processed sludge in a lined Subtitle D landfill which is permitted, licensed, or registered by the state of Montana or other state which is subject to Federal RCRA delisting. If constituent levels in any sample and any retest sample for any constituent exceed the delisting levels set in paragraph (1) ConocoPhillips must do the following: (A) Notify the EPA in accordance with paragraph (5) and; (B) Manage and dispose of the process residual solids as F037 hazardous waste generated under Subtitle C of RCRA. 3. *Changes in Operating Conditions:* ConocoPhillips must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. ConocoPhillips must handle wastes generated after the process change as hazardous until it has: Demonstrated that the wastes continue to meet the delisting concentrations in paragraph (1); demonstrated that no new hazardous constituents listed in appendix VIII of part 261 have been introduced; and it has received written approval from the EPA. 4. *Data Submittal:* Whenever tank cleanout is conducted ConocoPhillips must verify that the residual solids from the processed storm water tank sludge meet the delisting levels in 40 CFR part 261 Appendix IX Table 1, as amended by this notice. ConocoPhillips must submit the verification data to U.S. EPA Region 8, 1595 Wynkoop Street, RCRA Delisting Program, Mail code 8P–HW, Denver, CO 80202. ConocoPhillips must compile, summarize and maintain onsite records of tank cleanout and process operating conditions and analytical data for a period of five years. 5. *Reopener Language:* (A) If, anytime after final approval of this exclusion, ConocoPhillips possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the EPA in granting the petition, then the facility must report the data, in writing to the EPA at the address above, within 10 days of first possessing or being made aware of that data. (B) If ConocoPhillips fails to submit the information described in paragraph (A) or if any other information is received from any source, the EPA will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) If the EPA determines that the reported information requires the EPA action, the EPA will notify the facility in writing of the actions the agency believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed the EPA action is not necessary. The facility shall have 30 days from the date of the notice to present such information. (D) If after 30 days ConocoPhillips presents no further information or after a review of any submitted information, the EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the EPAs determination shall become effective immediately, unless the EPA provides otherwise. (E) Notification Requirements: ConocoPhillips must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (1) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (2) Update the onetime written notification, if it ships the delisted waste to a different disposal facility. (3) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

[FR Doc. 2012–5006 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1244]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

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

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

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

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

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

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

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

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

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

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

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

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

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

Executive Order 13132, Federalism. This interim rule involves no policies

that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Jefferson	City of Birmingham (11–04–6751P).	December 2, 2011; December 9, 2011; *The Birmingham News*.	The Honorable William Bell, Mayor, City of Birmingham, 710 North 20th Street, Birmingham, AL 35203.	April 9, 2012	010116
Jefferson	City of Mountain Brook (11–04–6751P).	December 2, 2011; December 9, 2011; *The Birmingham News*.	The Honorable Lawrence Terry Oden, Mayor, City of Mountain Brook, 3928 Montclair Road, Mountain Brook, AL 35213.	April 9, 2012	010128
Jefferson	Unincorporated areas of Jefferson County (11–04–6751P).	December 2, 2011; December 9, 2011; *The Birmingham News*.	The Honorable David Carrington, President, Jefferson County Commission, 716 Richard Arrington, Jr. Boulevard North, Birmingham, AL 35203.	April 9, 2012	010217
Arizona:					
Coconino	City of Flagstaff (11–09–0801P).	October 27, 2011; November 3, 2011; *The Arizona Daily Sun*.	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	March 2, 2012	040020
Maricopa	City of Peoria (11–09–3985P).	December 8, 2011; December 15, 2011; *The Arizona Business Gazette*.	The Honorable Bob Barrett, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	November 29, 2011	040050
Colorado:					
Arapahoe	City of Centennial (11–08–0818P).	December 8, 2011; December 15, 2011; *The Littleton Independent*.	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	April 13, 2012	080315
Arapahoe	City of Centennial (11–08–1095P).	December 8, 2011; December 15, 2011; *The Littleton Independent*.	The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112.	April 13, 2012	080315
Routt	Town of Hayden (11–08–0603P).	November 6, 2011; November 13, 2011; *The Steamboat Pilot & Today*.	The Honorable Jim Haskins, Mayor, Town of Hayden, 178 West Jefferson Avenue, Hayden, CO 81639.	March 12, 2012	080157
Weld	City of Fort Lupton (11–08–0714P).	November 9, 2011; November 16, 2011; *The Greeley Tribune*.	The Honorable Tommy Holton, Mayor, City of Fort Lupton, 130 South McKinley Avenue, Fort Lupton, CO 80621.	March 15, 2012	080183
Weld	Unincorporated areas of Weld County (11–08–0714P).	November 9, 2011; November 16, 2011; *The Greeley Tribune*.	The Honorable Douglas Rademacher, Chairman, Weld County Board of Commissioners, 1150 O Street, Greeley, CO 80631.	March 15, 2012	080266
Florida:					
Lee	Unincorporated areas of Lee County (12–04–0347P).	December 7, 2011; December 14, 2011; *The News-Press*.	The Honorable John Manning, Chairman, Lee County Board of Commissioners, 2120 Main Street, Fort Myers, FL 33901.	November 29, 2011	125124
Orange	City of Orlando (11–04–8600P).	December 5, 2011; December 12, 2011; *The Orlando Sentinel*.	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32802.	November 22, 2011	120186
New Mexico:					
Chaves	City of Roswell (11–06–0142P).	November 17, 2011; November 24, 2011; *The Roswell Daily Record*.	The Honorable Del Jurney, Mayor, City of Roswell, 425 North Richardson Avenue, Roswell, NM 88202.	March 23, 2012	350006
Chaves	Unincorporated areas of Chaves County (11–06–0142P).	November 17, 2011; November 24, 2011; *The Roswell Daily Record*.	The Honorable Stanton L. Riggs, Chaves County Manager, 1 Saint Mary's Place, Roswell, NM 88203.	March 23, 2012	350125
Santa Fe	Unincorporated areas of Santa Fe County (11–06–0697P).	November 29, 2011; December 6, 2011; *The Santa Fe New Mexican*.	The Honorable Virginia Vigil, Chairman, Santa Fe County Commissioners, 102 Grant Avenue, Santa Fe, NM 87501.	November 23, 2011	350069
New York:					
Dutchess	Town of Dover (12–02–0166P).	November 23, 2011; November 30, 2011; *The Poughkeepsie Journal*.	The Honorable Ryan Courtien, Supervisor, Town of Dover, 126 East Duncan Hill Road, Dover Plains, NY 12522.	May 3, 2012	361335
North Carolina:					
Dare	Unincorporated areas of Dare County (11–04–5020P).	September 8, 2011; September 15, 2011; *The Coastland Times*.	The Honorable Warren Judge, Chairman, Dare County Board of Supervisors, 954 Marshall C. Collins Drive, Manteo, NC 27954.	August 30, 2011	375348

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Orange	Town of Chapel Hill (10–04–6903P).	November 23, 2011; November 30, 2011; *The Chapel Hill Herald*.	The Honorable Mark Kleinschmidt, Mayor, Town of Chapel Hill, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	March 29, 2012	370180
Stanly	City of Albemarle (11–04–3287P).	November 3, 2011; November 10, 2011; *The Stanly News & Press*.	The Honorable Elbert L. Whitley, Jr., Mayor, City of Albemarle, 144 North 2nd Street, Albemarle, NC 28001.	March 9, 2012	370223
Stanly	Unincorporated areas of Stanly County (11–04–3287P).	November 3, 2011; November 10, 2011; *The Stanly News & Press*.	Mr. Andy Lucas, Stanly County Manager, 1000 North 1st Street, Suite 10, Albemarle, NC 28001.	March 9, 2012	370361
Texas:					
Denton	City of Denton (11–06–3838P).	November 17, 2011; November 24, 2011; *The Denton Record-Chronicle*.	The Honorable Mark A. Burroughs, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	November 10, 2011	480194
Guadalupe	City of Schertz (11–06–1933P).	November 28, 2011; December 5, 2011; *The Daily Commercial Recorder*.	The Honorable Harold Baldwin, Mayor, City of Schertz, 1400 Schertz Parkway, Schertz, TX 78154.	April 3, 2012	480269
Guadalupe	City of Selma (11–06–1933P).	November 28, 2011; December 5, 2011; *The Daily Commercial Recorder*.	The Honorable Tom Daly, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	April 3, 2012	480046
Tarrant	City of Southlake (11–06–2709P).	November 10, 2011; November 17, 2011; *The Fort Worth Star-Telegram*.	The Honorable John Terrell, Mayor, City of Southlake, 1400 Main Street, Suite 270, Southlake, TX 76092.	March 16, 2012	480612
Wichita	City of Wichita Falls (11–06–1179P).	November 29, 2011; December 6, 2011; *The Times Record News*.	The Honorable Glenn Barham, Mayor, City of Wichita Falls, 1300 7th Street, Wichita Falls, TX 76301.	April 4, 2012	480662
Virginia:					
Loudoun	Unincorporated areas of Loudoun County (11–03–0738P).	November 30, 2011; December 7, 2011; *The Loudoun Times Mirror*.	The Honorable Scott K. York, Chairman, Loudoun County Board of Supervisors, 1 Harrison Street, Leesburg, VA 20175.	April 5, 2012	510090

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

Dated: February 15, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–4955 Filed 2–29–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324–1265–02]

RIN 0648–BB88

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) March 1, 2012. Comments on this final rule must be received no later than April 2, 2012.

ADDRESSES: You may submit comments, identified by FDMS docket number NOAA–NMFS–2010–0194 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* 206–526–6736, Attn: Colby Brady
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Colby Brady.

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.

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.

FOR FURTHER INFORMATION CONTACT: Colby Brady (Northwest Region, NMFS), phone: 206–526–6117, fax: 206–526–6736, *colby.brady@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

On November 3, 2010, NMFS published a proposed rule to implement the 2011–2012 harvest specifications

and management measures for most species of the Pacific Coast groundfish fishery (75 FR 67810). The final rule to implement the 2011–12 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by several inseason actions including the one that is referenced in this action, which published on December 21, 2011 (76 FR 79122).

This inseason action contains a modification to Washington state lingcod recreational management measures implemented in the December 21, 2011, final rule (76 FR 79122).

Background and Need for Clarification of Washington State Lingcod Recreational Fishery Management Measures

The Council recommended adjusting the biennial groundfish management measures for the remainder of the biennial period to respond to updated fishery information and other inseason management needs at its November 2–November 6 meeting in Costa Mesa, California. One of the changes included adoption of regulations that would create a lingcod recreational fishing closure off Washington to conform with state regulations. NMFS implemented this change by inseason action on December 21, 2011 (76 FR 79122). As published, the final regulations contained errors within § 660.360(c)(1)(i)(D)(*2*) of the Code of Federal Regulations (CFR) that may mislead the public and needs to be clarified. This clarification will establish the appropriate language in that paragraph.

In establishing the new closure for lingcod, regulations unintentionally allowed lingcod fishing between a boundary line approximating the 30-fm (55-m) depth contour and the new lingcod closure area from March 15 through June 15. This is inconsistent with the intent of the regulations, which was to close the areas both seaward of the 30-fm (50-m) boundary line and the area seaward of the new lingcod closure line. Those area restrictions would both apply on the dates that were outlined, except on days that the primary halibut fishery is open. As published, the regulations in this paragraph do not fully implement the Council's recommendation. This regulation would be confusing to the public if it is not clarified.

Therefore, as the Council recommended, NMFS is implementing a lingcod recreational fishery area closure as follows: Lingcod fishing is prohibited year round, except in Marine Area 2 on days when the Pacific halibut fishery is open, in the area seaward (West) of a straight line connecting all of the following points in the order stated: 47°31.70′ N. lat., 124°45.00′ W. long.; 46°38.17′ N. lat., 124°30.00′ W. long.; 46°38.17′ N. lat., 124°21.00′ W. long.; and 46°25.00′ N. lat., 124°21.00′ W. long.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

This inseason adjustment is also taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is in accordance with 50 CFR part 660, the regulations implementing the FMP. This action is based on the most recent information available.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b)(3)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available information upon which the changes to the Washington recreational management measure changes are based was originally provided to the Council, and the Council made its recommendations, at its November 2–6, 2011, meeting in Costa Mesa, California. The Council recommended that these changes be implemented by January 1, 2012 or as quickly as possible thereafter. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect recreational fisheries off Washington State.

These adjustments to management measures must be implemented in a timely manner: To conform federal regulations to the new Washington State lingcod recreational fishing area closure prior to the March 17 opening of the recreational fishery. If this rule is not implemented immediately, the public will have incorrect information regarding boundaries used, and allowed fishing activities for groundfish fisheries management, which would cause confusion and be inconsistent with the intent of the December 21, 2011 inseason action. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change immediately allows harvest as intended by the Council in fisheries that are important to coastal communities in a manner that prevents ACLs of overfished species from being exceeded, preventing premature closure of the recreational fishery.

No aspect of this action is controversial and no change in operating practices in the fishery is required from those intended in this inseason adjustment, as state regulations are already in place to the effect of this conforming action.

Delaying these changes would also keep management measures in place that are not based on the best available information. Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: February 27, 2012.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.360, paragraph (c)(1)(i)(D)(*2*) is revised to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(D) * * *

(*2*) Between the Queets River (47°31.70′ N. lat.) and Leadbetter Point

(46°38.17′ N. lat.) (Washington state Marine Area 2), recreational fishing for groundfish, is prohibited seaward of a boundary line approximating the 30 fm (55 m) depth contour from March 15 through June 15 with the following exceptions: Recreational fishing for lingcod is permitted within the RCA on days that the primary halibut fishery is open; recreational fishing for rockfish is permitted within the RCA from March 15 through June 15; recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15. In addition to the RCA described above, between the Queets River (47°31.70′ N. lat.) and Leadbetter Point (46°38.17′ N. lat.) (Washington state Marine Area 2), recreational fishing for lingcod is prohibited year round seaward of a straight line connecting all of the following points in the order stated: 47°31.70′ N. lat., 124°45.00′ W. long.; 46°38.17′ N. lat., 124°30.00′ W. long. with the following exceptions: On days that the primary halibut fishery is open lingcod may be taken, retained and possessed within the lingcod area closure. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Retention of lingcod seaward of the boundary line approximating the 30 fm (55 m) depth contour south of 46°58′ N. lat. is prohibited on Fridays and Saturdays from July 1 through August 31. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iv) of this section. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

* * * * *

[FR Doc. 2012–4989 Filed 2–29–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XB049

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2012 total allowable catch of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 27, 2012, through 1200 hrs, A.l.t., March 10, 2012.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2012 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 14,023 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011) and inseason adjustment (77 FR 438, January 5, 2012).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2012 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,773 mt and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 24, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 2012.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–4975 Filed 2–27–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 77, No. 41

Thursday, March 1, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0187; Directorate Identifier 2011–NM–094–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 757 airplanes. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. This proposed AD would require modifying the fuel quantity indication system (FQIS) wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank. We are proposing this AD to prevent ignition sources inside the center fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 30, 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.

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: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6499; fax: 425–917–6590; email: *takahisa.kobayashi@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–2012–0187; Directorate Identifier 2011–NM–094–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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, a combination of failures, and unacceptable service (failure) experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside the center fuel tank, which has been identified to have a high flammability exposure. Ignition sources inside the center fuel tank, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The combination of a latent failure within the center fuel tank and a subsequent single failure of the fuel quantity indicating system (FQIS) wiring or components outside the fuel tank can cause development of an

ignition source inside the center fuel tank. Latent in-tank failures, including corrosion/deposits at wire terminals, conductive debris on fuel system probes, wires or probes contacting the tank structure, and wire faults, could create a conductive path inside the center fuel tank. Out-tank single failures including hot shorts in airplane wiring and/or the FQIS processor could result in electrical energy being transmitted into the center fuel tank via the FQIS wiring. The electrical energy, if combined with a latent in-tank failure, could be sufficient to create an ignition source inside the center fuel tank, which, combined with flammable fuel vapors could result in a catastrophic fuel tank explosion.

SFAR 88 and Fuel Tank Flammability Reduction Rule

The National Transportation Safety Board (NTSB) determined that the combination of a latent failure inside the center fuel tank and a subsequent single failure of the FQIS wiring or components outside the fuel tank was the most likely ignition source inside the center fuel tank that resulted in the TWA Flight 800 explosion. After the TWA 800 accident, we issued AD 99–03–04, Amendment 39–11018 (64 FR 4959, February 2, 1999), and AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998), mandating separation of the FQIS wiring that penetrates the fuel tank from high power wires and circuits on the classic Boeing 737 and 747 airplanes. Those ADs resulted in installation of Transient Suppression Units (TSUs), Transient Suppression Devices (TSDs), or Isolated Fuel Quantity Transmitter (IFQT) as a method of compliance with the AD requirements.

After we issued those ADs, the findings from the SFAR 88 review showed that most transport category airplanes with high flammability fuel tanks needed TSUs, TSDs, or IFQTs to prevent electrical energy from entering the fuel tanks via the FQIS wiring in the event of a latent failure in combination with a single failure.

Installation of those FQIS protection devices, however, was determined unnecessary on those airplanes that are required to comply with the ''Reduction of Fuel Tank Flammability in Transport Category Airplanes'' rule (73 FR 42444, July 21, 2008), referred to as the Fuel Tank Flammability Reduction (FTFR) rule. The FTFR rule requires incorporation of a flammability reduction means (FRM) that converts high flammability fuel tanks into low flammability fuel tanks for certain airplane models. Therefore, the unsafe condition identified by SFAR 88 is mitigated by incorporation of an FRM, as discussed in the FTFR rule.

This proposed AD is intended to address the unsafe condition associated with the FQIS wiring that penetrates the center fuel tank for all Boeing Model 757 airplanes that are not subject to the requirements of the FTFR rule. This proposed AD would apply to airplanes operated in all-cargo service and airplanes operated under Title 14 Code of Federal Regulations (CFR) part 91, since those airplanes are not subject to the requirements of the FTFR rule. Also, this proposed AD would apply to airplanes for which the State of Manufacture issued the original certificate of airworthiness or export airworthiness approval prior to January 1, 1992, since those airplanes are also not subject to the requirements of the FTFR rule. However, as explained in paragraph 2–5.a. of Advisory Circular 120–98, ''Operator Requirements for Incorporation of Fuel Tank Flammability Reduction Requirements,'' dated May 7, 2009, to operate a pre-1992 airplane in passenger service after December 26, 2017, operators must incorporate an FRM that meets the requirements of § 26.33(c) before that date. For such airplanes on which an FRM is incorporated, further compliance with this proposed AD is not required.

The nitrogen generating system (NGS) being developed by Boeing to meet the FTFR rule addresses the unsafe condition of this AD, as well as providing other safety improvements. Paragraph (h) of this proposed AD provides that, for operators not required to comply with the FTFR rule, electing to comply with the FTFR rule would be an acceptable method of addressing the unsafe condition.

As discussed in the FTFR rule, the FAA recognized that separate airworthiness actions would be initiated to address the remaining fuel system safety issues for airplanes for which an FRM is not required. We have notified design approval holders that service instructions to support introduction of FQIS protection are now necessary for fuel tanks that are not required to be modified with an FRM by the FTFR rule. To date we have not received any service information from Boeing addressing this specific threat; therefore, we are proceeding with this proposal, which would require modifications using methods approved by the Manager of the Seattle Aircraft Certification Office.

We plan similar actions for those Boeing and Airbus airplanes with similar FQIS vulnerabilities that are not affected by the FTFR rule.

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 modifying the FQIS wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank.

Costs of Compliance

We estimate that this proposed AD affects 352 airplanes of U.S. registry. We have been advised that some of those airplanes are subject to the requirements of the FTFR rule and therefore are excluded from the requirements of this AD.

Because the manufacturer has not yet developed a modification commensurate with the actions specified by this proposed AD, we cannot provide specific information regarding the required number of work hours or the cost of parts to do the proposed modification. In addition, modification costs will likely vary depending on the operator and the airplane configuration. The proposed compliance time of 60 months should provide ample time for the development, approval, and installation of an appropriate modification.

Based on similar modifications, however, we can provide some estimated costs for the proposed modification in this NPRM. The modifications mandated by AD 99–03–04, Amendment 39–11018 (64 FR 4959, February 2, 1999), and AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998), for the classic Boeing Model 737 and 747 airplanes (i.e., TSD, TSU, IFQT) are not available for Boeing Model 757 airplanes. But, based on the costs associated with those modifications, we estimate the cost of this new proposed modification to be no more than $100,000 per airplane. The Honeywell FQIS may need additional modifications, which may cost as much as $100,000 per airplane. The cost impact of the proposed AD therefore is estimated to be between $100,000 and $200,000 per airplane.

As indicated earlier in this preamble, we specifically invite the submission of comments and other data regarding the costs of this proposed 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

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–2012–0187; Directorate Identifier 2011–NM–094–AD.

(a) Comments Due Date

We must receive comments by April 30, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes; certificated in any category; for which compliance with 14 CFR 121.1117(d), 125.509(d), or 129.117(d) is not required; regardless of the date of issuance of the original certificate of airworthiness or export airworthiness approval.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 7397: Engine fuel system wiring.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent development of an ignition source inside the center fuel tank caused by a latent in-tank failure combined with electrical energy transmitted into the center fuel tank via the fuel quantity indicating system (FQIS) wiring due to a single out-tank failure.

(f) Compliance

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

(g) Modification

Within 60 months after the effective date of this AD, modify the FQIS wiring or fuel tank systems to prevent development of an ignition source inside the center fuel tank, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 1 to paragraph (g) of this AD: After accomplishment of the actions required by paragraph (g) of this AD, maintenance and/or preventive 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).

(h) Optional Installation of Flammability Reduction Means

As an alternative to the requirements of paragraph (g) of this AD, operators may elect to comply with the requirements of 14 CFR 121.1117 or 14 CFR 125.509 or 14 CFR 129.117 (not including the exclusion of cargo airplanes in Sections 121.1117(j), 129.117(j), and 125.509(j)). Following this election, failure to comply with Sections 121.1117, 129.117, and 125.509 is a violation of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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.

(j) Related Information

For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6499; fax: 425–917–6590; email: *takahisa.kobayashi@faa.gov.*

Issued in Renton, Washington, on February 21, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4931 Filed 2–29–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–345]

Schedules of Controlled Substances: Placement of Five Synthetic Cannabinoids Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) proposes placing five synthetic cannabinoids 1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue) including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into Schedule I of the Controlled Substances Act (CSA). This proposed action is pursuant to the CSA which requires that

such actions be made on the record after opportunity for a hearing through formal rulemaking.

DATES: DEA will permit interested persons to file written comments on this proposal pursuant to 21 CFR 1308.43(g). Electronic comments must be submitted and written comments must be postmarked on or before April 30, 2012. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Time on the last day of the comment period.

Interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' [1] may file a request for hearing or waiver of participation pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45. Requests for hearing and waivers of participation must be received on or before April 2, 2012.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–345'' on all electronic and written correspondence. DEA encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document and supplemental information to this proposed rule are also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/OD, 8701 Morrissette Drive, Springfield, VA 22152. All requests for hearing and waivers of participation must be sent to Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, VA 22152.

FOR FURTHER INFORMATION CONTACT: Alan G. Santos, Associate Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all of the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted, and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Request for Hearing or Waiver of Participation in Hearing

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557) and 21 CFR 1308.41. Pursuant to 21 CFR 1308.44(a) and (c), requests for hearing and waivers of participation may be submitted only by interested persons, defined as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811).'' Requests for hearing must conform to the requirements of 21 CFR 1308.44(a) and 1316.47. A request should state, with particularity, the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver must conform to the requirements of 21 CFR 1308.44(c), including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of the hearing is restricted to ''(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *'' Requests for hearing and waivers of participation in the hearing should be submitted to DEA using the address information provided above.

Legal Authority

The DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended (hereinafter, ''CSA''). The implementing regulations for these statutes are found in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. Under the CSA, controlled substances are classified in one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances by statute are found at 21 U.S.C. 812(c) and the current list of scheduled substances are published at 21 CFR Part 1308.

The CSA permits these initial schedules to be modified by providing that scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of HHS, or (3) on the petition of any interested party. 21 U.S.C. 811(a). The Attorney General may, by rule, ''add to such a schedule or transfer between such schedules any drug or other substance if he (A) finds that such drug or other substance has a potential for abuse, and (B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed * * *''

[1] 21 CFR 1300.01.

Background

On November 24, 2010, DEA published a Notice of Intent [2] to temporarily place five synthetic cannabinoids into Schedule I pursuant to the temporary scheduling provisions of the CSA: 1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue). 75 FR 71635. Following this, on March 1, 2011, the Administrator published a Final Order in the **Federal Register** amending 21 CFR 1308.11(g) to temporarily place the five synthetic cannabinoids into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 76 FR 11075. This Final Order, which became effective on the date of publication, was based on findings by the Administrator that the temporary scheduling of the five synthetic cannabinoids was necessary to avoid an imminent hazard to the public safety. The CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expire at the end of one year from the date of issuance of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a) are pending, the temporary scheduling of a substance may be extended for up to six months. Under this provision, the temporary scheduling of the cannabinoids, which would expire on February 29, 2012, may be extended to August 29, 2012. This extension is being ordered by the Administrator in a separate action.

As described in the March 1, 2011 Final Order, a ''cannabinoid'' is a class of chemical compounds in the marijuana [3] plant that are structurally related. The cannabinoid Δ9-tetrahydrocannabinol (THC) is the primary psychoactive constituent of marijuana. ''Synthetic cannabinoids'' are a large family of chemically unrelated structures functionally (biologically) similar to THC, the active principal of marijuana.

The emergence of these five synthetic cannabinoids represents a recent phenomenon in the U.S. designer drug market. Numerous products, marketed under the guise being ''herbal incense,'' with trade names such as ''Spice'' and ''K2'' have conclusively been found to contain these five substances. These products are manufactured by spiking plant material with the synthetic cannabinoids and then distributed in a way that poses dangerous consequences to the consumer. Marketed as ''legal'' alternatives to marijuana, these products are being abused for their psychoactive properties and are packaged without information as to their health and safety risks.

Proposed Determination To Schedule Five Synthetic Cannabinoids

This NPRM proposes the permanent scheduling of JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol pursuant to 21 U.S.C. 811(a)(1). On June 21, 2011, DEA requested a scientific and medical evaluation and scheduling recommendation from the Assistant Secretary of HHS for each of the five synthetic cannabinoids pursuant to 21 U.S.C. 811(b). Upon receipt and evaluation of the scientific and medical evaluation and scheduling recommendations from the Assistant Secretary,[4] DEA concluded its analysis of all other relevant data for the proposal to place JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol into Schedule I of the CSA.

Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in the scheduling decision. Please note that both the DEA and HHS analyses are available under ''Supporting and Related Material'' of the public docket for this proposed rule at *www.regulations.gov* under docket number DEA–345.

1. The Drug's Actual or Relative Potential for Abuse: The abuse potential of the five synthetic cannabinoids under evaluation is associated with their ability to evoke cannabinoid-like subjective effects similar to those evoked by the Schedule I cannabinoid delta-9-tetrahydrocannabinol (THC).

The legislative history of the CSA provides four factors to consider in determining whether a particular drug or substance has potential for abuse: [5]

i. There is evidence that individuals are taking the drug or other substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community; or

ii. There is significant diversion of the drug or substance from legitimate drug channels; or

iii. Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

iv. The drug is a new drug so related in its action to a drug or other substance already listed as having a potential for abuse to make it likely that the drug or other substance will have the same potential for abuse as such drugs, thus making it reasonable to assume that there may be significant diversion from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

With respect to the first factor, a number of case reports and case series (article grouping several case reports) have shown that individuals are taking these substances and products containing these substances in amount sufficient to induce toxic effects similar to those induced by marijuana such as anxiety, tachycardia and hallucinations. Severe toxic effects including seizures, tachyarrhythmias, extreme anxiety leading to suicide and the precipitation of psychotic episodes have also been reported following abuse of these substances or products containing these substances.

In considering evidence of significant diversion of the drug or substance from legitimate drug channels under the second factor, it must be noted that as of March 1, 2011, these synthetic cannabinoids have been temporarily controlled as Schedule I substances and thus have not been legally available unless for research purposes. The National Forensic Laboratory Information System (NFLIS) details over 5,450 reports from state and local forensic laboratories identifying JWH–018, JWH–073, JWH–200, CP–47,497 or cannabicyclohexanol in drug related exhibits for a period from January 2009 to December 2011 from 39 states. The System to Retrieve Information from Drug Evidence (STRIDE) also details

[2] This Notice of Intent was corrected on January 13, 2011. 76 FR 2287.

[3] Note that ''marihuana'' is the spelling originally used in the Controlled Substances Act (CSA). This document uses the spelling that is more common in current usage, ''marijuana.''

[4] DEA received separate Evaluations and Recommendation documents from HHS with respect to each of the five synthetic cannabinoids. HHS recommended Schedule I placement for each of these five substances on the following dates: 1-pentyl-3-(1-naphthoyl)indole (JWH–018) (January 5, 2012); 1-pentyl-3-(1-naphthoyl)indole (JWH–073) and 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200) (February 6, 2012), 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP–47,497) and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol) (February 13, 2012).

[5] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); 1970 U.S.C.C.A.N. 4566, 4601.

reports from federal forensic laboratories identifying JWH–018, JWH–073, and JWH–200 in drug related exhibits for a period from January 2009 to December 2011.

For the third factor, there is no currently accepted medical use for any of the five synthetic cannabinoids, and, outside of an extremely limited research setting, no medical practitioner is currently licensed by law to administer them. Thus, with no accepted medical use or administering practitioners, any individuals currently taking using products containing JWH–018, JWH–073, JWH–200, CP–47,497 or cannabicyclohexanol are doing so on their own initiative without medical advice from a practitioner licensed to administer those substances.

Related to the fourth factor, HHS states that JWH–018, JWH–073, JWH–200, CP–47,497 and cannabicyclohexanol are cannabinoids with a potential for abuse similar to the Schedule I substances marijuana and THC. These synthetic cannabinoids appear to be marketed solely for abuse of their marijuana-like activity and because, prior to the March 1, 2011 Final Order, they were not controlled under the CSA. As such, commerce involving these synthetic cannabinoids can only be for the purposes of abuse and escaping the regulatory and criminal penalties of the CSA that pertain to marijuana.

JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol have agonist properties at the CB1 receptor. The CB1 receptors are thought to be responsible for the euphoric and psychoactive effects of THC and related cannabinoids.

Drug discrimination is a method in which laboratory animals indicate whether a test drug produces physical or psychic perceptions similar to those produced by a known drug of abuse. Drug discrimination studies in rats suggest that JWH–018, JWH–200, JWH–073, CP–47,497, and cannabicyclohexanol have similar subjective effects as THC, while numerous anecdotal self-reports, as well as case reports and case series substantiate that these substances and their associated products are abused by humans for their hallucinogenic effects. An indication of the extent of such abuse may be found in the results of the 2011 Monitoring the Future survey of high schools students, where 1 in 9 high school seniors (11.4%) reported having used ''synthetic marijuana'' (products often containing synthetic cannabinoids) in the past year. These statistics make it one of the most frequently mentioned among high school seniors, second only to marijuana. Additionally, while products containing synthetic cannabinoids appear to produce subjective effects similar to marijuana, they are dissimilar to other licit and illicit drugs.

As evidence of abuse on the national scale, State public health and poison centers have issued warnings in response to adverse health effects associated with abuse of herbal incense products containing these synthetic cannabinoids. These adverse effects included tachycardia, elevated blood pressure, unconsciousness, tremors, seizures, vomiting, hallucinations, agitation, anxiety, pallor, numbness and tingling. This is in addition to the numerous public health and poison centers which have similarly issued warnings regarding the abuse of these synthetic cannabinoids and their associated products, and the ban on the use of these synthetic cannabinoids by military personnel issued in response to reported instances of abuse by active personnel.

2. *Scientific Evidence of the Drug's Pharmacological Effects, If Known:* In their recommendations for the placement of the five synthetic cannabinoids, HHS states that *in vitro* and preclinical studies suggest that the pharmacological effects of JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol are similar to those of THC.

The CB1 receptors are thought to be responsible for the euphoric and psychoactive effects of THC and related cannabinoids. JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol have agonist properties at the CB1 receptor.

Animal studies also provided evidence of cannabinoid-like pharmacological effects of these synthetic cannabinoids. JWH–018, JWH–200, CP–47,497 and cannabicyclohexanol were shown to be active in all four parameters of the mouse tetrad, a well-established paradigm for evaluating substances for cannabimimetic properties, while JWH–073 was only tested, and shown to be active, in three of the four parameters of the tetrad test. JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol substitute fully for the discriminative stimulus effects of THC in laboratory animals, suggesting that they are likely to have similar subjective effects as THC, the main active ingredient of marijuana.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance:* The appearance of these substances in the designer drug market can be traced to the initial forensic laboratory confirmation in mid-December 2008. A commercial laboratory in Frankfurt, Germany announced the identification of JWH–018 in samples of herbal incense and others were identified shortly after this initial determination.

These five cannabinoid substances have been termed 'synthetic' or 'non-classical' because they are agonists at the CB1 receptor but are structurally distinct from naturally occurring cannabinoids.

HHS has confirmed to DEA in a letter dated November 22, 2010, that there are no Investigational New Drug Applications (INDs) or New Drug Applications (NDAs) for these synthetic cannabinoids. DEA is also not aware of any accepted medical use for these five synthetic cannabinoids.

4. *Its History and Current Pattern of Abuse:* Synthetic cannabinoids have been developed over the last 30 years to investigate their cannabimimetic properties and as research tools to investigate the cannabinoid systems (Huffman *et al.,* 1994; Wiley *et al.,* 1998). Trafficking of synthetic cannabinoids was first reported in the United States in a December 2008 encounter, where a shipment of 'Spice' was seized and analyzed by U.S. Customs and Border Patrol in Dayton, Ohio. Around the same time, in December 2008, JWH–018 and cannabicyclohexanol were identified by German forensic laboratories (EMCDDA, 2009).

JWH–018, JWH–073, JWH–200, CP–47,497, and Cannabicyclohexanol have been found alone and found laced on products that are marketed as herbal incense. The abuse of these substances and their associated products for their psychoactive effects has been widely reported and their popularity has spread rapidly since December 2008. The NFLIS has detailed over 5,450 reports from state and local forensic laboratories identifying JWH–018, JWH–073, JWH–200, CP–47,497 and/or cannabicyclohexanol in drug related exhibits for a period from January 2009 to December 2011 from 39 states. Prior to being temporarily placed in Schedule I on March 1, 2011, these products were promoted as legal alternatives to marijuana, were widely available over the Internet, and were found to be sold in gas stations, convenience stores, tobacco and head shops to all populations.

As of January 13, 2012, forty-eight states in the U.S. as well as numerous local jurisdictions and countries have controlled at least one of these five synthetic cannabinoids.

5. *The Scope, Duration, and Significance of Abuse:* HHS states that the current scope and duration of use of the synthetic cannabinoids is likely underestimated because of the lack of widely available toxicological methods to identify its use using routine analyses (Peters and Martinez-Ramirez 2010). Additionally, since these substances were never intended for human consumption, minimal information exists as to the health implications resulting from exposure to these substances (Griffiths et al., 2010; Vardakou et al., 2010). As forensic procedures and toxicology screens are being developed, the amount of information concerning these substances and the associated products is increasing.

The abuse of synthetic cannabinoids has been associated with both acute and long-term public health and safety concerns. In the past year, increased exposure incidents have been documented by poison control centers in the United States. As of December 31, 2011, the American Association of Poison Centers (AAPCC) has reported receiving 9,992 calls corresponding to products purportedly laced with synthetic cannabinoids. The calls represented exposed individuals from all 50 states and the District of Columbia, as well as a few calls regarding exposed individuals in Puerto Rico, U.S. Territories, foreign countries, and a category identified as ''overseas/US military/diplomatic.'' Several of these exposures were confirmed to involve JWH–018 (141), and JWH–073 (12).

The increased abuse of these synthetic cannabinoids in the United States is supported by an increasing number of encounters by law enforcement. Over the past year in the United States there has been a significant increase in availability, trafficking and abuse of these substances as evident from the increasing number of encounters reported by forensic laboratories (NFLIS and STRIDE data). Product manufacturing and synthesis laboratories have been discovered, and laboratories have been found manufacturing products by lacing plant material with synthetic cannabinoids.

6. *What, if any, Risk There is to the Public Health:* Law enforcement, military, and public health officials have reported exposure incidents that demonstrate the dangers associated with these substances to both the individual abusers and other affected individuals. Two suicides, one also involving a murder, have been linked to the abuse of synthetic cannabinoids (law enforcement communication to DEA). Warnings regarding the dangers of synthetic cannabinoid abuse and associated products have been issued by numerous state public health departments and poison centers and private organizations. Detailed product analyses describe variations in the amount and type of synthetic cannabinoid laced on the plant material; this is true even within samplings of the same product.

Because they share pharmacological similarities with the Schedule I substance THC, the synthetic cannabinoids JWH–018, JWH–073, JWH–200, CP–47,497, and cannabicyclohexanol pose substantial risks to the abuser. Numerous emergency department admissions have been connected to these substances, while law enforcement communications to DEA indicate multiple violent episodes linked to smoking these synthetic cannabinoids. Health warnings issued by numerous state public health departments and poison centers have described adverse health effects associated with smoking (inhaling) these products, including agitation, vomiting, tachycardia, elevated blood pressure, seizures, paranoia, hallucinations and non-responsiveness, and fatality.

Case reports describe presentations to emergency departments of individuals exposed to synthetic cannabinoids with symptoms that include anxiety and panic attacks, tremors, generalized convulsions, psychosis, heart palpitations and elevated pulse, severe gastrointestinal distress, tremors, blurred peripheral vision, nausea, and persistent vomiting with retching. Such abuse also includes instances of persons suspected of driving under the influence of these synthetic cannabinoids, including one incident where an automobile was driven through a residence. In that case the driver claimed to have no memory of the event while a toxicology analysis confirmed that the driver had smoked a product containing JWH–018, but not any other drugs.

7. *Its Psychic or Physiological Dependence Liability:* HHS states that the pharmacological profile of JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol strongly suggests that they possess physiological and psychological dependence liability similar to that of the Schedule I controlled substances marijuana and THC. While no laboratory controlled clinical studies of the psychic or physical dependence potential of these five synthetic cannabinoids are currently available, their pharmacological profile indicates that the substances will have high psychic and physiologic dependence capacity.

Case reports have shown that herbal products containing synthetic cannabinoids could produce physical dependence and a withdrawal syndrome. The HHS analysis discusses one case report in which the authors concluded that the patient satisfied criteria for a diagnosis of DSM–IV and ICD–10 dependency syndrome on JWH–018. Some reported withdrawal symptoms included elevated blood pressure, restlessness, drug craving, nightmares, sweating, nausea, tremor and headache.

Because these substances act through the same molecular target as THC, the main active ingredient of marijuana, it can be reasonably expected that their physical dependence liability will be similar. Long-term, regular use of marijuana can lead to physical dependence and withdrawal following discontinuation as well as psychic addiction or dependence.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA:* JWH–018, JWH–073, JWH–200, CP–47,497, and cannabicyclohexanol are not considered immediate precursors of any controlled substance of the CSA as defined by Title 21, U.S.C. 802(23).

Conclusion: Based on consideration of the scientific and medical evaluations and accompanying recommendations of HHS, and based on DEA's consideration of its own eight-factor analyses, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of JWH–018, JWH–073, JWH–200, CP–47,497 and cannabicyclohexanol. As such, DEA hereby proposes to schedule JWH–018, JWH–073, JWH–200, CP–47,497 and cannabicyclohexanol as controlled substances under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as Schedules I, II, III, IV, and V. The statute outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis and recommendations of the Assistant Secretary for Health of HHS and review of all available data, the Administrator of DEA, pursuant to 21 U.S.C. 812(b)(1), finds that:

(1) 1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-(3-

hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue) have a high potential for abuse;

(2) 1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue) have no currently accepted medical use in treatment in the United States; and

(3) there is a lack of accepted safety for use of 1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue) under medical supervision.

Based on these findings, the Administrator of DEA concludes that 1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue), including their salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrant control in Schedule I of the CSA (21 U.S.C. 812(b)(1)).

Requirements for Handling Five Synthetic Cannabinoids

If this rule is finalized as proposed, JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol would be permanently, as they are currently temporarily, subject to the CSA and the Controlled Substances Import and Export Act (CSIEA) regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a Schedule I controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with JWH–018, JWH–200, JWH–073, CP–47,497 or cannabicyclohexanols, or who desires to manufacture, distribute, dispense, import, export, engage in research or conduct instructional activities with any of the five synthetic cannabinoids, would need to be registered to conduct such activities pursuant to 21 U.S.C. 822 and 958 and in accordance with 21 CFR part 1301.

Security. JWH–018, JWH–200, JWH–073, CP–47,497 or cannabicyclohexanol would be subject to Schedule I security requirements and would need to be manufactured, distributed, and stored pursuant to 21 U.S.C. 823 and in accordance with 21 CFR 1301.71, 1301.72(a), (c) and (d), 1301.73, 1301.74, 1301.75(a) and (c), 1301.76.

Labeling and Packaging. All labels and labeling for commercial containers of JWH–018, JWH–200, JWH–073, CP–47,497 or cannabicyclohexanol which are distributed on or after the effective date of the finalization of this rule would need to be in accordance with 21 CFR 1302.03–1302.07, pursuant to 21 U.S.C. 825.

Quotas. Quotas for JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol will be established based on registrations granted and quota applications received pursuant to part 1303 of Title 21 of the Code of Federal Regulations.

Inventory. Every registrant required to keep records and who possesses any quantity of JWH–018, JWH–200, JWH–073, CP–47,497 or cannabicyclohexanol would be required to keep an inventory of all stocks of any of the five synthetic cannabinoids on hand pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Every registrant who desires registration in Schedule I for any of the five synthetic cannabinoids would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23.

Reports. All registrants required to submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.33 would be required to do so regarding JWH–018, JWH–200, JWH–073, CP–47,497 and cannabicyclohexanol.

Order Forms. All registrants involved in the distribution of JWH–018, JWH–200, JWH–073, CP–47,497 or cannabicyclohexanol pursuant to 21 U.S.C. 828 would be required to comply with the order form requirements of 21 CFR 1305.

Importation and Exportation. All importation and exportation of JWH–018, JWH–200, JWH–073, CP–47,497 or cannabicyclohexanol would need to be done in accordance with 21 CFR Part 1312, pursuant to 21 U.S.C. 952, 953, 957, and 958.

Criminal Liability. Any activity with JWH–018, JWH–200, JWH–073, CP–47,497 or cannabicyclohexanol not authorized by, or in violation of, Subchapter I Part D and Subchapter II of the CSA or the CSIEA occurring on or after effective date of the finalization of this proposed rule would be unlawful.

Regulatory Analyses

Executive Orders 12866 and 13563

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget pursuant to Section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This proposed rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 13175

This proposed rule will not have tribal implications and will not impose substantial direct compliance costs on Indian tribal governments.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control,

Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR Part 1308 is proposed to be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11 is amended by redesignating paragraphs (d)(18) through (35) as paragraphs (d)(19) through (36) and adding a new paragraph (d)(18) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(18) Cannabimimetic agents

(i) 1-Butyl-3-(1-naphthoyl)indole (Other names: JWH–073)	7173
(ii) 5-(1,1-Dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (Other names: CP–47,497)	7297
(iii) 5-(1,1-Dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (Other names: Cannabicyclohexanol and CP–47,497 C8 homologue)	7298
(iv) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (Other names: JWH–200)	7200
(v) 1-Pentyl-3-(1-naphthoyl)indole (Other names: JWH–018 and AM678)	7118

* * * * *

Dated: February 24, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–4982 Filed 2–28–12; 11:15 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157714–06]

RIN 1545–BG43

Determination of Governmental Plan Status; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on an advance notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of public hearing on an advance proposed rulemaking (REG–157714–06) that was published in the **Federal Register** on Friday, February 3, 2012 (77 FR 5442) relating to the determination of governmental plans.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Kinard at (202) 622–6060, and regarding the submission of public comments and the public hearing, Ms. Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing on an advance notice proposed rulemaking (REG–133233–08) that is the subject of this correction is under section 414(d) of the Internal Revenue Code.

Need for Correction

As published, REG–157714–06, contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of public hearing on an advance proposed rulemaking (REG–157714–06) which was the subject of FR. Doc. 2012–2499, is corrected as follows:

■ 1. On page 5442, column 2, in the preamble, under the caption **DATES:**, line four, the language ''Building. The IRS must receive outlines'' is corrected to read ''Building. Written or electronic comments must be received by June 18, 2012. The IRS must receive outlines''

■ 2. On page 5442, column 2, in the preamble, under the caption **ADDRESSES:**, second paragraph, first line, the language ''Mail outlines to CC:PA:LPD:PR (REG-'' is corrected to read '' Mail submissions and outlines to CC:PA:LPD:PR (REG-''.

LaNita Van Dyke,

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

[FR Doc. 2012–4905 Filed 2–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0074, Formerly USCG–2011–0314]

RIN 1625–AA09

Drawbridge Operation Regulation; Hood Canal, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the drawbridge operating regulation for the Hood Canal floating drawbridge near Port Gamble. This modification would relieve heavy rush hour road traffic on State Routes 3 and 104, by allowing the draws of the bridge to not open for maritime traffic during afternoon rush hour in the summer months.

DATES: Comments and related material must reach the Coast Guard on or before April 16, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0074 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282 email *randall.d.overton@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All

comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0074), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2012–0074'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert USCG–2012–0074 and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before April 2, 2012, using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

Senator Phil Rockefeller and Representative Christine Rolfes of the Washington State Legislature requested that the operating regulations of the Hood Canal Bridge be changed to provide some relief to road traffic on State Routes 3 and 104. Traffic queues south of the eastern end of the bridge can be in excess of 45 minutes during and after openings of the draw span. The stopped road traffic on this two-lane highway blocks access to intersecting streets along the queue. The current operating regulations for the bridge are found at 33 CFR 117.1045. Per existing operating regulations, the bridge shall open on signal if at least one hour notice is provided and that the draw shall be opened horizontally for three hundred feet unless the maximum opening of 600 feet is requested. The current regulations remain in effect except for the establishment of the restricted period. Navigation on the waterway consists of commercial tugs with tows, recreational vessels of various sizes, commercial fishing vessels, and U.S. naval vessels with escort vessels including those of the U.S. Coast Guard. This proposed change to the Hood Canal draw span operating schedule will not affect commercial tug and tow vessels nor will it affect U.S. Naval Vessels or vessels in service to the U.S. Navy or other pubic vessels of the United States because pursuant to the modification, the bridge is required to open for these types of vessels during the restricted period. The Coast Guard conducted a test deviation of the bridge operating schedule from May 27, 2011 through September 30, 2011 during which the bridge was not required to open from 3 p.m. to 6 p.m. except for U.S. Navy Vessels and vessels attending the missions of the U.S. Navy. This test deviation was published in the **Federal Register** under docket number USCG–2010–0314 and comments were received and evaluated during the comment period which ended November 30, 2011.

Comments received, during the test deviation, from waterway and roadway users as well as public and private interest were evaluated and considered while developing this proposed deviation.

Discussion of Proposed Rule

The proposed deviation will allow the bridge to not open for vessel traffic from 3 p.m. to 6:15 p.m. daily from 3 p.m. May 22 to 6:15 p.m. September 30 except for commercial tug and tow vessels and vessels of the U.S. Navy or vessels attending the missions of the U.S. Navy and other public vessels of the United States. At all other times the bridge will operate in accordance with 33 CFR 117.1045.

The Hood Canal Bridge provides three navigational openings for vessel passage, the movable floating span, subject to this proposed change, and two fixed navigational openings; one on the east end of the bridge at Salsbury Point, and one on the west end of the bridge at Termination Point. The fixed navigational opening on the east end of the bridge provides a horizontal clearance of 230 feet and a vertical clearance of 50 feet above mean high water. The opening on the west end of the bridge provides a horizontal clearance of 230 feet and a vertical clearance of 35 feet above mean high water. Vessels that are able to safely pass through the fixed navigational openings are allowed to do so during the restricted period.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as

supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order. We have reached this conclusion by the fact that commercial tow vessels and U.S. Naval Vessels are exempt from the restricted openings. Vessels that would be primarily affected are recreational vessels that are not able to pass through the fixed navigational channels of the bridge. Vessels affected by the restricted opening schedule will be able to plan their trips to avoid the restricted period.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would primarily affect recreational sailboats which have mast heights that preclude them from passing under the fixed navigational openings in the bridge. Vessels which require an opening will be informed of the restricted closure period via the Coast Guard's Local Notice to Mariners which will allow them to plan trips to avoid this time frame.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Randall Overton, Coast Guard Bridge Administrator, 13th Coast Guard District, at (206) 220–7282. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on

the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.1045 by adding the below text as paragraph (b) and changing the current paragraph (b) to read (c) and current paragraph (c) to read (d):

§ 117.1045 Hood Canal.

(b) The draw of the Hood Canal Bridge, mile 5.0, need not open for vessel traffic from 3 p.m. to 6:15 p.m. daily from 3 p.m. May 22 to 6:16 p.m. September 30, except for commercial tug and tow vessels and vessels of the U.S. Navy or vessels attending the missions of the U.S. Navy and other public vessels of the United States. At all other times the bridge will operate in accordance with subparagraph (a) of this section.

Dated: February 6, 2012.

K.A. Taylor,

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

[FR Doc. 2012–4928 Filed 2–29–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN99

VA Dental Insurance Program

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations to establish a pilot program to offer premium-based dental insurance to enrolled veterans and certain survivors and dependents of veterans. VA would contract with a private insurer through the Federal contracting process to offer dental insurance, and the private insurer would then be responsible for the administration of the dental insurance plan. VA's role would primarily be to form the contract with the private insurer and verify the eligibility of veterans, survivors, and dependents. The program is authorized, and this rulemaking is required, by section 510 of the Caregivers and Veterans Omnibus Health Services Act of 2010 (the 2010 Act).

DATES: Comments must be received by VA on or before April 30, 2012.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue 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–AN99, VA Dental Insurance Program.'' 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: Kristin Cunningham, Director, Business Policy, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461–1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to section 510(a) of the 2010 Act, VA ''shall carry out a pilot program to assess the feasibility and advisability of providing a dental insurance plan to veterans and survivors and dependents of veterans.'' In order to comply with section 510, VA would contract with a private dental insurer that would offer dental coverage to the persons identified in section 510(b) of the 2010 Act. This proposed rule would establish rules and procedures for the VA Dental Insurance Program (VADIP), in accordance with section 510(k) of the 2010 Act, which requires VA to prescribe regulations.

Section 510(c) of the 2010 Act is a ''sunset provision'' that authorizes VADIP to run from January 30, 2011, to January 30, 2014. Public Law 111–163, § 510(c) (''The pilot program shall be carried out during the 3-year program beginning on the date that is 270 days after enactment of this Act,'' which was May 5, 2010). However, we would not include that date limitation in the proposed rule, as we were not able to begin the pilot program on January 30, 2011, due to the need to prescribe regulations, a time-intensive process. We nonetheless interpret section 510(c) to require that the pilot program be administered for no less than three years, and would conduct the program for three years once commenced. Our interpretation is further supported by the Secretary's duty as stated in section 510(a) of the 2010 Act, to ''assess the feasibility and advisability of providing a dental insurance plan to veterans and survivors and dependants of veterans'', and we believe that this assessment would be incomplete unless afforded the full duration of the program as prescribed by law. We can easily ensure the termination of VADIP through contract if no extension is provided and the program is no longer authorized by law. If VADIP is not extended, we would remove the rule from the Code of Federal Regulations and, in the meantime, would no longer offer the benefit.

Paragraph (a)(1) of proposed § 17.169 would generally establish VADIP and explain what the program provides. We would note that ''[e]nrollment in VADIP does not affect the covered beneficiary's eligibility for VA outpatient dental services and treatment, and related dental appliances under 38 U.S.C. 1712.'' This reiterates the requirement in section 510(j) of the 2010 Act.

Proposed paragraph (a)(2) would define the terms ''insured'' and ''participating insurer,'' which are used throughout the proposed rule to identify persons enrolled in an insurance plan through VADIP and providers of VADIP insurance, respectively. Defining the terms as such would help ensure that the proposed rule is easily understood.

Proposed paragraph (b) would identify the persons who are eligible for insurance through VADIP, and would require that a participating insurer offer coverage to such persons. These individuals are clearly identified by section 510(b) of the 2010 Act, and the proposed rule would use language that is virtually identical to the language used in section 510(b). We would require that a participating insurer offer coverage to all persons identified in the paragraph in order to ensure that we have fully assessed the feasibility and advisability of VADIP, as required by section 510(a) of the 2010 Act. We note that we would not geographically limit coverage by regulation, but would allow the participating insurer to incorporate

such limitations in the contract with VA. Section 510(d) of the 2010 Act requires that VADIP ''be carried out in such Veterans Integrated Services Networks [VISNs] as the Secretary considers appropriate.'' We believe that such consideration must be made in the context of the Federal contracting process. VA's limitation of this pilot program to particular VISNs, as regional groupings, could be detrimental to contract formation, as dental services can be provided by insurers through national contracts, regional contracts, or partnerships between national and regional group practices. We cannot predict at this time whether private insurance companies will want to provide limited or nationwide coverage through VADIP, but will attempt through the contracting process to obtain the widest possible geographic coverage for veterans and their survivors and dependents.

Proposed paragraph (c)(1) would address premiums, coverage, and selection of the participating insurer. Premiums and copayments would be paid by the insured in accordance with the terms of the insurance plan. Responsibility for payment is so mandated by section 510(h)(3) of the 2010 Act. The amount of premiums and copayments would be based on the contract with the participating insurer. We do not propose to require a minimum or maximum amount in the proposed rule, because we believe that this matter would be best handled through the contracting process, during which factors such as competition between insurers, locations where services are provided, and the range of services offered would determine the amounts. VA will not know the range of amounts for premium and copayment rates until the proposals received from insurers are reviewed, and then based on that review and subsequent negotiation, the insurers would be selected. Proposed paragraph (c)(1) would additionally require annual premium adjustments, and also require that insureds be notified of the amount and effective date of such adjustments, in accordance with section 510(h)(2). The burden of notifying the insureds would be placed on the participating insurer, and we would additionally require that such notice be provided in writing.

Proposed paragraph (c)(2) would specify the minimum coverage that must be offered by the participating insurer. We believe that the described coverage must be provided in order for the dental plan to be meaningful, as well as to comply with the minimum requirements established in section 510(f) of the 2010 Act, which are that the benefits include appropriate ''diagnostic services, preventative services, endodontics and other restorative services, surgical services, and emergency services.'' We note that a more detailed discussion of covered services, and additional services, would be established in the actual insurance plan offered by the participating insurer, which VA would approve by contract.

Proposed paragraph (c)(3) would state that VA would use the Federal competitive contracting process to select a participating insurer and would further provide that the selected insurer would administer the program, in accordance with section 510(e) of the 2010 Act, which requires that VA contract with a dental insurer to administer the dental insurance plan pilot program. Section 510(e) of the 2010 Act makes clear that the Secretary's duty is to contract with a dental insurer, and that insurer would then administer the dental insurance plan as provided under the pilot.

Proposed paragraph (d)(1) would establish that VA, in connection with the participating insurer, would market VADIP through existing VA communication channels to notify all eligible persons of their right to voluntarily enroll in VADIP. Enrollment must be purely voluntary under section 510(g)(1) of the 2010 Act. We would require that further procedures associated with voluntary enrollment, beyond notification of eligible persons, would be the responsibility of the participating insurer. VA would be responsible for verifying eligibility using established VA data storage systems. As previously stated, VA is not required by section 510 of the 2010 Act to take an active role in the administration of the actual dental program, as the law is merely designed to facilitate the provision of private insurance to the specified VA beneficiaries. Requiring that the private insurer take on a majority of responsibility for enrollment procedures would help ensure that only minimal VA resources are devoted to VADIP, and that VA may optimally manage its resources to provide VA dental benefits to VA beneficiaries as applicable. Section 510(j) makes clear that the Secretary's responsibilities to provide VA dental benefits under 38 U.S.C. 1712 shall not be affected by the administration of this pilot, and in fact that the Secretary must not allow a veteran's dental care under that section to be affected even in instances where that veteran is also participating in the pilot.

Proposed paragraph (d)(2) would require a minimum initial enrollment period of 12 calendar months, followed by month-to-month enrollment at the option of the insured. We are required to prescribe a minimum period of enrollment by section 510(g)(2) of the 2010 Act, and we believe that a minimum of one year is required to assess the viability of VADIP. Allowing month-to-month enrollment thereafter, as long as the enrollee chooses to continue, would help ensure that enrollment remains voluntary, as required in section 510(g)(1) of the 2010 Act.

Proposed paragraph (d)(3) would require an insurer to continue to provide coverage for at least 30 calendar days after an insured ceases to be eligible under proposed paragraphs (b)(1) and (2), to ensure the completion of any services scheduled but not yet provided. This continued coverage is critical for certain services in proposed paragraph (c)(2) that typically would be provided in multiple stages, such as when an insured would receive a crown. The insured would be required to pay any premiums due during this 30-day continued coverage period. This 30-day continued coverage period would not be available to those insureds who become disenrolled under proposed paragraph (e), but only to those who cease to be eligible under proposed paragraphs (b)(1) and (2).

Under proposed paragraph (e), we would include five voluntary bases for insureds to disenroll from VADIP, consistent with section 510(i) of the 2010 Act, and would also authorize participating insurers to disenroll insureds who fail to pay the required premiums. Disenrollment for failure to pay premiums would be at the discretion of the participating insurer, in accordance with the details of the insurance plan. Because insureds are required by section 510(h)(3) of the 2010 Act to make such payments, we do not believe that VA has any duty to regulate disenrollment on this basis, beyond authorizing involuntary disenrollment for non-payment. Proposed paragraphs (e)(1)(i) through (iii) would set forth the bases for voluntarily disenrollment that are established by section 510(i) of the 2010 Act. Under proposed paragraph (e)(1)(i), we would require the participating insurer to allow disenrollment ''[f]or any reason, during the first 30 days that the beneficiary is covered by the plan, if no claims for dental services or benefits were filed by the insured.'' We would require that no claims were filed because such an action would require the insurer to expend resources, and would also

indicate the insured's desire to participate in the plan, and because VA is required by section 510(i)(1)(B) of the Act to ensure that disenrollment criteria do not ''jeopardize the fiscal integrity of the dental insurance plan.'' Proposed paragraph (e)(1)(ii) would require the participating insurer to allow disenrollment if the insured relocates to an area outside the jurisdiction of the plan that prevents the use of the benefits under the plan, as required by section 510(i)(2)(A) of the 2010 Act. Proposed paragraph (e)(1)(iii) would require the participating insurer to allow disenrollment if the insured is prevented by serious medical condition from being able to obtain benefits under the plan, as required by section 510(i)(2)(B) of the 2010 Act.

Section 510(i)(2)(C) of the 2010 Act also authorizes VA to prescribe additional bases for voluntary disenrollment. We propose two additional bases in paragraphs (e)(1)(iv) and (e)(1)(v). Proposed paragraph (e)(1)(iv) would establish the first additional basis of disenrollment to be that the insured could voluntarily disenroll if he or she would suffer severe financial hardship by continuing in VADIP. Proposed paragraph (e)(1)(v) would establish the second additional basis to be that an insured could voluntarily disenroll for any reason at any time after the initial 12-month enrollment period. Both these bases further support VA's obligation under section 510(g)(1) of the 2010 Act to ensure that enrollment in the dental insurance plan be voluntary. All bases of voluntary disenrollment in proposed paragraphs (e)(1)(i) through (v) either reiterate specific Congressional requirements in section 510(i) of the 2010 Act, or are additional bases to ensure that enrollment remains voluntary, as also mandated in section 510(i).

Proposed paragraph (e)(2) would establish that all insured requests for voluntary disenrollment must be submitted to the insurer for determination of whether the insured qualifies for disenrollment under the criteria in proposed (e)(1)(i)-(v). Requests for disenrollment because of a serious medical condition or severe financial hardship would include the insured's submission to the insurer of written documentation that verifies the existence of a serious medical condition or financial hardship. The written documentation submitted to the insurer must show that circumstances leading to a serious medical condition or financial hardship originated after the effective date coverage began, and would prevent the insured's use of benefits. These standards obviate the need to define the statutory terms ''serious medical condition'' or ''severe financial hardship,'' because under the regulation all that would be required is that the insured provide written documentation that shows that conditions exist which prevent him or her from maintaining the insurance benefits, and which did not exist prior to the start of coverage.

Section 510(i)(3) of the 2010 Act requires VA to ''establish procedures for determinations on the permissibility of voluntary disenrollments,'' i.e., disenrollment initiated by the insured pursuant to proposed paragraphs (e)(1)(i) through (v). Section 510(i)(3) requires that ''[s]uch procedures shall ensure timely determinations on the permissibility of such disenrollments,'' but section 510 of the 2010 Act does not require that VA adjudicate or participate in such appeals. Moreover, section 510 of the 2010 Act is silent as to VA's role in appeals of issues other than disenrollment, such as denials of benefits. We propose minimum timeframes for disenrollment appeals and subsequent decisions and we propose an appeals process to ensure that appropriate notice and an opportunity to respond is provided to insureds. VA would not be involved in the appeals process beyond establishing these criteria. Particularly, the decisions of the insurer with regards to an insured appeal must be final, so that VA does not become involved with the adjudication of appeals. In proposed paragraph (e)(3), we would require that, when requests for voluntary disenrollment are denied because the insured does not meet any criterion under proposed paragraphs (e)(1)(i)–(v), the insurer must provide notification of the denial and the right to appeal to the insured in writing within 30 days after receipt of the insured's request to voluntarily disenroll. The form of the appeal would be established by the participating insurer, and may include oral appeals rather than (or in addition to) written appeals, but the insured must be provided at least 30 days to appeal. The participating insurer would be required to issue a final decision in writing on such an appeal within 30 days after receiving the appeal. We believe that by requiring these timeframes we can ensure compliance with requirements in section 510(i)(3) of the 2010 Act that VA establish procedures for determinations of disenrollment and ensure those determinations are timely, while ensuring VA is not actively involved in the determination process. Participating insurers would be free to provide additional rights to insureds, but at a minimum would be required to comply with the procedural framework set forth in proposed paragraph (e)(3).

In proposed paragraph (f), we would state that ''[p]articipating insurers will establish and be responsible for determination and appeals procedures for all issues other than voluntary disenrollment.'' This would allow participating insurers to establish determination procedures consistent with the generally accepted administration of private insurance plans or with their current practice. We are not required by section 510 of the 2010 Act to regulate determination of matters other than voluntary disenrollment, and we believe that including proposed paragraph (f) would help clarify the narrow scope of VA's obligation.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures are 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 2010 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 § 17.169(d) and (e) 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 collections 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: the 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–AN99, VA Dental Insurance Program.''

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: VA Dental Insurance Program.

Summary of collections of information: The proposed rule at § 17.169(d) would allow an individual to voluntarily apply for dental insurance by submitting an application to a participating insurer; the application will be made in accordance with the plan requirements provided by the private insurer. The proposed rule at § 17.169(e)(2) would authorize the submission to the participating insurer of evidence to support an attempt to disenroll from the program. Paragraph (e) would establish procedures for submission of requests for voluntary disenrollment and supporting documentation.

Description of the need for information and proposed use of information: Applications are needed so that individuals can voluntarily participate in VADIP. Procedures for voluntary disenrollment, as well as appeals of disenrollment decisions, are needed to ensure that enrollment remain voluntary, and that disenrollment determinations are timely.

Description of likely respondents: Veterans, certain survivors and dependents.

Estimated number of respondents per year: Applications: 101,000–201,000. Disenrollment requests: 1,000. Appeals of disenrollment decisions: 500.

Estimated frequency of responses per year: 1.

Estimated burden per response: Applications: 15 min. Disenrollment requests: 30 min. Appeals of disenrollment decisions: 30 min.

Estimated total annual reporting and recordkeeping burden: 26,000–51,000 hours.

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. This proposed rule would not directly affect any small entities. Only dental insurers, certain veterans and their survivors and dependents, which are not small entities, could be affected. 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) classifies a regulatory action as a ''significant regulatory action,'' requiring review by OMB, unless OMB waives such review, if it is a 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 the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule 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 of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009 Veterans Medical Care Benefits and 64.011 Veterans Dental Care.

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 February 23, 2012, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Dental health, Health care, Veterans.

Dated: February 24, 2012.

William F. Russo,

Deputy Director, Office of Regulation Policy & 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 noted in specific sections.

2. Add § 17.169 after § 17.166 to read as follows:

§ 17.169 VA Dental Insurance Plan program for veterans and survivors and dependents of veterans (VADIP).

(a) *General.* (1) The VA Dental Insurance Plan Program (VADIP) provides premium-based dental insurance coverage through which individuals eligible under paragraph (b) of this section may choose to obtain dental insurance from a participating insurer. Enrollment in VADIP does not affect the insured's eligibility for outpatient dental services and treatment, and related dental appliances, under 38 U.S.C. 1712.

(2) The following definitions apply to this section:

Insured means an individual, identified in paragraph (b) of this section, who has enrolled in an insurance plan through VADIP.

Participating insurer means an insurance company that has contracted with VA to offer a premium-based dental insurance plan to veterans, survivors, and dependents through VADIP. There may be more than one participating insurer.

(b) *Covered veterans and survivors and dependents.* A participating insurer must offer coverage to the following persons:

(1) Any veteran who is enrolled under 38 U.S.C. 1705 in accordance with 38 CFR 17.36.

(2) Any survivor or dependent of a veteran who is eligible for medical care under 38 U.S.C. 1781 and 38 CFR 17.271.

(c) *Premiums, coverage, and selection of participating insurer.* (1) *Premiums.* Premiums and copayments will be paid by the insured in accordance with the terms of the insurance plan. Premiums and copayments will be determined by VA through the contracting process, and will be adjusted on an annual basis. The participating insurer will notify all insureds in writing of the amount and effective date of such adjustment.

(2) *Benefits.* Participating insurers must offer, at a minimum, coverage for the following dental care and services:

(i) *Diagnostic services.*

(A) Clinical oral examinations.

(B) Radiographs and diagnostic imaging.

(C) Tests and laboratory examinations.

(ii) *Preventive services.*

(A) Dental prophylaxis.

(B) Topical fluoride treatment (office procedure).

(C) Sealants.

(D) Space maintenance.

(iii) *Restorative services.*

(A) Amalgam restorations.

(B) Resin-based composite restorations.

(iv) *Endodontic services.*

(A) Pulp capping.

(B) Pulpotomy and pulpectomy.

(C) Root canal therapy.

(D) Apexification and recalcification procedures.

(E) Apicoectomy and periradicular services.

(v) *Periodontic services.*

(A) Surgical services.

(B) Periodontal services.

(vi) *Oral surgery.*

(A) Extractions.

(B) Surgical extractions.

(C) Alveoloplasty.

(D) Biopsy.

(vii) *Other services.*

(A) Palliative (emergency) treatment of dental pain.

(B) Therapeutic drug injection.

(C) Other drugs and/or medications.

(D) Treatment of postsurgical complications.

(E) Crowns.

(F) Bridges.

(G) Dentures.

(3) *Selection of participating insurer.* VA will use the Federal competitive contracting process to select a participating insurer, and the insurer will be responsible for the administration of VADIP.

(d) *Enrollment.* (1) VA, in connection with the participating insurer, will market VADIP through existing VA communication channels to notify all eligible persons of their right to voluntarily enroll in VADIP. The participating insurer will prescribe all further enrollment procedures, and VA will be responsible for confirming that a person is eligible under paragraph (b) of this section.

(2) The initial period of enrollment will be for a period of 12 calendar months, followed by month-to-month enrollment as long as the insured remains eligible for coverage under paragraph (b) of this section and chooses to continue enrollment, so long as VA continues to authorize VADIP.

(3) The participating insurer will agree to continue to provide coverage to an insured who ceases to be eligible under paragraphs (b)(1) through (2) of this section for at least 30 calendar days after eligibility ceased. The insured must pay any premiums due during this 30-day period. This 30-day coverage does not apply to an insured who is disenrolled under paragraph (e) of this section.

(e) *Disenrollment.* (1) Insureds may be involuntarily disenrolled at any time for failure to make premium payments. Insureds must be permitted to voluntarily disenroll, and will not be required to continue to pay any copayments or premiums, under any of the following circumstances:

(i) For any reason, during the first 30 days that the beneficiary is covered by the plan, if no claims for dental services or benefits were filed by the insured.

(ii) If the insured relocates to an area outside the jurisdiction of the plan that prevents the use of the benefits under the plan.

(iii) If the insured is prevented by serious medical condition from being able to obtain benefits under the plan.

(iv) If the insured would suffer severe financial hardship by continuing in VADIP.

(v) For any reason during the month-to-month coverage period, after the initial 12-month enrollment period.

(2) All insured requests for voluntary disenrollment must be submitted to the insurer for determination of whether the insured qualifies for disenrollment under the criteria in paragraphs (e)(1)(i) through (v) of this section. Requests for disenrollment due to a serious medical condition or financial hardship must include submission of written documentation that verifies the existence of a serious medical condition or financial hardship. The written documentation submitted to the insurer must show that circumstances leading to a serious medical condition or financial hardship originated after the effective date coverage began, and will prevent the insured from maintaining the insurance benefits.

(3) If the participating insurer denies a request for voluntary disenrollment because the insured does not meet any criterion under paragraphs (e)(1)(i) through (v) of this section, the participating insurer must issue a written decision and notify the insured of the basis for the denial and how to appeal. The participating insurer will establish the form of such appeals whether orally, in writing, or both. The decision and notification of appellate rights must be issued to the insured no later than 30 days after the request for

voluntary disenrollment is received by the participating insurer. The appeal will be decided and that decision issued in writing to the insured no later than 30 days after the appeal is received by the participating insurer. An insurer's decision of an appeal is final.

(f) Participating insurers will establish and be responsible for determination and appeal procedures for all issues other than voluntary disenrollment.

(Authority: Sec. 510, Pub. L. 111–163)

[FR Doc. 2012–4879 Filed 2–29–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN87

Tentative Eligibility Determinations; Presumptive Eligibility for Psychosis and Other Mental Illness

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) regulation authorizing tentative eligibility determinations to comply with amended statutory authority concerning statutory minimum active-duty service requirements. This document also proposes to codify in regulation statutory presumptions of medical-care eligibility for veterans of certain wars and conflicts who developed psychosis within specified time periods and for Persian Gulf War veterans who developed a mental illness other than psychosis within two years after service and within two years after the end of the Persian Gulf War period. We believe that regulations are necessary because we would interpret the law to allow VA to waive any copayments associated with care pursuant to the statutory presumption and to waive any otherwise applicable minimum service requirements.

DATES: Comments must be received by VA on or before April 30, 2012.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number). Comments should indicate that they are submitted in response to ''RIN 2900–AN87, Tentative eligibility determinations; Presumptive eligibility for psychosis and other mental illness.'' 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 for an appointment. (This is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461–1599. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: This rulemaking would amend 38 CFR 17.34, ''Tentative eligibility determinations,'' and would establish a new § 17.109 concerning presumptive eligibility for medical care for psychosis and other mental illness.

Current 38 CFR 17.34 applies to veterans who seek medical care but are not enrolled in the VA healthcare system. Administratively, the rule allows us to provide medical care in specified situations, if ''eligibility for [medical] care probably will be established.'' Current § 17.34(a), which is not amended by this notice, authorizes such a tentative eligibility determination in emergencies. The vast majority of applicants who have not yet established eligibility but require medical care fall into this category.

Current § 17.34(b) applies in non-emergency situations to a veteran who seeks medical care ''within 6 months after date of honorable discharge from a period of not less than 6 months of active duty.'' Paragraph (b) authorizes a tentative eligibility determination because of the brief time period between discharge and application. In many of these cases, it is clear that the condition for which the veteran seeks care is one for which service connection ''probably will be established.'' However, current paragraph (b) needs to be revised so that the minimum-active-duty period (''6 months of active duty'') complies with the minimum active-duty service requirements set forth in 38 U.S.C. 5303A. Pursuant to section 5303A(a), ''any requirements for eligibility for or entitlement to any [VA] benefit * * * that are based on the length of active duty served by a person who initially enters such service after September 7, 1980, shall be exclusively as prescribed in [title 38, United States Code].'' Therefore, the current rule would be applicable only to persons who entered a period of service on or before September 7, 1980, and are seeking eligibility based on that period of service. This requirement would be reflected in proposed paragraph (b)(1). Proposed paragraph (b)(2) would require, for persons who entered service after September 7, 1980, that the applicant meet the minimum service requirements in section 5303A, and have filed their application within 6 months after date of honorable discharge. These revisions merely update our regulation to conform to current law.

We would amend VA's regulation on the provision of care to non-enrolled veterans, 38 CFR 17.37, by adding a paragraph that would authorize VA to provide care to veterans for psychosis and mental illnesses other than psychosis. The provision of this care would be pursuant to 38 CFR 17.109, which we propose to create in this rule and discuss in detail below. The proposal to amend § 17.37 authorizes the subsequent changes we propose in this rulemaking.

We also propose a new § 17.109 that would codify in regulation for the first time two presumptions of eligibility for medical care based on specific diagnoses in certain veteran populations. Pursuant to 38 U.S.C. 1702(a), for the purposes of VA's authority to provide medical benefits under chapter 17 of title 38, United States Code, certain veterans who developed an active psychosis within a time period specified in the statute ''shall be deemed to have incurred such disability in the active military, naval, or air service.'' The effect of a presumption of incurrence means that VA must provide medical care to the veteran as if the condition for which the veteran is treated were service connected. Although VA complies with this mandate, this statutory authority has never been articulated in a VA regulation.

The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, § 1708(a)(1), (2), 122 Stat. 3, 493–94 (2008), amended 38 U.S.C. 1702 to create a similar presumption for veterans of the Persian Gulf War who develop a mental illness other than psychosis within two years after discharge from military service and within two years after the last day of the Persian Gulf War. We note that the Persian Gulf War is defined by statute as ''the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation

or by law.'' 38 U.S.C. 101(33). No ending date has yet been prescribed.

In proposed § 17.109, we would articulate in regulation the statutory presumptions in 38 U.S.C. 1702. Most of the language of the proposed rule would be virtually identical to that of the authorizing statute; we would merely reorganize it for clarity.

A veteran who receives care from VA for a service-connected disability is not required to pay copayments under 38 CFR 17.108(b), 17.110(c)(2), and 17.111(f). Because the veteran would be receiving care for a condition that is presumed to have been incurred during service, i.e., presumed to be service connected, we believe that section 1702 requires us to waive copayments for this group of veterans. Thus, we would state in the proposed rule that the eligibility for benefits is established under this section ''and such condition is exempted from copayments under §§ 17.108, 17.110, and 17.111''.

The section 1702 presumption applies only for the purposes of 38 U.S.C. chapter 17, which establishes VA's authority to provide medical, nursing home, and domiciliary care. In other words, we presume eligibility for the purposes of administering those services that VA is authorized to provide under chapter 17, including but not only the medical benefits package under 38 CFR 17.38, which sets out generally those services that VA may provide.

Thus, the Veterans Health Administration (VHA) may treat the covered disabilities as if they were service connected for purposes of furnishing VHA benefits and, in turn, determine that no copayment is applicable to the receipt of such benefits.

In addition, because we are treating these veterans by presuming that their condition is service-connected, we would clarify in paragraph (c) that minimum active-duty service requirements do not apply to eligibility for care and waiver of copayments established under the proposed rule. As discussed above regarding the proposal to amend § 17.34(b), pursuant to 38 U.S.C. 5303A(a), veterans who entered service after September 7, 1980, are subject to certain minimum service requirements; however, under section 5303A(b)(3)(D), this requirement does not apply ''to the provision of a benefit for or in connection with a service-connected disability''.

Finally, we propose to amend 38 CFR 17.108, 17.110, and 17.111 to clearly exempt persons eligible for care under proposed § 17.109 from the copayment requirement. Although we would establish such an exemption in § 17.109 itself, we believe that our regulations will be clearer overall if the exemptions are repeated in the copayment regulations.

VA assumes that the number of veterans who will request eligibility under this rulemaking is insignificant because most veterans will be otherwise eligible for service-connected treatment. The majority of veterans who are already enrolled in the system or eligible for care under 38 U.S.C. 1710 would not be affected by this rulemaking. The potential cohort of veterans who are not enrolled in the system and who are not eligible for care under 38 U.S.C. 1710, but meet the criteria established by the provisions of this rulemaking are insignificant compared to the veterans eligible or enrolled under 38 U.S.C. 1710. In addition, the veterans who gain access through this rulemaking do not get the full medical benefits package so it would not be advantageous to gain eligibility through this provision when they are eligible through 38 U.S.C. 1710. Therefore, VA assumes the cost associated with this rulemaking to be insignificant and welcomes the public to comment on any of the assumptions used in this analysis.

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, distributive impacts, and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of 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 the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed 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.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 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 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 proposed rule would have no such effect on State, local, or tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule does not contain any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

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. This proposed rule would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, under 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.013, Veterans Prosthetic Appliances; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans

Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

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 February 24, 2012, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: February 27, 2012.

Robert C. McFetridge,

Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs 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 noted in specific sections.

2. Amend § 17.34 by revising paragraph (b) to read as follows:

§ 17.34 Tentative Eligibility Determinations.

* * * * *

(b) *Based on discharge.* The application is filed within 6 months after date of honorable discharge and:

(1) For a veteran who seeks eligibility based on a period of service that began on or before September 7, 1980, such period must have been for not less than 6 months of active duty.

(2) For a veteran who seeks eligibility based on a period of service that began after September 7, 1980, the veteran must meet the applicable minimum service requirements under 38 U.S.C. 5303A.

(Authority: 38 U.S.C. 501, 5303A)

3. Amend § 17.37 by adding paragraph (k) immediately after paragraph (j) to read as follows:

§ 17.37 Enrollment Not Required—Provision of Hospital and Outpatient Care to Veterans.

* * * * *

(k) A veteran may receive care for psychosis or mental illness other than psychosis pursuant to 38 CFR 17.109.

* * * * *

4. Amend § 17.108 by adding paragraph (d)(12) to read as follows:

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.

* * * * *

(d) * * *

(12) A veteran receiving care for psychosis or a mental illness other than psychosis pursuant to § 17.109.

* * * * *

5. Add § 17.109 to read as follows:

§ 17.109 Presumptive eligibility for psychosis and mental illness other than psychosis.

(a) *Psychosis.* Eligibility for benefits under this part is established by this section for treatment of an active psychosis, and such condition is exempted from copayments under §§ 17.108, 17.110, and 17.111 for any veteran of World War II, the Korean conflict, the Vietnam era, or the Persian Gulf War who developed such psychosis:

(1) Within 2 years after discharge or release from the active military, naval, or air service; and

(2) Before the following date associated with the war or conflict in which he or she served:

(i) World War II: July 26, 1949.

(ii) Korean conflict: February 1, 1957.

(iii) Vietnam era: May 8, 1977.

(iv) Persian Gulf War: The end of the 2-year period beginning on the last day of the Persian Gulf War.

(b) *Mental illness (other than psychosis).* Eligibility under this part is established by this section for treatment of an active mental illness (other than psychosis), and such condition is exempted from copayments under §§ 17.108, 17.110, and 17.111 for any veteran of the Persian Gulf War who developed such mental illness other than psychosis:

(1) Within 2 years after discharge or release from the active military, naval, or air service; and

(2) Before the end of the 2-year period beginning on the last day of the Persian Gulf War.

(c) *No minimum service required.* Eligibility for care and waiver of copayments will be established under this section without regard to the veteran's length of active-duty service.

(Authority: 38 U.S.C. 501, 1702, 5303A)

6. Amend § 17.110 by adding paragraph (c)(10) immediately after paragraph (c)(9) to read as follows:

§ 17.110 Copayments for medication.

* * * * *

(c) * * *

(10) A veteran receiving care for psychosis or a mental illness other than psychosis pursuant to § 17.109.

* * * * *

7. Amend § 17.111 by adding paragraph (f)(9) to read as follows:

§ 17.111 Copayments for extended care services.

* * * * *

(f) * * *

(9) A veteran receiving care for psychosis or a mental illness other than psychosis pursuant to § 17.109.

* * * * *

[FR Doc. 2012–4941 Filed 2–29–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0100; FRL–9641–9]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Lead Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Indiana Department of Environmental Management (IDEM) on November 24, 2010, to revise the Indiana State Implementation Plan (SIP) for lead (Pb) under the Clean Air Act (CAA). This submittal incorporates the National Ambient Air Quality Standards (NAAQS) for Pb promulgated by EPA in 2008.

DATES: Comments must be received on or before April 2, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0100, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: aburano.douglas@epa.gov.*

3. *Fax:* (312) 408–2279.

4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance

Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Final Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to this rule, we do not contemplate taking any further action. If EPA receives adverse comments, we will withdraw the direct final rule, and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule, which is located in the Final Rules section of this **Federal Register**.

Dated: February 21, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–4971 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0696–201202(b); FRL–9636–7]

Approval and Promulgation of Implementation Plans; Tennessee: Prevention of Significant Deterioration; Greenhouse Gases—Automatic Rescission Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environmental Conservation (TDEC), Air Pollution Control Division, to EPA on January 11, 2012, for the purpose of amending the State's New Source Review (NSR) Prevention of Significant Deterioration (PSD) regulations as they relate to greenhouse gases (GHGs). Specifically, Tennessee amended its PSD regulations to add automatic rescission provisions. These provisions provide that in the event that the U.S. Court of Appeals for the DC Circuit or the U.S. Supreme Court issues an order which would render GHGs not subject to regulation under the Clean Air Act's (CAA) PSD permitting program, then GHGs shall not be subject to regulation under Tennessee's PSD regulations as of the effective date of EPA's **Federal Register** notice of vacatur. Further, the provisions provide that in the event that there is a change to Federal law that supersedes regulation of GHGs under the CAA's PSD permitting program, then GHGs shall not be subject to regulation under Tennessee's PSD regulations as of the effective date of the change in federal law. EPA took action to approve the GHG Tailoring Rule PSD provisions into the Tennessee SIP in a separate rulemaking. EPA is proposing to approve Tennessee's January 11, 2012, SIP revision because the Agency has made the determination that this SIP revision is not contrary to section 110 and part C of the Federal Clean Air Act or EPA regulations regarding PSD permitting for GHGs. In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments.

DATES: Written comments must be received on or before April 2, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0696, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: benjamin.lynorae@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2010–0696,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9352. Ms. Bradley can be reached via electronic mail at *bradley.twunjala@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: February 10, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–4890 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0050–201207(b); FRL–9639–3]

Approval and Promulgation of Implementation Plans; Georgia; Atlanta; Fine Particulate Matter 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the fine particulate matter ($PM_{2.5}$) 2002 base year emissions inventory, portion of the State Implementation Plan (SIP) revision submitted by the State of Georgia on July 6, 2010. The emissions inventory is part of the Atlanta, Georgia $PM_{2.5}$ attainment demonstration that was submitted for the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standards. This action is being taken pursuant to section 110 of the Clean Air Act. In the Rules Section of this **Federal Register**, EPA is approving Georgia's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments.

DATES: Written comments must be received on or before April 2, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0050, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0050,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: February 10, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–4987 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0990; FRL–9626–5]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and Mojave Desert Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) and Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern recordkeeping for rules governing volatile organic compound (VOC) emissions from coatings, solvents and adhesives and rules governing VOC emissions from graphic arts and paper, film, foil and fabric coatings. We are proposing to approve two local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by April 2, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0990, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location

(*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: AVAQMD Rule 109, Recordkeeping for Volatile Organic Compound Emissions and MDAQMD Rule 1117, Graphic Arts and Paper, Film, Foil and Fabric Coatings. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 13, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–4976 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0020; FRL–9634–4]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern negative declarations for volatile organic compound (VOC) and oxides of sulfur source categories. We are proposing to approve these negative declarations under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by April 2, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0020, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following negative declarations listed in Table I:

TABLE 1—SUBMITTED NEGATIVE DECLARATIONS

Local agency	Title	Adopted	Submitted
AVAQMD	Petroleum Coke Calcining Operations—Oxides of Sulfur	01/18/11	06/20/11
SJVUAPCD	Synthesized Pharmaceutical Products Manufacturing	04/16/09	06/18/09
SJVUAPCD	Coating Operations at Shipbuilding/Ship Repair Facilities	04/16/09	06/18/09
SJVUAPCD	Manufacture of Pneumatic Rubber Tires	12/16/10	06/20/11

In the Rules and Regulations section of this **Federal Register**, we are approving these negative declarations in a direct final action without prior proposal because we believe these negative declarations are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 9, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–4675 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 11–05]

RIN 3072–AC43

Amendments to Commission's Rules of Practice and Procedure—Subparts E and L

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend Subpart E (Proceedings; Pleadings; Motions; Replies) and Subpart L (Depositions, Written Interrogatories, and Discovery) of its Rules of Practice and Procedure to update and clarify the rules and to reduce the burden on parties to proceedings before the Commission.

DATES: Comments or suggestions due on or before April 30, 2012.

ADDRESSES: Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Submit Comments: Submit an original and five (5) copies in paper form, and if possible, send a PDF of the document by email to *secretary@fmc.gov.* Include in the subject line: Docket No. 11–05, and [Company/Individual Name].

Background

The Commission's Rules of Practice and Procedure, 46 CFR part 502, govern procedures before the Commission. 46 CFR 502.1-.991. The rules are in place to secure just, speedy, and inexpensive resolution of proceedings before the Commission. The Commission has determined to amend Part 502 of Title 46 of the Code of Federal Regulations to update and improve the Commission's Rules of Practice and Procedure and to reduce the burden on parties to proceedings before the Commission.

As a first step in updating and improving its procedural rules, the Commission already issued a Final Rule with respect to certain rules in Subparts A, H, I, S, and T of its Rules of Practice and Procedure. 76 FR 10258 (February 24, 2011). The Commission also issued an Advance Notice of Proposed Rulemaking (ANPR) to seek comments on further amendments to improve its rules. 76 FR 19022 (April 6, 2011).

In continuance of its efforts to modernize its rules, the Commission proposes to amend Subpart E (Proceedings; Pleadings; Motions; Replies) and Subpart L (Disclosures and Discovery) of its Rules of Practice and Procedure.

Comments in Response to ANPR

In response to the ANPR, the Commission received comments from Nathan Barillo, student at Villanova University School of Law (Barillo), and the Law Firm of Rodriguez O'Donnell Gonzalez & Williams, P.C., Washington DC (ROGW). Barillo's comments focused on electronic delivery systems that the Commission should consider in connection with its filing and docket requirements. Based on experience with various systems, he advocates the use of a cloud computing system in which documents can be filed giving multiple users ability to access information from a remote location and server. Such a system would permit the Commission to receive documents electronically and allow Commission personnel and public users to access the documents at any time and from any location. He names several commercial systems as viable options for an online submission system, and also suggests that a government created system could alleviate security concerns. Barillo believes that cloud computing would streamline efficiency and reduce staff labor in dealing with paper, but nevertheless acknowledges that the Commission must also consider the needs of a small segment of the population that may not have access to a computer.

ROGW's attorneys frequently appear before the Commission in adjudications, rulemakings, and various other regulatory matters. ROGW commends the recent amendments to the Commission's rules addressing electronic filing in PDF format as well as paper. ROGW recommends adoption of a filing system similar to the Public Access to Court Electronic Records (PACER) system currently used in the federal courts. Through PACER, the federal judiciary allows and in most cases, requires, electronic filing of documents and public access to filings through a centralized system. ROGW believes that if funding permits, adoption of such a system would permit Commission personnel and private practitioners to obtain access to formal and informal proceedings and public docket information via the Internet.

With respect to the substance of certain rules, ROGW states that the applicability of the Federal Rules of Civil Procedure (FRCP) in Commission proceedings is not always clear and that the federal rules should be applied whenever possible. Specifically, ROGW suggests that adoption of FRCP 56 procedures for summary judgment would allow for more expeditious litigation. Similarly, ROGW recommends that the FRCP 41 procedures for voluntary and involuntary dismissals be included in the Commission's rules. ROGW explains that under the Commission's rules, after reaching a settlement in a case, the litigants cannot simply file a notice dismissing the complaint, but rather must file a motion for approval of the settlement. ROGW asserts that this requirement results in unnecessary expense of resources for the Commission and the parties and believes that the better approach is provided by the federal rule. Finally, ROGW supports adoption of the discovery rules in the FRCP, in particular the requirements for initial disclosures, identification of expert witnesses, procedures for claiming privilege and protection of trial preparation materials, limitations on depositions and interrogatories, and the 30-day response period for production of documents and interrogatories. Based on its experience, ROGW submits that mandatory disclosures would reduce the need to file motions to compel. However, ROGW believes that in considering adoption of these federal rules, due regard should be given to the differences in the nature of proceedings and practice in the federal courts and before the Commission.

Subpart E—Proceedings; Pleadings; Motions; Replies

The revisions to Subpart E are intended both to streamline the current rules for ease of use by the public and to provide parties to Commission proceedings with greater clarity as to the requirements pertaining to the conduct of proceedings, specifically motions, intervention and dismissals. Also as described below, this proposed amendment sets out a new procedure for the conduct of Commission initiated enforcement proceedings. Minor changes are also proposed to reorder sections and enhance clarity generally.

Rule 62—Private Party Complaints for Formal Adjudication

Rule 62, 46 CFR 502.62, governs the filing of private party complaints for formal adjudication and has been revised for clarification and modernized

to request email addresses for parties to proceedings. Rules related to the filing of answers to complaints (currently found at 46 CFR 502.64) and statutes of limitations (currently found at 46 CFR 502.63) have been consolidated into Rule 62. Proposed Rule 62 explains more fully what is required in an answer and also provides for the filing of counterclaims, cross-claims, and third party complaints. Commission rules have not previously addressed these types of claims, though they have been filed and adjudicated. Proposed Rule 62 references decisions on default for failure to answer a complaint, counterclaim, cross-claim, or third-party complaint. Administrative Law Judges (ALJs) have adjudicated decisions on default in the past in various fashions, but the proposed rule better defines when an initial decision on default may be issued. The new default rule is discussed in greater detail below.

Exhibit 1 to Subpart E currently contains a complaint form and a checklist of information required when filing a complaint. The proposed rule would remove this form from the rules as the Commission plans to publish a revision of this form on its Web site along with other forms and further helpful information for complaint filers, with information oriented particularly to pro se filers.

Rule 63—Commission Enforcement Action

Proposed Rule 63 provides a new procedure at the initial stages of Commission enforcement proceedings designed to more efficiently utilize Commission resources, provide for expeditious resolution of cases where a respondent defaults or otherwise chooses not to appear, and ensures due process to respondents. Under current procedure, the Commission issues an Order of Investigation and Hearing that advises respondents of the issues under investigation, designates the Commission's Bureau of Enforcement (BOE) as a party to the proceeding to prosecute the case, and assigns the matter to the Office of Administrative Law Judges to conduct the proceeding and issue an initial decision. There is no requirement in the current procedural rules that a respondent answer or otherwise respond to the Order. Typically, the presiding officer issues an initial order to the parties followed by a scheduling order setting forth dates by which certain aspects of the case must be completed and generally setting a schedule for the proceeding. It is not uncommon, however, for a respondent to fail to appear or to initially appear and then cease participating in the case. Under these procedures, there are no Commission rules to address a respondent's failure to appear or comply with procedural requirements. Instead, the presiding officer is required to undertake a number of sequential procedural steps just to put the case in a posture where an initial decision can be issued. Unfortunately, these necessary procedural steps can consume several months. For example, a motion to compel responses to discovery must be filed after the responses were due; followed by a time period for respondent to reply to the motion; followed by a time period for the ALJ to issue an order; followed by another time period for respondent's compliance; followed by BOE's motion for sanctions for failure to comply with the ALJ's order; followed by a period of time for respondent's reply; followed by issuance of the ALJ's order. Obviously, this process is time consuming and wasteful of limited resources in prosecuting a case which may well turn out to be an uncontested or a default case. The new rule for default is discussed in greater detail below.

Under the proposed procedure, an enforcement action would continue to be instituted upon the Commission's issuance of an Order of Investigation and Hearing. The Order of Investigation and Hearing would set forth specific facts alleged by BOE supporting an assertion that the respondent has violated the Shipping Act, require an answer from the respondent, and identify the consequences of failure to answer or otherwise respond to the Order. Such a procedure is employed by various other federal agencies in conducting investigative adjudications including the Federal Trade Commission, Commodity Futures Trading Commission, Department of Housing and Urban Development, and the new Consumer Financial Protection Bureau (interim final rules). The Order of Investigation and Hearing would also identify the name and address of each respondent subject to the Order; recite the legal authority and jurisdiction for instituting the proceeding including designation of the statutory provisions and/or Commission regulations alleged to have been violated; include a clear and concise statement of facts sufficient to inform the respondent of the acts or practices alleged to constitute a violation of the law; include a statement of the civil penalties, cease and desist order, and any other appropriate penalty that may be imposed; specify the date or time period by or in which respondent must file an answer with the Commission and serve BOE; and a statement of the consequences for failure to file an answer.

The new rule contains a separate provision addressing the contents of an answer to an Order of Investigation and Hearing. The Rule would require that a respondent must file an answer with the Commission and serve the answer on BOE within 25 days after being served with the Order. The rule further provides that the answer must contain a concise statement of the facts upon which each ground of defense is based and an admission, denial, or explanation of each fact alleged in the Order, or, if the respondent does not have sufficient knowledge of the facts to prepare a response, a statement to that effect. Factual allegations in the Order not answered or addressed would be deemed to be admitted.

Rule 64—Alternative Dispute Resolution

The Commission has long held the policy of using alternative means of dispute resolution to the fullest extent compatible with the law and the agency's mission and resources. The Commission's policy statement requires parties to consider the use of alternative dispute resolution to resolve disputes at an early stage. 46 CFR 502.401. Recently, in Fact Finding 27, Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades, the Fact Finding Officer recommended that the Commission adjust its ADR requirements by requiring a mandatory mediation period in formal proceedings involving household goods. The Commission subsequently adopted this recommendation.

Accordingly, the Commission has determined to modify its rules to require a preliminary dispute resolution conference in all formal proceedings. Under the new section 502.64, parties will be required to participate in a preliminary conference to determine whether the matter in dispute may be resolved through the use of mediation or other means of voluntary alternative dispute resolution. Following the conference, the parties would determine whether to proceed with alternative dispute resolution.

Rule 65—Decision on Default

The Commission is proposing new procedural rules on default which should clarify the process that will occur when a party fails to participate or respond in a Commission proceeding. The proposed rule states in pertinent part that ''[w]hen a party is found to be

in default, the Commission or the presiding officer may issue a decision on default upon consideration of the record.''

The default rule is modeled on that of other agencies that employ a similar enforcement procedure. A defaulting respondent may petition the Commission to set aside a decision on default, which may be granted to prevent injustice upon a showing of good cause. While the federal rules do not set a time limit for the filing of such a motion, it is believed that a finite period should be set. The proposed rule requires that a motion be filed within 22 days after service of the decision on default to coincide with the current time period for the filing of exceptions to an initial decision.

Rule 68—Motion for Leave To Intervene

Proposed Rule 68, addresses motions for leave to intervene previously found in Rule 72, 46 CFR 502.72 Petitions for leave to intervene. This section has been modernized to reflect intervention of right and permissive intervention as provided in the FRCP. The proposed rule requires that parties seek leave to intervene in proceedings by motion, rather than by petition. The proposed standard recognizes the existing standard of the Commission's rule as well as that in FRCP 24 governing intervention.

The proposed rule allows for permissive intervention by a federal or state government department or agency or the Commission's Bureau of Enforcement. The federal or state government or agency or the Commission's Bureau of Enforcement is required to show that its expertise is relevant to one or more issues involved in the proceeding and may assist in the consideration of those issues.

Rule 69—Motions

Proposed Rule 69 reorders the subparts from current Rule 73 into a more logical fashion and adds two new paragraphs. Paragraph (f) clarifies when responses to written motions are permitted. Paragraph (g) defines dispositive motions, because dispositive and non-dispositive motions are treated differently pursuant to proposed rules 70 and 71.

Rule 70—Procedure for Dispositive Motions

Proposed Rule 70 addresses dispositive motions. Because these motions may dispose of all or part of a proceeding, they are handled differently from non-dispositive motions. Dispositive motions must include specific information. Non-moving parties must file responses within 15 days. The moving party may file a reply within 7 days thereafter. No further reply may be filed unless requested by the presiding officer or upon a showing of extraordinary circumstances. Because these motions may be dispositive, the presiding officer may request additional briefing to ensure a full record. Previously, additional time and briefs were permitted on a case by case basis.

Rule 71—Procedures for Non-Dispositive Motions

Proposed Rule 71 addresses non-dispositive motions. These are frequently motions regarding discovery disputes or requesting an extension of a deadline. They do not tend to be as complex and do not require as much time to address as dispositive motions. Therefore, proposed Rule 71 requires the parties to attempt to confer to try to resolve the dispute before filing the motion. If a motion is still required (e.g. to extend a date) the motion will state whether it is opposed. If the motion is opposed, the non-moving party must file a response within 7 days. A reply is only permitted upon a showing of extraordinary circumstances. This will allow non-dispositive motions to be resolved more quickly and efficiently.

Rule 72—Dismissals

Proposed Rule 72 clarifies the process for seeking voluntary and involuntary dismissals. Without such a rule, parties were not always certain how to present these dismissals. The rule is similar to FRCP 41.

Subpart L—Disclosures and Discovery

The Commission proposes to revise its discovery rules found in 46 CFR Subpart L to modernize and more closely conform them to the current version of the FRCP and to encourage focused and expeditious use and completion of discovery. The Shipping Act of 1984 provides: ''In an investigation or adjudicatory proceeding under this part—* * * (2) a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).'' 46 U.S.C. 41303(a). In 1984, the Commission promulgated discovery rules based on the federal rules as they then existed. The Commission promulgated minor amendments to Rule 203 in 1993 and Rule 201 in 1999, but in all other respects the rules are unchanged since 1984. The FRCP on discovery, on the other hand, has been extensively revised since 1984.

As a general matter, to ensure that FMC proceedings are conducted as efficiently as possible, the Commission does not propose to adopt the various deadlines from the FRCP. To ensure parties are present in the case, proposed deadlines would run from the date of the filing of the answer, as opposed to the complaint, including the deadline for filing initial disclosures (§ 502.201(b)), completion of discovery (§ 502.201(g)), and initial duty to confer (§ 502.201(h)). The Commission is not proposing to adopt many of those rules that pertain to trials, as trial-type hearings are currently the exception in Commission proceedings. The Commission is at this time incorporating references to electronically stored documents and proposing to treat those as the FRCP does in the context of discovery.

Rule 201—Duty To Disclose; General Provisions Governing Discovery

Proposed Rule 201 governs discovery generally, defines the scope of discovery and its limits, and provides for limited initial disclosures to be made by all parties to any Commission proceeding within seven days of receipt of respondent's answer. The proposed requirement to make initial disclosures would be a new requirement in Commission proceedings. FRCP 26 requires initial disclosures in federal courts, and the procedural rules of other federal agencies, such as the Federal Trade Commission, require initial disclosure in proceedings. Proposed Rule 201 would require the parties to confer within 14 days of receipt of respondent's answer, to complete discovery within 120 days of the answer and to require supplementation of responses to discovery. Currently, discovery must be completed within 120 days of notice of the complaint filing. This limitation has proven to be unrealistic, particularly because the actual date of receipt of an answer can vary greatly. Proposed Rule 201 would adopt the federal rule on the scope of discovery as it currently exists in FRCP 26(b)(1).

Proposed Rule 201 also requires the disclosure of expert witnesses. The substance of the requirement tracks the federal rule, except with respect to the time for disclosures to be provided. The federal rule requires disclosure of experts and their reports no later than 90 days before trial. This deadline is not suitable in view of the Commission's 120 day discovery period. Therefore, parties are required to address expert disclosures and discovery as part of the

''duty to confer'' requirement and, if experts will be used, schedule disclosure and exchange of reports in their proposed schedule.

Rule 202—Persons Before Whom Depositions May Be Taken

Rule 203—Depositions by Oral Examination

Proposed Rules 202 and 203 would modernize Commission rules on depositions to conform with current FRCP 28, 29, and 30. While the Commission's rules have followed the FRCP in other respects, there are currently no limitations on the number of depositions. The proposed rule would limit the number of depositions that may be taken without stipulation or leave of the presiding officer to 20.

Rule 204—Depositions by Written Questions

Rule 205—Interrogatories to Parties

Proposed Rules 204 and 205 pertain to interrogatories and also conform to FRCP 31 and 33. A party would be permitted to serve no more than 50 written interrogatories without stipulation or leave of the presiding officer. The Commission seeks comments specifically on the issue of whether the limitations described in this paragraph are appropriate in Commission proceedings.

Rule 206—Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, for Inspection and Other Purposes

Proposed Rule 206 would continue to echo FRCP 34, but would incorporate reference to production of electronically stored information and establishes that responses to requests are due within 30 days, whereas the current rule does not specify a deadline for such a response.

Rule 207—Requests for Admission

Rule 208—Use of Discovery Procedures Directed to Commission Staff Personnel

Proposed Rule 207 generally follows FRCP 36, although it does not allow the award of expenses if a party fails to admit a matter that is later proven true. Proposed Rule 208 remains unchanged but is reprinted in the proposed rule for ease of reference.

Rule 209—Use of Depositions at Hearings

Proposed Rule 209 continues to follow FRCP 32, but does not reference that rule in its entirety as certain provisions, such as FRCP 32(a)(5) (Limitations on use) are not typically relevant in Commission proceedings. References to the Federal Rules of Evidence are removed as they do not generally apply to administrative proceedings.

Rule 210—Motions To Compel Initial Disclosure or Compliance With Discovery Requests; Failure To Comply With Order To Make Disclosure or Answer or Produce Documents; Sanctions; Enforcement

Proposed Rule 210 is revised to more closely conform to FRCP 37(b)(2)(A), and makes the failure to make initial disclosures subject to a motion to compel and sanctions. The proposed rule also changes the response period to 7 days in accordance with the general rule applicable to responses to motions.

Although this rulemaking affects only the Commission's Rules of Practice and Procedure, and is therefore not subject to notice-and-comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b)(A), the Commission believes that the views of the public, especially practitioners who frequently appear before it, should be considered. Therefore, through this Notice of Proposed Rulemaking, the Commission again encourages the public to submit views on these proposed changes to its procedural rules.

This proposed rule is not a ''major rule'' under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to amend subparts E and L of 46 CFR Part 502 as follows.

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1964–1965 Comp. p. 306; 21 U.S.C. 853a.

2. Revise subpart E to read as follows:

Subpart E—Proceedings; Pleadings; Motions; Replies

§ 502.61 Proceedings.

(a) Any person may commence a proceeding by filing a complaint (Rule 62) for a formal adjudication under normal or shortened procedures (subpart K) or by filing a claim for the informal adjudication of small claims (subpart S). A person may also file a petition for a rulemaking (Rule 51), for an exemption (Rule 74), for a declaratory order (Rule 75), or for other appropriate relief (Rule 76), which becomes a proceeding when the Commission assigns a formal docket number to the petition. The Commission may commence a proceeding for a rulemaking, for an adjudication (including Commission enforcement action under § 502.63), or a non-adjudicatory investigation upon petition or on its own initiative by issuing an appropriate order.

(b) In the order instituting a proceeding or in the notice of filing of complaint and assignment, the Commission must establish dates by which the initial decision and the final Commission decision will be issued. These dates may be extended by order of the Commission for good cause shown. [Rule 61.]

§ 502.62 Private party complaints for formal adjudication.

(a) *Filing a complaint for formal adjudication.* (1) A person may file a sworn complaint alleging violation of the Shipping Act of 1984, 46 U.S.C. 40101 *et seq.*

(2) *Form.* Complaints should be drafted in accordance with the rules in this section.

(3) *Content of complaint.* The complaint must be verified and must contain the following:

(i) The name, street address, and email address of each complainant, and the name, address, and email address of each complainant's attorney or representative, the name, address, and, if known, email address of each person against whom complaint is made;

(ii) A recitation of the legal authority and jurisdiction for institution of the proceeding, with specific designation of the statutory provisions alleged to have been violated;

(iii) A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the acts or practices alleged to be in violation of the law; and

(iv) A request for the relief and other affirmative action sought.

(v) *Shipping Act violation must be alleged.* If the complaint fails to indicate the sections of the Act alleged to have been violated or clearly to state facts which support the allegations, the Commission may, on its own initiative, require the complaint to be amended to

supply such further particulars as it deems necessary.

(4) *Complaints seeking reparation; statute of limitations.* A complaint may seek reparation (money damages) for injury caused by violation of the Shipping Act of 1984. (See subpart O of this part.)

(i) Where reparation is sought, the complaint must set forth the injury caused by the alleged violation and the amount of alleged damages.

(ii) Except under unusual circumstances and for good cause shown, reparation will not be awarded upon a complaint in which it is not specifically requested, nor upon a new complaint by or for the same complainant which is based upon a finding in the original proceeding.

(iii) A complaint seeking reparation must be filed within three years after the claim accrues. Notification to the Commission that a complaint may or will be filed for the recovery of reparation will not constitute a filing within the applicable statutory period.

(iv) Civil penalties must not be requested and will not be awarded in complaint proceedings.

(5) *Oral hearing.* The complaint should designate whether an oral hearing is requested and the desired place for any oral hearing. The presiding officer will determine whether an oral hearing is necessary.

(6) *Filing fee.* The complaint must be accompanied by remittance of a $221 filing fee.

(7) A complaint is deemed filed on the date it is received by the Commission.

(b) *Answer to a complaint.* (1) *Time for filing.* A respondent must file with the Commission an answer to the complaint and must serve the answer on complainant as provided in subpart H of this part within 25 days after the date of service of the complaint by the Commission unless this period has been extended under § 502.67 or § 502.102, or reduced under § 502.103, or unless motion is filed to withdraw or dismiss the complaint, in which latter case, answer must be filed within 10 days after service of an order denying such motion. For good cause shown, the presiding officer may extend the time for filing an answer.

(2) *Contents of answer.* The answer must be verified and must contain the following:

(i) The name, address, and email address of each respondent, and the name, address, and email address of each respondent's attorney or representative;

(ii) Admission or denial of each alleged violation of the Shipping Act;

(iii) A clear and concise statement of each ground of defense and specific admission, denial, or explanation of facts alleged in the complaint, or, if respondent is without knowledge or information thereof, a statement to that effect;

(iv) Any affirmative defenses, including allegations of any additional facts on which the affirmative defenses are based; and

(3) *Oral hearing.* The answer should designate whether an oral hearing is requested and the desired place for such hearing. The presiding officer will determine whether an oral hearing is necessary.

(4) *Counterclaims, crossclaims, and third-party complaints.* In addition to filing an answer to a complaint, a respondent may include in the answer a counterclaim against the complainant, a crossclaim against another respondent, or a third-party complaint. A counterclaim, a crossclaim, or a third-party complaint must allege and be limited to violations of the Shipping Act within the jurisdiction of the Commission. The service and filing of a counterclaim, a crossclaim, or a third-party complaint and answers or replies thereto are governed by the rules and requirements of this section for the filing of complaints and answers.

(5) A reply to an answer may not be filed unless ordered by the presiding officer.

(6) *Effect of failure to file answer.*

(i) Failure of a party to file an answer to a complaint, counterclaim, crossclaim, or third-party complaint within the time provided will be deemed to constitute a waiver of that party's right to appear and contest the allegations of the complaint, counterclaim, crossclaim, or third-party complaint to which it has not filed an answer and to authorize the presiding officer to enter an initial decision on default as provided for in 46 CFR 502.65. Well pled factual allegations in the complaint not answered or addressed will be deemed to be admitted.

(ii) A party may make a motion for initial decision on default. [Rule 62.]

§ 502.63 Commission enforcement action.

(a) The Commission may issue an Order of Investigation and Hearing commencing an adjudicatory investigation against one or more respondents alleging one or more violations of the statutes that it administers.

(b) *Contents of Order of Investigation and Hearing.* The Order of Investigation and Hearing must contain the following:

(1) The name, street address, and, if known, email address of each person against whom violations are alleged;

(2) A recitation of the legal authority and jurisdiction for institution of the proceeding, with specific designation of the statutory provisions alleged to have been violated;

(3) A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the acts and practices alleged to be in violation of the law;

(4) Notice of penalties, cease and desist order, or other affirmative action sought; and

(5) Notice of the requirement to file an answer and a statement of the consequences of failure to file an answer.

(c) *Answer to Order of Investigation and Hearing.* (1) *Time for filing.* A respondent must file with the Commission an answer to the Order of Investigation and Hearing and serve a copy of the answer on the Bureau of Enforcement within 25 days after being served with the Order of Investigation and Hearing unless this period has been extended under § 502.67 or § 502.102, or reduced under § 502.103, or unless motion is filed to withdraw or dismiss the Order of Investigation and Hearing, in which latter case, answer must be filed within 10 days after service of an order denying such motion. For good cause shown, the presiding officer may extend the time for filing an answer.

(2) *Contents of answer.* The answer must be verified and must contain the following:

(i) The name, address, and email address of each respondent, and the name, address, and email address of each respondent's attorney or representative;

(ii) Admission or denial of each alleged violation of the Shipping Act;

(iii) A clear and concise statement of each ground of defense and specific admission, denial, or explanation of facts alleged in the complaint, or, if respondent is without knowledge or information thereof, a statement to that effect; and

(iv) Any affirmative defenses, including allegations of any additional facts on which the affirmative defenses are based.

(3) *Oral hearing.* The answer must indicate whether an oral hearing is requested and the desired place for such hearing.The presiding officer will determine whether an oral hearing is necessary.

(4) *Effect of failure to file answer.*

(i) Failure of a respondent to file an answer to an Order of Investigation and Hearing within the time provided will

be deemed to constitute a waiver of the respondent's right to appear and contest the allegations in the Order of Investigation and Hearing and to authorize the presiding officer to enter a decision on default as provided for in 46 CFR 502.65. Well plead factual allegations in the Order of Investigation and Hearing not answered or addressed will be deemed to be admitted.

(ii) The Bureau of Enforcement may make a motion for decision on default. [Rule 63.]

§ 502.64 Alternative dispute resolution.

(a) *Mandatory Preliminary Conference.* (1) *Participation.* Subsequent to service of a complaint or Order of Investigation and Hearing, parties must participate in a preliminary conference with the Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS) to determine whether the matter may be resolved through the use of alternative dispute resolution pursuant to Subpart U of this Part. The preliminary conference may be conducted either in person or via telephone, video conference, or other forum.

(2) *Timing.* The Director of CADRS will appoint a neutral to convene the conference within thirty (30) days of the filing of an answer. The neutral, within his or her discretion, may confer with each party separately at any time.

(b) *Continued Availability of Dispute Resolution Services to Resolve Procedural and other Disputes.* Termination of a dispute resolution proceeding does not preclude the parties from seeking dispute resolution services at a later time to explore resolution of procedural or substantive issues.

(c) *Proceeding Not Stayed During Dispute Resolution Process.* Unless otherwise ordered by the presiding officer, a mediation proceeding does not stay or delay the procedural time requirements set forth by rule or order of the presiding officer.

(d) *Confidentiality.* All dispute resolution proceedings are subject to the confidentiality provisions set forth in § 502.405 of this part. [Rule 64.]

§ 502.65 Decision on default.

(a) A party to a proceeding may be deemed to be in default if that party fails:

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) To cure a deficient filing within the time specified by the Commission or the presiding officer.

(b) When a party is found to be in default, the Commission or the presiding officer may issue a decision on default upon consideration of the record, including the complaint or Order of Investigation and Hearing.

(c) The presiding officer may require additional information or clarification when needed to issue a decision on default, including a determination of the amount of reparations or civil penalties where applicable.

(d) A respondent who has defaulted may file with the Commission a petition to set aside a decision on default. Such a petition must be made within 22 days of the service date of the decision, state in detail the reasons for failure to appear or defend, and specify the nature of the proposed defense. In order to prevent injustice, the Commission may for good cause shown set aside a decision on default. [Rule 65.]

§ 502.66 Amendments or supplements to pleadings.

(a) Amendments or supplements to any pleading (complaint, Order of Investigation and Hearing, counterclaim, crossclaim, third-party complaint, and answers thereto) will be permitted or rejected, either in the discretion of the Commission or presiding officer. After a case is assigned for hearing, no amendment must be allowed which would broaden the issues, without opportunity to reply to such amended pleading and to prepare for the broadened issues. The presiding officer may direct a party to state its case more fully and in more detail by way of amendment.

(b) A response to an amended pleading must be filed and served in conformity with the requirements of subpart H of this part and § 502.69, unless the Commission or the presiding officer directs otherwise. Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading, except that the presiding officer may authorize the service of amended complaints directly by the parties rather than by the Secretary of the Commission.

(c) Whenever by the rules in this part a pleading is required to be verified, the amendment or supplement must also be verified. [Rule 66.]

§ 502.67 Motion for more definite statement.

If a pleading (including a complaint, counterclaim, crossclaim, or third-party complaint filed pursuant to § 502.62) to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably prepare a response, the party may move for a more definite statement before filing a responsive pleading. The motion must be filed within 15 days of the pleading and must point out the defects complained of and the details desired. If the motion is granted and the order of the presiding officer is not obeyed within 10 days after service of the order or within such time as the presiding officer sets, the presiding officer may strike the pleading to which the motion was directed or issue any other appropriate order. If the motion is denied, the time for responding to the pleading must be extended to a date 10 days after service of the notice of denial. [Rule 67.]

§ 502.68 Motion for leave to intervene.

(a) A motion for leave to intervene may be filed in any proceeding.

(b) *Procedure for intervention.* (1) Upon request, the Commission will furnish a service list to any member of the public pursuant to part 503 of this chapter.

(2) The motion must:

(i) Comply with all applicable provisions of subpart A of this part;

(ii) Indicate the type of intervention sought;

(iii) Describe the interest and position of the person seeking intervention, and address the grounds for intervention set forth in paragraph (c) of this section;

(iv) Describe the nature and extent of its proposed participation, including the use of discovery, presentation of evidence, and examination of witnesses;

(v) State the basis for affirmative relief, if affirmative relief is sought; and

(vi) Be served on existing parties by the person seeking intervention pursuant to subpart H of this part.

(3) A response to a motion to intervene must be served and filed within 15 days after the date of service of the motion.

(c)(1) *Intervention of right.* The presiding officer or Commission must permit anyone to intervene who claims an interest relating to the property or transaction that is subject of the proceeding, and is so situated that disposition of the proceeding may as a practical matter impair or impede the ability of such person to protect its interest, unless existing parties adequately represent that interest.

(2) *Permissive intervention.*

(i) *In general.* The presiding officer or Commission may permit anyone to intervene who shows that a common issue of law or fact exists between such person's interest and the subject matter of the proceeding; that intervention

would not unduly delay or broaden the scope of the proceeding, prejudice the adjudication of the rights, or be duplicative of the positions of any existing party; and that such person's participation may reasonably be expected to assist in the development of a sound record.

(ii) *By a government department, agency, or the Commission's Bureau of Enforcement.* The presiding officer or Commission may permit intervention by a federal or state government department or agency or the Commission's Bureau of Enforcement upon a showing that its expertise is relevant to one or more issues involved in the proceeding and may assist in the consideration of those issues.

(3) The timeliness of the motion will also be considered in determining whether a motion will be granted under paragraph (b)(2) of this section and should be filed no later than 30 days after publication in the **Federal Register** of the Commission's order instituting the proceeding or the notice of the filing of the complaint. Motions filed after that date must show good cause for the failure to file within the 30-day period.

(d) *Use of discovery by an intervenor.* (1) Absent good cause shown, an intervenor desiring to utilize the discovery procedures provided in subpart L must commence doing so no more than 15 days after its motion for leave to intervene has been granted.

(2) The Commission or presiding officer may impose reasonable limitations on an intervenor's participation in order to: (i) Restrict irrelevant or duplicative discovery, evidence, or argument; (ii) have common interests represented by a spokesperson; and (iii) retain authority to determine priorities and control the course of the proceeding.

(3) The use of discovery procedures by an intervenor whose motion was filed more than 30 days after publication in the **Federal Register** of the Commission's order instituting the proceeding or the notice of the filing of the complaint will not be allowed if the presiding officer determines that the use of the discovery by the intervenor will unduly delay the proceeding. [Rule 68.]

§ 502.69 Motions.

(a) In any adjudication, an application or request for an order or ruling not otherwise specifically provided for in this part must be by motion. After the assignment of a presiding officer to a proceeding and before the issuance of his or her recommended or initial decision, all motions must be addressed to and ruled upon by the presiding officer unless the subject matter of the motion is beyond his or her authority, in which event the matter must be referred to the Commission. If the proceeding is not before the presiding officer, motions must be designated as *petitions* and must be addressed to and ruled upon by the Commission.

(b) Motions must be in writing, except that a motion made at a hearing may be sufficient if stated orally upon the record.

(c) Oral argument upon a written motion may be permitted at the discretion of the presiding officer or the Commission.

(d) A repetitious motion will not be entertained.

(e) All written motions must state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds supporting the relief requested; and must conform with the requirements of subpart H of this part.

(f) Any party may file and serve a response to any written motion, pleading, petition, application, etc., permitted under this part except as otherwise provided respecting answers (§ 502.62), shortened procedure (subpart K of this part), briefs (§ 502.221), exceptions (§ 502.227), and reply to petitions for attorney fees under the Equal Access to Justice Act (§ 502.503(b)(1)).

(g) *Dispositive and non-dispositive motions defined.* For the purpose of these rules, *dispositive motion* means a motion for decision on the pleadings; motion for summary decision or partial summary decision; motion to dismiss all or part of a proceeding or party to a proceeding; motion for involuntary dismissal; motion for initial decision on default; or any other motion for a final determination of all or part of a proceeding. All other motions, including all motions related to discovery, are non-dispositive motions. [Rule 69.]

§ 502.70 Procedure for dispositive motions.

(a) A dispositive motion as defined in § 502.69(g) of this subpart must include a concise statement of the legal basis of the motion with citation to legal authority and a statement of material facts with exhibits as appropriate.

(b) A response to a dispositive motion must be served and filed within 15 days after the date of service of the motion. The response must include a concise statement of the legal basis of the response with citation to legal authority and specific responses to any statements of material facts with exhibits as appropriate.

(c) A reply to the response to a dispositive motion may be filed within 7 days after the date of service of the response to the motion. A reply may not raise new grounds for relief or present matters that do not relate to the response and must not reargue points made in the opening motion.

(d) The non-moving party may not file any further reply unless requested by the Commission or presiding officer, or upon a showing of extraordinary circumstances.

(e) *Page limits.* Neither the motion nor the response may exceed 30 pages, excluding exhibits or appendices, without leave of the presiding officer. A reply may not exceed 15 pages. [Rule 70.]

§ 502.71 Procedure for non-dispositive motions.

(a) *Duty to confer.* Before filing a non-dispositive motion as defined in § 502.69(g) of this subpart, the parties must attempt to discuss the anticipated motion with each other in a good faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement. The moving party must state within the body of the motion what attempt was made or that the discussion occurred and whether the motion is opposed.

(b) A response to a non-dispositive motion must be served and filed within 7 days after the date of service of the motion.

(c) The moving party may not file a reply to a response to a non-dispositive motion unless requested by the Commission or presiding officer, or upon a showing of extraordinary circumstances.

(d) *Page limits.* Neither the motion nor the response may exceed 10 pages, excluding exhibits or appendices, without leave of the presiding officer. [Rule 71.]

§ 502.72 Dismissals.

(a) *Voluntary dismissal*—(1) *By the complainant.* The complainant may dismiss an action without an order from the presiding officer by filing a notice of dismissal before the opposing party serves either an answer, a motion to dismiss, or a motion for summary decision; or a stipulation of dismissal signed by all parties who have appeared. Unless the notice or stipulation states otherwise, the dismissal is without prejudice.

(2) *By order of the presiding officer.* Except as provided in paragraph (a)(1) of this section, an action may be

dismissed at the complainant's request only by order of the presiding officer or the Commission, on terms the presiding officer considers proper. If a respondent has pleaded a counterclaim before being served with the complainant's motion to dismiss, the action may be dismissed over the respondent's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

(b) *Involuntary dismissal; effect.* If the complainant fails to prosecute or to comply with these rules or an order in the proceeding, a respondent may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subpart, except one for lack of jurisdiction or failure to join a party, operates as an adjudication on the merits. [Rule 72.]

§ 502.73 Order to show cause.

The Commission may institute a proceeding by order to show cause. The order must be served upon all persons named therein, must include the information specified in § 502.143, must require the person named therein to answer, and may require such person to appear at a specified time and place and present evidence upon the matters specified. [Rule 73.]

§ 502.74 Exemption procedures—General.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or regulation exempt for the future any class of agreements between persons subject to the Shipping Act of 1984 or any specified activity of those persons from any requirement of the Act if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption.

(b) *Application for exemption.* Any person may petition the Commission for an exemption or revocation of an exemption of any class of agreements or an individual agreement or any specified activity pursuant to section 16 of the Shipping Act of 1984 (46 U.S.C. 40103). A petition for exemption must state the particular requirement of the Shipping Act of 1984 for which exemption is sought. The petition must also include a statement of the reasons why an exemption should be granted or revoked, must provide information relevant to any finding required by the Act and must comply with § 502.76. Where a petition for exemption of an individual agreement is made, the application must include a copy of the agreement. Unless a petition specifically requests an exemption by regulation, the Commission must evaluate the petition as a request for an exemption by order.

(c) *Participation by interested persons.* No order or regulation of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(d) ***Federal Register*** *notice.* Notice of any proposed exemption or revocation of exemption, whether upon petition or the Commission's own motion, must be published in the **Federal Register**. The notice must include when applicable:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements or specified activity for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the petition and any accompanying information are available for inspection in the Commission's offices in Washington, DC; and

(5) The final date for filing comments regarding the proposal. [Rule 74.]

§ 502.75 Declaratory orders and fee.

(a)(1) The Commission may, in its discretion, issue a declaratory order to terminate a controversy or to remove uncertainty.

(2) Petitions for the issuance thereof must: State clearly and concisely the controversy or uncertainty; name the persons and cite the statutory authority involved; include a complete statement of the facts and grounds prompting the petition, together with full disclosure of petitioner's interest; be served upon all parties named therein; and conform to the requirements of subpart H of this part.

(3) Petitions must be accompanied by remittance of a $241 filing fee.

(b) Petitions under this section must be limited to matters involving conduct or activity regulated by the Commission under statutes administered by the Commission. The procedures of this section must be invoked solely for the purpose of obtaining declaratory rulings which will allow persons to act without peril upon their own view. Controversies involving an allegation of violation by another person of statutes administered by the Commission, for which coercive rulings such as payment of reparation or cease and desist orders are sought, are not proper subjects of petitions under this section. Such matters must be adjudicated either by filing of a complaint under section 11 of the Shipping Act of 1984 (46 U.S.C. 41301–41302, 41305–41307(a)) and § 502.62, or by filing of a petition for investigation under § 502.76.

(c) Petitions under this section must be accompanied by the complete factual and legal presentation of petitioner as to the desired resolution of the controversy or uncertainty, or a detailed explanation why such can only be developed through discovery or evidentiary hearing.

(d) Responses to the petition must contain the complete factual and legal presentation of the responding party as to the desired resolution, or a detailed explanation why such can only be developed through discovery or evidentiary hearing. Responses must conform to the requirements of § 502.69 and must be served pursuant to subpart H of this part.

(e) No additional submissions will be permitted unless ordered or requested by the Commission or the presiding officer. If discovery or evidentiary hearing on the petition is deemed necessary by the parties, such must be requested in the petition or responses. Requests must state in detail the facts to be developed, their relevance to the issues, and why discovery or hearing procedures are necessary to develop such facts.

(f)(1) A notice of filing of any petition which meets the requirements of this section must be published in the **Federal Register**. The notice will indicate the time for filing of responses to the petition. If the controversy or uncertainty is one of general public interest, and not limited to specifically named persons, opportunity for response will be given to all interested persons including the Commission's Bureau of Enforcement.

(2) In the case of petitions involving a matter limited to specifically named persons, participation by persons not named therein will be permitted only upon grant of intervention by the Commission pursuant to § 502.68.

(3) Petitions for leave to intervene must be submitted on or before the response date and must be accompanied by intervenor's complete response including its factual and legal presentation in the matter.

(g) Petitions for declaratory order which conform to the requirements of this section will be referred to a formal docket. Referral to a formal docket is not to be construed as the exercise by the Commission of its discretion to issue an

order on the merits of the petition. [Rule 75.]

§ 502.76 Petitions—General and fee.

(a) Except when submitted in connection with a formal proceeding, all claims for relief or other affirmative action by the Commission, including appeals from Commission staff action, except as otherwise provided in this part, must be by written petition, which must state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon and the relief sought, must cite by appropriate reference the statutory provisions or other authority relied upon for relief, must be served upon all parties named therein, and must conform otherwise to the requirements of subpart H of this part. Responses thereto must conform to the requirements of § 502.67.

(b) Petitions must be accompanied by remittance of a $241 filing fee. [Rule 76.]

§ 502.77 Proceedings involving assessment agreements.

(a) In complaint proceedings involving assessment agreements filed under section 5(e) of the Shipping Act of 1984 (46 U.S.C. 40301(e), 40305), the Notice of Filing of Complaint and Assignment will specify a date before which the initial decision will be issued, which date will not be more than eight months from the date the complaint was filed.

(b) Any party to a proceeding conducted under this section who desires to utilize the prehearing discovery procedures provided by subpart L of this part must commence doing so at the time it files its initial pleading, i.e., complaint, answer, or petition for leave to intervene. Discovery matters accompanying complaints must be filed with the Secretary of the Commission for service pursuant to § 502.113. Answers or objections to discovery requests must be subject to the normal provisions set forth in subpart L.

(c) Exceptions to the decision of the presiding officer, filed pursuant to § 502.227, must be filed and served no later than 15 days after date of service of the initial decision. Replies thereto must be filed and served no later than 15 days after date of service of exceptions. In the absence of exceptions, the decision of the presiding officer must be final within 30 days from the date of service, unless within that period, a determination to review is made in accordance with the procedures outlined in § 502.227. [Rule 77.]

§ 502.78 Brief of an amicus curiae.

(a) A brief of an amicus curiae may be filed only by leave of the Commission or the presiding officer granted on motion with notice to the parties, or at the request of the Commission or the presiding officer, except that leave must not be required when the brief is presented by the United States or any agency or officer of the United States. The brief may be conditionally filed with the motion for leave. A brief of an amicus curiae must be limited to questions of law or policy.

(b) A motion for leave to file an amicus brief must identify the interest of the applicant and must state the reasons why such a brief is desirable.

(c) Except as otherwise permitted by the Commission or the presiding officer, an amicus curiae must file its brief no later than 7 days after the initial brief of the party it supports is received at the Commission. An amicus curiae that is not supporting either party must file its brief no later than 7 days after the initial brief of the first party filing a brief is received at the Commission. The Commission or the presiding officer must grant leave for a later filing only for cause shown, in which event the period within which an opposing party may answer must be specified.

(d) A motion of an amicus curiae to participate in oral argument will be granted only in accordance with the requirements of § 502.241. [Rule 78.]

3. Revise subpart L to read as follows:

Subpart L—Disclosures and Discovery

§ 502.201 Duty to disclose; general provisions governing discovery.

(a) *Applicability.* Unless otherwise stated in subpart S, T, or any other subpart of this part, the procedures described in this subpart are available in all adjudicatory proceedings under the Shipping Act of 1984.

(b) *Initial disclosures.* Except as otherwise stipulated or ordered by the Commission or presiding officer, and except as provided in this subpart related to disclosure of expert testimony, all parties must, within 7 days of service of a respondent's answer to the complaint or Order of Investigation and Hearing and without awaiting a discovery request, provide to each other:

(1) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(2) A copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(3) An estimate of any damages claimed by the disclosing party who must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which the estimate is based, including materials bearing on the nature and extent of injuries suffered.

(c) *For parties served or joined later.* A party that is first served or otherwise joined after the answer is made must make the initial disclosures within 5 days after an answer is filed by the late-joined party, unless a different time is set by stipulation or order of presiding officer. All parties must also produce to the late-joined party any initial disclosures previously made.

(d) *Disclosure of expert testimony*—(1) *In general.* A party must disclose to the other parties the identity of any witness it may use in the proceeding to present evidence as an expert.

(2) *Witnesses who are required to provide a written report.* Unless otherwise stipulated or ordered by the presiding officer, if the witness is one retained or specially employed to provide expert testimony in the proceeding or one whose duties as the party's employee regularly involve giving expert testimony, the disclosure must be accompanied by a written report, prepared and signed by the witness. The report must contain:

(i) A complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) The facts or data considered by the witness in forming them;

(iii) Any exhibits that will be used to summarize or support them;

(iv) The witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) A list of all other proceedings or cases in which, during the previous 4 years, the witness testified as an expert in a trial, an administrative proceeding, or by deposition; and

(vi) A statement of the compensation to be paid for the study and testimony in the proceeding.

(3) *Witnesses who are not required to provide a written report.* Unless otherwise stipulated or ordered by the presiding officer, if the witness is not required to provide a written report under paragraph (2) above, the disclosure must state:

(i) The subject matter on which the witness is expected to present evidence as an expert; and

(ii) Summary of the facts and opinions to which the witness is expected to testify.

(4) *Time to disclose expert testimony.* The time for disclosure of expert testimony must be addressed by the parties when they confer as provided in paragraph (h) of this section and, if applicable, must be included in the proposed discovery schedule submitted to the presiding officer.

(e) *Scope of discovery and limits.* (1) Unless otherwise limited by the presiding officer, or as otherwise provided in this subpart, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the presiding officer may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at hearing if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations on frequency and extent*—

(i) *Specific limitations on electronically stored information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the presiding officer may nonetheless order discovery from such sources if the requesting party shows good cause. The presiding officer may specify conditions for the discovery.

(ii) *When required.* On motion or on its own, the presiding officer may limit the frequency or extent of discovery otherwise allowed by these rules if the presiding officer determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(B) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(C) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the proceeding, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(f) *Scope of discovery and limits—experts.* (1) A party may depose any person who has been identified as an expert whose opinions may be presented in a proceeding. If a report is required of the witness, the deposition may be conducted only after the report is provided.

(2) Drafts of any report or disclosure required by these rules are not discoverable regardless of the form in which the draft is recorded.

(3) Communications between the party's attorney and any expert witness required to provide a report are not discoverable regardless of the form of communications, except to the extent that the communications relate to compensation for the expert's study or testimony; identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(4) A party may not by interrogatories or deposition discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for a proceeding and who is not expected to be presented as a witness; provided, however, that the presiding officer may permit such discovery and may impose such conditions as deemed appropriate upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(g) *Completion of discovery.* Discovery must be completed within 120 days of the service of a respondent's answer to the complaint or Order of Investigation and Hearing.

(h) *Duty of the parties to confer.* In all proceedings in which the procedures of this subpart are used, it is the duty of the parties to confer within 14 days after receipt of a respondent's answer to a complaint or Order of Investigation and Hearing in order to: Establish a schedule for the completion of discovery, including disclosures and discovery related to experts, within the 120-day period prescribed in paragraph (g) of this section; resolve to the fullest extent possible disputes relating to discovery matters; and expedite, limit, or eliminate discovery by use of admissions, stipulations and other techniques. The parties must submit the schedule to the presiding officer not later than 5 days after the conference. Nothing in this rule should be construed to preclude the parties from conducting discovery and conferring at an earlier date.

(i)(1) *Conferences by order of the presiding officer.* The presiding officer may at any time order the parties or their attorneys to participate in a conference at which the presiding officer may direct the proper use of the procedures of this subpart or make such orders as may be necessary to resolve disputes with respect to discovery and to prevent delay or undue inconvenience.

(2) *Resolution of disputes.* After making every reasonable effort to resolve discovery disputes, a party may request a conference or rulings from the presiding officer on such disputes. If necessary to prevent undue delay or otherwise facilitate conclusion of the proceeding, the presiding officer may order a hearing to commence before the completion of discovery.

(j) *Protective orders*—(1) *In general.* A party or any person from whom discovery is sought may move for a protective order. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without Commission or presiding officer action. The Commission or presiding officer may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) Forbidding the disclosure or discovery;

(ii) Specifying terms, including time and place, for the disclosure or discovery;

(iii) Prescribing a discovery method other than the one selected by the party seeking discovery;

(iv) Forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(v) Designating the persons who may be present while the discovery is conducted;

(vi) Requiring that a deposition be sealed and opened only on Commission or presiding officer order;

(vii) Requiring that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a specified way; or

(viii) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to

be opened as the Commission or presiding officer directs.

(2) *Ordering discovery.* If a motion for a protective order is denied in whole or in part, the Commission or presiding officer may, on just terms, order that any party or person provide or permit discovery.

(k) *Supplementing responses.* A party who has made a disclosure under paragraph (b) of this section, or who has responded to an interrogatory, request for production, or request for admission, must supplement or correct its disclosure or response:

(1) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in written communication; or

(2) As ordered by the presiding officer.

(l) *Stipulations.* Unless the presiding officer orders otherwise, the parties may stipulate that other procedures governing or limiting discovery be modified, but a stipulation extending the time for any form of discovery must have presiding officer's approval if it would interfere with the time set for completing discovery, for adjudicating a motion, or for hearing. [Rule 201.]

§ 502.202 Persons before whom depositions may be taken.

(a) *Within the United States*—(1) *In general.* Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(i) An officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(ii) A person appointed by the Commission or the presiding officer to administer oaths and take testimony.

(b) *In a foreign country*—(1) *In general.* A deposition may be taken in a foreign country:

(i) Under an applicable treaty or convention;

(ii) Under a letter of request, whether or not captioned a ''letter rogatory'';

(iii) On notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(iv) Before a person authorized by the Commission or the presiding officer to administer any necessary oath and take testimony.

(2) *Issuing a letter of request or an authorization.* A letter of request, an authorization, or both may be issued:

(i) On appropriate terms after an application and notice of it; and

(ii) Without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) *Form of a request, notice, or authorization.* When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed ''To the Appropriate Authority in [name of country].'' A deposition notice or an authorization must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of request—admitting evidence.* Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States.

(c) *Disqualification.* A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action. [Rule 202.]

§ 502.203 Depositions by oral examination.

(a) *When a deposition may be taken*—(1) *Without leave.* A party may, by oral questions, depose any person, including a party, without leave of the presiding officer except as provided in § 502.203(a)(2). The deponent's attendance may be compelled by subpoena under subpart I of this part.

(2) *With leave.* A party must obtain leave of the presiding officer, if the parties have not stipulated to the deposition and:

(i) The deposition would result in more than 20 depositions being taken under this rule or § 502.204 by any party; or

(ii) The deponent has already been deposed in the case.

(b) *Notice of the deposition; other formal requirements*—(1) *Notice in general.* A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing documents.* If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under § 502.206 to produce documents and tangible things at the deposition.

(3) *Method of recording.*

(i) *Method stated in the notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the presiding officer orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(ii) *Additional method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the presiding officer orders otherwise.

(4) *By remote means.* The parties may stipulate, or the presiding officer may on motion order, that a deposition be taken by telephone or other remote means.

(5) *Officer's duties*—

(i) *Before the deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under § 502.202. The officer must begin the deposition with an on-the-record statement that includes:

(A) The officer's name and business address;

(B) The date, time, and place of the deposition;

(C) The deponent's name;

(D) The officer's administration of the oath or affirmation to the deponent; and

(E) The identity of all persons present.

(ii) *Conducting the deposition; avoiding distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in § 502.203(b)(5)(i)(A)–(C) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(iii) *After the deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or subpoena directed to an organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity

and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing representatives, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) *Examination and cross-examination; record of the examination; objections; written questions*—

(1) *Examination and cross-examination.* The examination and cross-examination of a deponent proceed as they would at hearing under the provisions of § 502.154. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under § 502.203(b)(3). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections.* An objection at the time of the examination, whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition, must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the presiding officer, or to present a motion under § 502.203(d)(2).

(3) *Participating through written questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) *Duration; sanction; motion to terminate or limit*—(1) *Duration.* Unless otherwise stipulated or ordered by the presiding officer, a deposition is limited to 1 day of 7 hours. The presiding officer must allow additional time consistent with § 502.201(e)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Motion to terminate or limit*—

(i) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed with the presiding officer. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(ii) *Order.* The presiding officer may order that the deposition be terminated or may limit its scope and manner as provided in § 502.201(j). If terminated, the deposition may be resumed only by order of the Commission or presiding officer.

(e) *Review by the witness; changes*—

(1) *Review; statement of changes.* On request by the deponent or a party before the deposition is completed, the deponent must be allowed 15 days after being notified by the officer that the transcript or recording is available in which:

(i) To review the transcript or recording; and

(ii) If there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes indicated in the officer's certificate.* The officer must note in the certificate prescribed by § 502.203(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 15-day period.

(f) *Certification and delivery; exhibits; copies of the transcript or recording; filing*—

(1) *Certification and delivery.* The officer must certify in writing that the witness was duly sworn and that the deposition, transcript or recording accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the presiding officer orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked ''Deposition of [witness's name]'' and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and tangible things*—

(i) *Originals and copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(A) Offer copies to be marked, attached to the deposition, and then used as originals, after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(B) Give all parties a fair opportunity to inspect and copy the originals after they are marked, in which event the originals may be used as if attached to the deposition.

(ii) *Order regarding the originals.* Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the transcript or recording.* Unless otherwise stipulated or ordered by the presiding officer, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent. [Rule 203.]

§ 502.204 Depositions by written questions.

(a) *When a deposition may be taken*—

(1) *Without leave.* A party may, by written questions, depose any person, including a party, without leave of the presiding officer except as provided in paragraph (a)(2) of this section. The deponent's attendance may be compelled by subpoena under subpart I of this part.

(2) *With leave.* A party must obtain leave of the presiding officer, if the parties have not stipulated to the deposition and:

(i) The deposition would result in more than 20 depositions being taken under this rule or § 502.203 by any party;

(ii) The deponent has already been deposed in the case.

(3) *Service; required notice.* A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) *Questions directed to an organization.* A public or private corporation, a partnership, an association, or a governmental agency

may be deposed by written questions in accordance with § 502.203(b)(6).

(5) *Questions from other parties.* Any questions to the deponent from other parties must be served on all parties as follows: Cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The presiding officer may, for good cause, extend or shorten these times.

(b) *Delivery to the officer; officer's duties.* The party who noticed the deposition must deliver to the officer before whom the deposition will be taken a copy of all the questions served and of the notice. The officer must promptly proceed to:

(1) Take the deponent's testimony in response to the questions;

(2) Prepare and certify the deposition; and

(3) Send it to the party, attaching a copy of the questions and of the notice.

(c) *Notice of completion or filing*—(1) *Completion.* The party who noticed the deposition must notify all other parties when it is completed.

(2) *Filing.* A party who files the deposition must promptly notify all other parties of the filing. [Rule 204.]

§ 502.205 Interrogatories to parties.

(a) *In general*—(1) *Number.* Unless otherwise stipulated or ordered by the presiding officer, a party may serve on any other party no more than 50 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with § 502.201(e)(2).

(2) *Scope.* An interrogatory may relate to any matter that may be inquired into under § 502.201(e)–(f). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that the interrogatory need not be answered until designated discovery is complete, or until a prehearing conference or some other time.

(b) *Answers and objections*—(1) *Responding party.* The interrogatories must be answered:

(i) By the party to whom they are directed; or

(ii) If that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or representative, who must furnish the information available to the party.

(2) *Time to respond.* The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to as provided in § 502.201(l) of this subpart or be ordered by the presiding officer.

(3) *Answering each interrogatory.* Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) *Objections.* The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the presiding officer, for good cause, excuses the failure.

(5) *Signature.* The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) *Use.* An answer to an interrogatory may be used to the extent allowed by the rules in this part.

(d) *Option to produce business records.* If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) Specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) Giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries. [Rule 205.]

§ 502.206 Producing documents, electronically stored information, and tangible things, or entering onto land, for inspection and other purposes.

(a) *In general.* A party may serve on any other party a request within the scope of § 502.201(e)–(f):

(1) To produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(i) Any designated documents or electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(ii) Any designated tangible things; or

(2) To permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) *Procedure*—(1) *Contents of the request.* The request:

(i) Must describe with reasonable particularity each item or category of items to be inspected;

(ii) Must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(iii) May specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and objections.*

(i) *Time to respond.* The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to as provided in § 502.201(l) of this subpart or be ordered by the presiding officer.

(ii) *Responding to each item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

(iii) *Objections.* An objection to part of a request must specify the part and permit inspection of the rest.

(iv) *Responding to a request for production of electronically stored information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form, or if no form was specified in the request, the party must state the form or forms it intends to use.

(v) *Producing the documents or electronically stored information.* Unless otherwise stipulated or ordered by the presiding officer, these procedures apply to producing documents or electronically stored information:

(A) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(B) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(C) A party need not produce the same electronically stored information in more than one form.

(c) *Nonparties.* By subpoena under subpart I of this part, a nonparty may be compelled to produce documents and tangible things or to permit an inspection. [Rule 206.]

§ 502.207 Requests for admission.

(a) *Scope and procedure*—(1) *Scope.* A party may serve on any other party a written request to admit, for the purposes of the pending action only, the truth of any nonprivileged relevant matters relating to facts, the application of law to fact, or opinions about either, and the genuineness of any described documents.

(2) *Form; copies of documents.* Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *Time to respond; effect of failure to respond.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to as provided in § 502.201(l) of this subpart or be ordered by the presiding officer.

(4) *Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections.* The grounds for objecting to a request must be stated. A party may not object solely on the ground that the request presents a genuine issue for adjudication.

(6) *Motion regarding the sufficiency of an answer or objection.* The requesting party may move for a determination of the sufficiency of an answer or objection. Unless the presiding officer finds an objection justified, the presiding officer must order that an answer be served. On finding that an answer does not comply with this rule, the presiding officer may order either that the matter is admitted or that an amended answer be served. The presiding officer may defer a decision until a prehearing conference or a specified time prior to hearing.

(b) *Effect of admission; withdrawal or amendment of admission.* A matter admitted under this rule is conclusively established unless the presiding officer, on motion, permits the admission to be withdrawn or amended. The presiding officer may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the presiding officer is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding. [Rule 207.]

§ 502.208 Use of discovery procedures directed to Commission staff personnel.

(a) Discovery procedures described in §§ 502.202, 502.203, 502.204, 502.205, 502.206, and 502.207, directed to Commission staff personnel must be permitted and must be governed by the procedures set forth in those sections except as modified by paragraphs (b) and (c) of this section. All notices to take depositions, written interrogatories, requests for production of documents and other things, requests for admissions, and any motions in connection with the foregoing, must be served on the Secretary of the Commission.

(b) The General Counsel must designate an attorney to represent any Commission staff personnel to whom any discovery requests or motions are directed. The attorney so designated must not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under paragraph (a) of this section must become final rulings of the Commission unless an appeal is filed within 10 days after date of issuance of such rulings or unless the Commission on its own motion reverses, modifies, or stays such rulings within 20 days of their issuance. Replies to appeals may be filed within 10 days. No motion for leave to appeal is necessary in such instances and no ruling of the presiding officer must be effective until 20 days from date of issuance unless the Commission otherwise directs. [Rule 208.]

§ 502.209 Use of depositions at hearings.

(a) *Using depositions*—(1) *In general.* At a hearing, all or part of a deposition may be used against a party on these conditions:

(i) The party was present or represented at the taking of the deposition or had reasonable notice of it;

(ii) It is used to the extent it would be admissible if the deponent were present and testifying; and

(iii) The use is allowed by § 502.209(a)(2) through (7).

(2) *Impeachment and other uses.* Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by § 502.156 of subpart J of this part.

(3) *Deposition of party, representative, or designee.* An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing representative, or designee under § 502.203(b)(6) or § 502.204(a)(4).

(4) *Unavailable witness.* A party may use for any purpose the deposition of a witness, whether or not a party, if the Commission or presiding officer finds:

(i) That the witness is dead;

(ii) That the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(iii) That the party offering the deposition could not procure the witness's attendance by subpoena; or

(iv) On motion and notice, that exceptional circumstances make it desirable, in the interest of justice and with due regard to the importance of live testimony at a hearing, to permit the deposition to be used.

(5) *Using part of a deposition.* If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(6) *Substituting a party.* Substituting a party does not affect the right to use a deposition previously taken.

(7) *Deposition taken in an earlier action.* A deposition lawfully taken and, if required, filed in any federal or state court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by § 502.156 of subpart J of this part.

(b) *Objections to admissibility.* Subject to Rules § 502.202(b) and § 502.209(d)(3), an objection may be made at a hearing to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) *Form of presentation.* Unless the presiding officer orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the presiding officer with the testimony in nontranscript form as well.

(d) *Waiver of objections*—(1) *To the notice.* An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the officer's qualification.* An objection based on qualification of the officer before whom a deposition is to be taken is waived if not made:

(i) Before the deposition begins; or

(ii) Promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) *To the taking of the deposition*—

(i) *Objection to competence, relevance, or materiality.* An objection to a deponent's competence, or to the competence, relevance, or materiality of testimony, is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(ii) *Objection to an error or irregularity.* An objection to an error or irregularity at an oral examination is waived if:

(A) It relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(B) It is not timely made during the deposition.

(iii) *Objection to a written question.* An objection to the form of a written question under § 502.204 of this subpart is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) *To completing and returning the deposition.* An objection to how the officer transcribed the testimony, or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition, is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known. [Rule 209.]

§ 502.210 Motions to compel initial disclosures or compliance with discovery requests; failure to comply with order to make disclosure or answer or produce documents; sanctions; enforcement.

(a) *Motion for order to compel initial disclosures or compliance with discovery requests.* (1) A party may file a motion pursuant to § 502.69 for an order compelling compliance with the requirement for initial disclosures provided in § 502.201 or with its discovery requests as provided in this subpart, if a deponent fails to answer a question asked at a deposition or by written questions; a corporation or other entity fails to make a designation of an individual who will testify on its behalf; a party fails to answer an interrogatory; or a party fails to respond that inspection will be permitted, or fails to permit inspection, as requested under § 502.206 of this subpart. For purposes of this section, a failure to make a disclosure, answer, or respond includes an evasive or incomplete disclosure, answer, or response.

(2) A motion to compel must include:

(i) A certification that the moving party has conferred in good faith or attempted to confer with the party failing to make initial disclosure or respond to discovery requests as provided in this subpart in an effort to obtain compliance without the necessity of a motion;

(ii) A copy of the discovery requests that have not been answered or for which evasive or incomplete responses have been given. If the motion is limited to specific discovery requests, only those requests are to be included;

(iii) If a disclosure has been made or an answer or response has been given, a copy of the disclosure, answer, or response in its entirety;

(iv) A copy of the certificate of service that accompanied the discovery request; and

(v) A request for relief and supporting argument, if any.

(3) A party may file a response to the motion within 7 days of the service date of the motion. Unless there is a dispute with respect to the accuracy of the versions of the discovery requests, responses thereto, or the disclosures submitted by the moving party, the response must not include duplicative copies of them.

(4) A reply to a response is not allowed unless requested by the presiding officer, or upon a showing of extraordinary circumstances.

(b) *Failure to comply with order compelling disclosures or discovery.* If a party or a party's officer or authorized representative fails or refuses to obey an order requiring it to make disclosures or to respond to discovery requests, the presiding officer upon his or her own initiative or upon motion of a party may make such orders in regard to the failure or refusal as are just. A motion must include a certification that the moving party has conferred in good faith or attempted to confer with the disobedient party in an effort to obtain compliance without the necessity of a motion. An order of the presiding officer may:

(1) Direct that the matters included in the order or any other designated facts must be taken to be established for the purposes of the action as the party making the motion claims;

(2) Prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; or

(3) Strike pleadings in whole or in part; staying further proceedings until the order is obeyed; or dismissing the action or proceeding or any party thereto, or rendering a decision by default against the disobedient party.

(c) *Enforcement of orders and subpoenas.* In the event of refusal to obey an order or failure to comply with a subpoena, the Attorney General at the request of the Commission, or any party injured thereby may seek enforcement by a United States district court having jurisdiction over the parties. Any action with respect to enforcement of subpoenas or orders relating to depositions, written interrogatories, or other discovery matters must be taken within 20 days of the date of refusal to obey or failure to comply. A private party must advise the Commission 5 days (excluding Saturdays, Sundays and legal holidays) before applying to the court of its intent to seek enforcement of such subpoenas and discovery orders.

(d) *Persons and documents located in a foreign country.* Orders of the presiding officer directed to persons or documents located in a foreign country must become final orders of the Commission unless an appeal to the Commission is filed within 10 days after date of issuance of such orders or unless the Commission on its own motion reverses, modifies, or stays such rulings within 20 days of their issuance. Replies to appeals may be filed within 10 days. No motion for leave to appeal is necessary in such instances and no orders of the presiding officer must be effective until 20 days from date of issuance unless the Commission otherwise directs. [Rule 210.]

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–4690 Filed 2–29–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0013; 4500030114]

RIN 1018–AX15

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for Riverside Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the June 1, 2011, proposed revised designation of critical habitat for Riverside fairy shrimp (*Streptocephalus woottoni*) under the Endangered Species Act of 1973, as amended (Act). We are revising the preamble to the proposed designation to clarify that certain subunits that we originally proposed for revised critical habitat designation under section 3(5)(A)(i) of the Act, are now also being proposed under section 3(5)(A)(ii) of the Act because these areas are essential for the conservation of the species but were not confirmed to be occupied by Riverside fairy shrimp at the time the species was listed in 1993. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of revised critical habitat for Riverside fairy shrimp and an amended required determination section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed revised critical habitat designation, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received on or before April 2, 2012. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R8–ES–2011–0013, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0013; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revised designation of critical habitat for Riverside fairy shrimp published in the **Federal Register** on June 1, 2011 (76 FR 31686), our DEA of the proposed revised designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) Areas that provide habitat for Riverside fairy shrimp that we did not discuss in our proposed revised critical habitat rule (76 FR 31686; June 1, 2011);

(b) Areas containing the physical and biological features essential to the conservation of Riverside fairy shrimp that we should include in the final revised critical habitat designation and why. Include information on the distribution of these essential features and what special management considerations or protections may be required to maintain or enhance them;

(c) Areas proposed as revised critical habitat that do not contain the physical and biological features essential for the conservation of the species and that should not be designated as critical habitat;

(d) Areas not occupied or not known to be occupied at the time of listing that are essential for the conservation of the species and why; and

(e) The potential effects of climate change on Riverside fairy shrimp and its habitat and whether the critical habitat may adequately account for these potential effects.

(3) Our proposal to designate specific areas for which there is no documentation of occupancy for the specific areas (subunits) prior to 1993, as essential for the conservation of the species under the definition of critical habitat in section (3)(5)(A)(ii) of the Act.

(4) Lands we identified as essential for the conservation of Riverside fairy shrimp in Appendix F of the Recovery Plan that are not being proposed as critical habitat.

(5) Lands we have identified as essential for the conservation of Riverside fairy shrimp that were not known at the time the Recovery Plan was written but that we conclude are essential for the conservation of the species.

(6) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(7) Information that may assist us in identifying or clarifying the physical and biological features essential to the conservation of Riverside fairy shrimp.

(8) Whether any specific areas being proposed as revised critical habitat for Riverside fairy shrimp should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act. See the Exclusions section of the June 1, 2011, proposed rule to revise critical habitat (76 FR 31686) for further discussion.

(9) Any probable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(10) Information on the extent to which the description of probable economic impacts in the DEA is complete and accurate, and specifically:

(a) Whether there are incremental costs of critical habitat designation (for example, costs attributable solely to the designation of revised critical habitat for Riverside fairy shrimp) that have not been appropriately identified or considered in our economic analysis, including costs associated with future administrative costs or project modifications that may be required by Federal agencies related to section 7 consultation under the Act;

(b) Whether there are additional project modifications that may result from the designation of critical habitat for Riverside fairy shrimp and what those potential project modifications might represent.

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed revised rule (76 FR 31686) during the initial comment period from June 1, 2011, to August 1, 2011, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat for Riverside fairy shrimp will take into consideration all written comments and any additional information we receive during this and previous comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2011–0013, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule (76 FR 31686) and the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2011–0013, or by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of revised critical habitat for Riverside fairy shrimp in this document. For more information on the taxonomy, biology, and ecology of Riverside fairy shrimp, please refer to the listing rule published in the **Federal Register** on August 3, 1993 (58 FR 41384), the 5-Year Review for Riverside fairy shrimp signed on September 30, 2008 (Service 2008), which is available online at *http://www.fws.gov/carlsbad/*, and our proposed revised critical habitat designation published in the **Federal Register** on June 1, 2011 (76 FR 31686), which is available online at *http://www.regulations.gov* (at Docket No. FWS–R8–ES–2011–0013), or contact the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On April 12, 2005, we published a final designation of critical habitat for Riverside fairy shrimp in the **Federal Register** (70 FR 19154). On January 14, 2009, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Southern District of California challenging our 2005 designation of critical habitat for Riverside fairy shrimp (*Center for Biological Diversity* v. *United States Fish and Wildlife Service and Dirk Kempthorne, Secretary of the Interior,* Case No. 3:09–CV–0050–MMA–AJB). The plaintiffs alleged that our April 12, 2005, critical habitat designation for Riverside fairy shrimp was insufficient for various reasons, specifically challenging the reasoning used to exclude areas from the 2005 critical habitat designation for Riverside fairy shrimp and citing improper use of a coextensive economic analysis. A settlement agreement was reached with the plaintiffs (Case No. 3:09–cv–00051–JM–JMA; November 16, 2009) in which we agreed to submit a proposed revised critical habitat designation for the Riverside fairy shrimp to the **Federal Register** by May 20, 2011, and submit a final revised critical habitat designation to the **Federal Register** by November 15, 2012.

On June 1, 2011, we published a proposed rule to designate revised critical habitat for the Riverside fairy shrimp (76 FR 31686). We proposed to designate approximately 2,984 acres (1,208 hectares) of land in five units in Ventura, Orange, Riverside, and San Diego Counties, California, as revised critical habitat. That proposal had a 60-day comment period, ending August 1, 2011.

Critical Habitat

Section 3(5)(A)(i) of the Act defines critical habitat as ''the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.'' Section 3(5)(A)(ii) pertains to ''specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. For more information on critical habitat, please refer to our proposed revised critical habitat designation published in the **Federal Register** on June 1, 2011 (76 FR 31686).

As stated in the proposed rule (76 FR 31692: June 1, 2011), when we are determining which areas should be designated as critical habitat or revised critical habitat, our primary source of information is generally the listing information developed during the listing process for the species. However, section 4 of the Act also requires that we designate critical habitat, or make revisions to, critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts.

In proposing revised critical habitat for Riverside fairy shrimp, we have made extensive use of the information in the Recovery Plan (Service 1998), and

incorporated the recovery goals and strategy identified in the Recovery Plan. We also reviewed other relevant information, including peer-reviewed journal articles, unpublished reports and materials (e.g., survey results and expert opinions), the final listing rule (58 FR 41384; August 3, 1993), the first and second rules proposing critical habitat published in the **Federal Register** on September 21, 2000 (65 FR 57136), and April 27, 2004 (69 FR 23024), respectively; and the subsequent final critical habitat designations published in the **Federal Register** on May 30, 2001 (66 FR 29384), and April 12, 2005 (70 FR 19154), the 5-year review for the Riverside fairy shrimp (Service 2008), and regional databases and GIS coverages, for example, California Natural Diversity Database, and National Wetlands Inventory maps. We analyzed this information to determine historical occupancy, occupancy at the time of listing, and current occupancy. Additionally, we reviewed available information pertaining to the species' habitat requirements and its distribution.

The geographical area known to be occupied by the species in the U.S. as presented in the listing rule (58 FR 41385; August 3, 1993) is that area bounded by the coastline to the west, east to an area near tribal land of the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California, in western Riverside County, north into the central foothills of Orange County near the former Marine Corps Air Station (MCAS) El Toro, and south to coastal mesa tops along the United States-Mexico Border in San Diego County. The current known range of Riverside fairy shrimp is from Ventura County to the United States-Mexico Border in San Diego County, a north-south distance of approximately 163 miles (mi) (262 kilometers (km)) within southern California and inland from the Pacific Coast 50 mi (80 km), based on all available species occurrence data pre- and post-listing. (Two additional records documented Riverside fairy shrimp in northwestern Baja California, Mexico, at the time the species was listed (58 FR 41385)). Extant occurrences are located within four counties in southern California: Ventura, Orange, Riverside, and San Diego.

When we developed our proposed critical habitat, we considered areas where Riverside fairy shrimp have been documented since listing (1993), including areas outside the geographical range of the species as presented in the listing rule, to be ''within the geographical area occupied by the species at the time of listing [in 1993]'' (see proposed rule at 76 FR 31689; June 1, 2011 and discussion below). Based on our review of the species biology and life-history traits, we conclude that occurrences documented since the 1993 listing do not represent an expansion of the species' distribution and range, but rather reflect our better understanding of the distribution and range of the species at the time of listing (Service 2008, p. 9).

We acknowledge that the geographical range *known* to be occupied by the species at the time of listing in the U.S. (based on species occurrence records available at the time the species was listed (58 FR 41384; August 3, 1993)) is from central Orange County to southwestern San Diego County at the United States-Mexico Border. However, as with many species, listing often results in greater efforts to conduct surveys that may reveal more information related to specific occurrences across a greater geographical area than were initially known (76 FR 31690; June 1, 2011).

Our method for identifying areas with physical and biological features essential to the conservation of the species and other areas essential for the conservation of Riverside fairy shrimp, has been to target areas occupied by Riverside fairy shrimp, and areas known to possess suitable ephemeral wetland habitat likely to be occupied or become occupied based on proximity to known occurrences, contiguous habitat, or within expected dispersal distances for Riverside fairy shrimp. We considered the low numbers of populations, restricted distribution, specialized habitat requirements, and limited genetic variability of Riverside fairy shrimp, and while we did not include all available habitat or all areas where Riverside fairy shrimp are located, criteria used to identify those areas essential for the conservation of Riverside fairy shrimp include areas of discontinuous habitat that: (1) Provide for geographic distribution across the range of the species; (2) represent the full range of habitat and environmental variability that the species occupies; (3) provide appropriate inundation and ponding durations, natural hydrologic regimes and appropriate soils, and intermixed wetland and upland watershed (that is, contain the necessary primary constituent elements (PCEs)); (4) provide for connectivity among pools within geographic proximity to facilitate dispersal and gene flow among vernal pool complexes; and (5) provide protection for unique, existing vernal pool composition and structure. Our determination of habitat, and therefore features, essential to the conservation of Riverside fairy shrimp takes into consideration the generalized conservation strategy identified in the 1998 Recovery Plan as necessary for the species stabilization and reclassification (Service 1998, pp. 1–113 and Appendices F and G therein). For more information on how critical habitat units and subunits were identified and delineated and additional information regarding the Recovery Plan, please also see the ''Methods'' section of the proposed revised critical habitat rule we published on June 1, 2011 (76 FR 31686).

Specific areas identified for inclusion into revised critical habitat were determined first at the unit level (based on Management Area (Units 1–5) provided in the Recovery Plan (Service 1998, p.38)). We delineated subunit boundaries by focusing on areas known or likely to be occupied based on species occurrence records and the presence of PCEs within each subunit. We mapped essential physical and biological features and then applied selection criteria to identify those areas essential to the conservation of Riverside fairy shrimp. We proposed to designate subunits within the geographical area occupied by the species at the time it was listed, as currently understood. As discussed below, based on information regarding the geographical area occupied by the species at the time it was listed, and the limited surveys verifying occupancy of many specific pools prior to listing, we are now also proposing certain subunits as essential for the conservation of the species under section 3(5)(A)(ii) of the Act.

We have not proposed for designation certain areas identified in the Recovery Plan that: (1) Lack a confirmed identification of species occurrence, (2) lack essential physical and biological features to support Riverside fairy shrimp in a self-sustaining population, or (3) do not represent occupied occurrences that add to species viability and, therefore, that we do not consider to be essential for the recovery of the species at this time. Specifically, we determined these areas are not essential for the conservation of the species because: (1) The original record of species occurrence, or current species persistence, remains questionable and unconfirmed; (2) specific occupied pools or their watersheds have been so highly modified or degraded that the long-term viability of the population is unlikely and the functional value of enhancing or restoring the existing habitat to assist in recovery is minimal; (3) they do not possess, or likely will

not retain (if restored), the necessary physical and biological features (soils, hydrology, topography) to support and maintain a self-sustaining population of Riverside fairy shrimp; or (4) the area supports an occurrence that does not appreciably add to the species viability at the unit or subunit level, therefore, the area is not essential for the recovery of the species.

We initially proposed Unit 1 (1a and 1b), Unit 2 (2dA, 2dB, 2e, 2f, 2g, 2h, and 2i), Unit 3 (3c, 3d, 3e, and 3h), Unit 4 (4c), and Unit 5 (5a, 5b, 5c, 5e, 5f, 5g, and 5h) for designation as revised critical habitat under section 3(5)(A)(i) of the Act because the areas contain physical and biological features essential to the conservation of the species that may require special management considerations or protection and we considered the areas to be within the geographical range occupied by the species at the time of listing. Because we lack surveys confirming the presence of Riverside fairy shrimp in these areas at the time of listing, we are now also proposing them for designation under section 3(5)(A)(ii) of the Act. We have determined that the areas are essential to the conservation of the species as presented below (Table 1). Since the time of listing we have also confirmed the areas are occupied by Riverside fairy shrimp.

TABLE 1—SUBUNIT OCCUPANCY STATUS AND JUSTIFICATIONS FOR DETERMINING SPECIFIC AREAS ESSENTIAL TO AND FOR THE CONSERVATION OF RIVERSIDE FAIRY SHRIMP

Unit/subunit: name [1]	Service status at listing [2]	Current status [3]; year of first record [4]	ESA section 3(5)(A)(i) justification [5]	ESA section 3(5)(A)(ii) justification [6]
Ventura County				
1a: Tierra Rejada Preserve.	Presumed occupied ...	Occupied; 1998 (CNNDB, EO 9).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; possesses unique soils and habitat type; disjunct population which maintains genetic diversity and population stability at species' northernmost distribution.
1b: South of Tierra Rejada Valley (east of Hwy 23).	Presumed occupied ...	Presumed occupied; no protocol surveys have been completed.	Has PCEs 1–3; may require management.	Provides appropriate inundation ponding; proximity and connectivity to 1a at northern distribution; protects existing vernal pool composition; ecological linkage.
Orange County				
2c: (MCAS) El Toro ...	Confirmed occupied ...	Occupied; 1998 (CNDDB, E0 10).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; maintains current geographic, elevation, and ecological distribution; maintains current population structure; provides for connectivity; large continuous block; ecological linkage.
2dA: Saddleback Meadow.	Presumed occupied ...	Occupied; 1997 (HELIX 2009, Report #10537).	Has PCEs 1–3; may require management.	
2dB: O'Neil Regional Park—near Trabuco Canyon.	Presumed occupied ...	Occupied; 2001 (CNDDB, EO 17).	Has PCEs 1–3; may require management.	Maintains current geographic, elevation, and ecological distribution; maintains current population structure; provides for connectivity.
2e: O'Neil Regional Park—near Canada Gobernadora/east of Tijeras Creek.	Presumed occupied ...	Occupied; 1997 (CNDDB, EO 4).	Has PCEs 1–3; may require management.	Maintains current geographic, elevation, and ecological distribution; maintains current population structure; provides for connectivity.
2f: Chiquita Ridge	Presumed occupied ...	Occupied; 1997 (CNDDB, EO 5).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; maintains current geographic, elevation, and ecological distribution; maintains current population structure; provides for connectivity.
2g: Radio Tower Road	Presumed occupied ...	Occupied; 2001 (CNDDB, EO 15, 16).	Has PCEs 1–3; may require management.	Maintains current geographic, elevation, and ecological distribution; maintains current population structure; provides for connectivity.
2h: San Onofre State Beach, State Park–leased land (near Christianitos Creek).	Presumed occupied ...	Occupied; 1997 (CNDDB, EO 6).	Has PCEs 1–3; may require management.	Unique soils and wetland type, maintains habitat function, genetic diversity and species viability; ecological linkage.
2i: SCE Viejo Conservation Bank.	Presumed occupied ...	Occupied; 1998 (CNDBB, EO 10).	Has PCEs 1–3; may require management.	Maintains current geographic, elevation, and ecological distribution; maintains current population structure; provides for connectivity.
Riverside County				
3c: Australia Pool	Presumed occupied ...	Occupied; 1998 (CNDDB, EO 11).	Has PCEs 1–3; may require management.	Maintains habitat function, genetic diversity and species viability; ecological linkage.
3d: Scott Road Pool ..	Presumed occupied ...	Occupied; 2002 (CNNDB, EO 24).	Has PCEs 1–3; may require management.	Maintains current geographic, elevation, and ecological distribution; disjunct habitat.

TABLE 1—SUBUNIT OCCUPANCY STATUS AND JUSTIFICATIONS FOR DETERMINING SPECIFIC AREAS ESSENTIAL TO AND FOR THE CONSERVATION OF RIVERSIDE FAIRY SHRIMP—Continued

Unit/subunit: name [1]	Service status at listing [2]	Current status [3]; year of first record [4]	ESA section 3(5)(A)(i) justification [5]	ESA section 3(5)(A)(ii) justification [6]
3e: Schleuniger Pool	Presumed occupied ...	Occupied; 1998 (CNDDB, EO 8).	Has PCEs 1–3; may require management.	Maintains current geographic, elevation, and ecological distribution.
3f: Skunk Hollow and Field Pool.	Confirmed occupied ...	Skunk Hollow: Occupied; 1988 (CNDBB, EO 3), Field Pool: Occupied; 1988 (Service, GIS ID 9).	Has PCEs 1–3; may require management.	
3g: Johnson Ranch Created Pool.	Created (in 2002)	Occupied; 2003 (Service, GIS ID 13).	Has PCEs 1–3; may require management.	Provides for connectivity among pools; maintains current population structure.
3h: Santa Rosa Plateau–Mesa de Colorado.	Presumed occupied ...	Occupied; 2009 (Selheim and Searcy 2010, Report # 11005).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; unique soils and habitat type; large continuous blocks of occupied habitat; ecological linkage.
San Diego County				
4c: Poinsettia Lane Commuter Train Station (JJ 2).	Presumed occupied ...	Occupied; 1998 (CNDDB, EO 7).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; unique soils and habitat type; disjunct habitat; provides protection for existing vernal pool composition and structure.
5a: J 33 (Sweetwater High School).	Presumed occupied ...	Occupied; 2003 (City of San Diego, 2004).	Has PCEs 1–3; may require management.	Maintains current population structure; genetic diversity.
5b: J15 (Arnie's Point)	Presumed occupied ...	Occupied; 2006 (ERS, Report # 8639).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; maintains current population structure; ecological linkage.
5c: East Otay Mesa ...	Presumed occupied ...	Occupied; 2000 GIS ID 4; 2001 (EDAW 2001) (CNDDB, EO 25).	Has PCEs 1–3; may require management.	Unique soils and habitat type; maintains current geographic, elevation, and ecological distribution; disjunct habitat; protects existing vernal pool composition.
5d: J29–31	Confirmed occupied ...	Occupied; 1986 (Bauder 1986); (Simovich and Fugate 1992) (CNDDB, EO 2).	Has PCEs 1–3; may require management.	
5e: J2 N, J4, J5	Presumed occupied ...	Occupied; 2003 (City of San Diego, 2004).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; provides for connectivity among pools; maintains current population structure.
5f: J2 S and J2 W	Presumed occupied ...	Occupied; 2001 (CNDDB, EO 18).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; provides for connectivity among pools; maintains current population structure.
5g: J14	Presumed occupied ...	Occupied; 2002 (HELIX 2002, Report # 2386).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; provides for connectivity among pools; maintains current population structure.
5h: J11, J12, J16–19	Presumed occupied ...	Occupied; 2002 (City of San Diego, 2004).	Has PCEs 1–3; may require management.	Necessary to stabilize in RP; provides for connectivity among pools; maintains current population structure.

[1] Unit/Subunit name as it appears in Table 1 of proposed revised rule (76 FR 31698–31699). For additional information, see the Recovery Plan (RP) for Vernal Pools of Southern California (Service 1998, 113+ pp.).

[2] Service status: "Confirmed occupied" means that there is a record of occupancy at or before the time of listing; "Presumed occupied" means there is no documentation of occupancy for the specific areas (subunits) prior to 1993, but the areas are presumed to have been occupied at the time of listing based on best available science and positive survey results in the possession of the Service. "Created" refers to a vernal pool enhancement or restoration after the time of listing.

[3] [4] Current status: "Occupied" indicates a positive survey result after the time of listing documenting the species occurrence and "presumed occupied" indicates no protocol surveys have been completed. The listed year indicates the year of first record followed by source. EO (element occurrence) is the number assigned to that occurrence, as defined and described according to the California Natural Diversity Data Base (CNDDB 2011). GIS ID is the number of the occurrence information for multiple species within jurisdiction of the Carlsbad Fish and Wildlife Office (Service 2011). City of San Diego (2004) is from the "Vernal pool inventory 2002–2003" or Contractor, and Report # is the number from a section 10(A)(1)(a) survey report, available in Service files.

[5] Reason/s determined essential to the conservation of the species as defined according to criteria set forth in the proposed revised critical habitat rule, this document, and in section 3(5)(A)(i) of the Act and based on current information of what we consider the occupied geographic range of the species at the time of listing.

[6] Reason/s determined essential for the conservation of the species as defined according to criteria set forth in the proposed revised critical habitat rule, this document, and in section 3(5)(A)(ii) of the Act. RP = Recovery Plan (see Service 1998, Appendix F, pp. F–1 to F–5). An empty box in the "ESA section 3(5)(A)(ii) justification" column indicates this subunit not proposed under section 3(5)(A)(ii) of the Act, and was confirmed occupied at the time of listing (see footnote 3).

The proposed revised rule explains in detail the bases for our determination that Unit 1 (1a and 1b), Unit 2 (2dA, 2dB, 2e, 2f, 2g, 2h, and 2i), Unit 3 (3c, 3d, 3e, and 3h), Unit 4 (4c), and Unit 5 (5a, 5b, 5c, 5e, 5f, 5g, and 5h) are essential to the conservation of Riverside fairy shrimp (76 FR 31686). Although the discussion of each subunit in the proposed revised rule occurs in the context of section 3(5)(A)(i) of the Act, the reasons identified in the proposed revised rule fully support designation of each of the subunits under section 3(5)(A)(ii) of the Act.

As stated in the proposed revised critical habitat rule (76 FR 31690; June 1, 2011), pursuant to section 3(5)(A)(i) of the Act we consider Unit 1 (1a and 1b) Unit 2 (2c, 2dA, 2dB, 2e, 2f, 2g, 2h, and 2i), Unit 3 (3d, 3e, and 3h), Unit 4 (4c), and Unit 5 (5a, 5b, 5c, 5e, 5f, 5g, and 5h) to be specific areas within the geographical area occupied by Riverside fairy shrimp at the time it was listed (although not all subunits were surveyed prior to listing) on which are found those physical or biological features essential to the conservation of the species which may require special management considerations or protection, and our rationale is explained below. We also have determined that these specific areas are essential for the conservation of Riverside fairy shrimp pursuant to section 3(5)(A)(ii) of the Act.

We propose 21 subunits (Subunits 1a, 1b; 2dA, 2dB, 2e, 2f, 2g, 2h, and 2i; Subunits 3c, 3d, 3e, and 3h; Subunit 4c; Subunits 5a, 5b, 5c, 5e, 5f, 5g, and 5h) under both section 3(5)(A)(i) and section 3(5)(A)(ii) of the Act to make clear that we consider these specific areas to be essential for the conservation of Riverside fairy shrimp notwithstanding the absence of surveys confirming the presence of Riverside fairy shrimp at the time of listing. Although evidence suggests that these subunits were occupied by the Riverside fairy shrimp at the time the species was listed, due to a lack of documentation of occupancy, such as survey results prior to 1993, for the purposes of this rulemaking, we determine that these subunits also meet the definition of critical habitat in section 3(5)(A)(ii) of the Act. The following paragraphs explain our determination, which applies to the following units and subunits—Unit 1 (1a, 1b), Unit 2 (2dA, 2dB, 2e, 2f, 2g, 2h, and 2i), Unit 3 (3c, 3d, 3e, and 3h), Unit 4 (4c), and Unit 5 (5a, 5b, 5c, 5e, 5f, 5g, and 5h).

The Riverside fairy shrimp is a narrow endemic species that is imperiled due to historical and ongoing land use practices that have resulted in significant loss of habitat in southern California. The Recovery Plan states that conservation of most of the remaining occupied occurrences of Riverside fairy shrimp, as well as restorable habitat, is essential to the preservation of the remaining diversity and the prevention of further losses (Service 1998, p. 46) and is essential if Riverside fairy shrimp is to recover (Service 1998, pp. 62–64). Limiting the designation to subunits that were known to be occupied at the time of listing (positive pre-listing survey results) would result in the exclusion of most of the areas currently known to support viable Riverside fairy shrimp populations and would result in a designation that is inadequate to provide for the conservation of the species. Therefore, we are proposing to designate Unit 1 (1a and 1b), Unit 2 (2dA, 2dB, 2e, 2f, 2g, 2h, and 2i), Unit 3 (3c, 3d, 3e, and 3h), Unit 4 (4c), and Unit 5 (5a, 5b, 5c, 5e, 5f, 5g, and 5h) under section 3(5)(a)(ii) of the Act as well as under section 3(5)(a)(i) of the Act because they consist of areas essential for the conservation of the species, are known to support Riverside fairy shrimp (with the exception of Subunit 1b), and contain physical and biological features essential to the conservation of the species. This proposed designation is based on the best scientific information available to us at this time.

Units 1–5, which include Ventura County Unit (Transverse Range; Unit 1), Los Angeles Basin–Orange County Unit (Unit 2), Riverside Inland Valleys Unit (Unit 3), San Diego North and Central Coastal Mesas Unit (Unit 4), and San Diego Southern Coastal Mesas Unit (Unit 5) comprise specific areas (subunits) within the geographical area occupied by the species at the time it was listed based on our current understanding (as previously discussed above), that we have also determined are essential for the conservation of Riverside fairy shrimp.

These units and subunits are necessary to stabilize existing populations of Riverside fairy shrimp (See Appendix F in the Recovery Plan for Vernal Pools of Southern California (hereafter, ''Recovery Plan'') Service 1998, pp. F–1 to F–5) and are needed to meet recovery goals identified in the Recovery Plan. [The Recovery Plan identifies securing and conserving most of the remaining Riverside fairy shrimp occurrences from further loss and degradation in a configuration that maintains habitat function and species viability (Service 1998, p. 62) as necessary for recovery of the species]. The Recovery Plan specifically identifies securing from loss and degradation existing vernal pools and their associated watersheds within the Transverse and Los Angeles Basin-Orange Management Areas as a recovery criterion (Service 1998, p. 62). The Recovery Plan also identifies remaining vernal pools and their watersheds contained within the complexes identified in Appendix F, secured in a configuration that maintains habitat function and species viability, as needed for recovery of Riverside fairy shrimp (Service 1998, p. 63).

Post-listing surveys in each of the units and subunits have confirmed the presence of Riverside fairy shrimp. As indicated in the Recovery Plan for Vernal Pools of Southern California, a key conservation goal for Riverside fairy shrimp is protection of most of the remaining Riverside fairy shrimp occurrences (securing from further loss and degradation) in a configuration that maintains habitat function and species viability (Service 1998, p. 62). Each of the areas (subunits) contain essential habitat that supports or can support viable occurrences of this extremely endangered species and is necessary for its eventual recovery.

At the time of listing, Riverside fairy shrimp were known to occupy nine vernal pool complexes within Orange, Riverside, and San Diego Counties, and Baja California, Mexico, including four vernal pools in Riverside County, one population in Orange County, two areas in San Diego County, and two locations in Baja California, Mexico (58 FR 41384). All observed occurrences at that time were within 30 mi (48 km) of the coast. Most of the additional complexes identified since the time of listing (post-1993) fall within the extant range of the Riverside fairy shrimp known at the time of listing. The necessary conditions for vernal pool presence—Mediterranean climate, topographic depressions, and soils with poor drainage—were all present within the species' known range, and these conditions strongly support the conclusion that additional occupied vernal pools and pool complexes containing Riverside fairy shrimp existed within the species' known range that simply had not been surveyed for the species at the time of listing.

The species was first collected in 1979, and recognized as a new species in 1985. The species description was published in 1990 (Eng *et al.* 1990, pp. 258–259), and Riverside fairy shrimp was federally listed as endangered in 1993 (58 FR 41384). Listing typically results in greater efforts to conduct surveys which often reveal a greater number of occurrences than were initially known. Given the relatively

short time period from when Riverside fairy shrimp was identified and published as a new species (1990) to when original or new survey efforts were completed (generally in the late 1980s and early 1990s, and again in 1997–early 2000s) and given the species' habitat, ecology, and life-history requirements (see following paragraphs below), the best scientific evidence suggests Riverside fairy shrimp were present and persisted in suitable seasonal depression wetlands with appropriate soils and microtopography within the geographical area known to be occupied by the species at the time it was listed. This conclusion is substantiated by the high number of additional occurrences identified since the time of listing (1993) from surveys conducted in locations that were not surveyed before 1993.

Riverside fairy shrimp are relatively sedentary and possess limited dispersal capabilities (Davies *et al.* 1997, p. 157). Dispersal is assumed to be through passive means including movement of diapausing cysts by rain and overponding of water (Zedler 2003, p. 602) and wind (Brendonck and Riddoch 1999, p. 67; Vanschoenwinkel 2008, pp.130–133), or actively through animal-mediated transport (Keeler-Wolf *et al.* 1998, p. 11; Bohonak and Jenkins 2003, p. 784; Green and Figuerola 2005, p. 150); however, evidence of passive dispersal remains limited and the relative role of vertebrate vectors requires additional studies (see Bohonak and Jenkins 2003, p. 786). Riverside fairy shrimp have a relatively long maturation time (Simovich 1998, p. 111), which limits the species to deeper pools with longer ponding durations (Hathaway and Simovich 1996, p. 675). Riverside fairy shrimp exhibit a diversified bet-hedging reproductive strategy (Simovich and Hathaway 1997, p. 42) in which the species partitions reproductive effort over more than one hydration event and utilizes diapause of eggs (production of cyst bank) and the fractional hatching of the egg (cyst) bank (Simovich and Hathaway 1997, p. 42; Philippi *et al.* 2001, p. 392; Ripley *et al.* 2004, p. 222).

Riverside fairy shrimp are restricted to certain pool types (deep, long-ponding along coastal mesas or in valley depressions) with certain underlying soils (Bauder and McMillian, p. 57), which have variable but specific water chemistry (Gonzalez *et al.* 1996, p. 317) and temperature regimes (Hathaway and Simovich 1996, p. 672). Suitable pools are geographically fixed and limited in number, and influenced by position, distance from coast, and elevation (Bauder and McMillian 1998, pp. 62 and 64). Typically, mounds of soil (mima) topography and impervious soils with a subsurface clay or hardpan layer provide the necessary ponding opportunities during winter and spring (Zedler 1987, pp. 13 and 17). Underlying soil types and pool size influence the wetland habitats' physiochemical parameters, associated vegetation, and faunal communities, as do regional climate (rainfall; temperature; evaporation rate) and elevation differences (Keeler-Wolf *et al.* 1998, p. 9). Vernal pools are discontinuously distributed in several regions in southern California, and Riverside fairy shrimp may be well adapted to the ephemeral nature of its habitat and to the localized climate, topography, and soil conditions (Bauder and McMillian 1998, p. 56; Keeley and Zedler 1998, p. 6). These statements are supported by careful review of the species' habitat, ecology, and life-history requirements. Based on these habitat and life-history traits, we conclude that the additional occurrences detected since listing both within and to the north of the species known geographical range at the time of listing were likely present prior to listing but occurred in areas that had not been surveyed for Riverside fairy shrimp prior to listing.

If the proposed revised rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion of a particular area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of excluding a particular area, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of Riverside fairy shrimp, the benefits of critical habitat include public awareness of the presence of Riverside fairy shrimp and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Riverside fairy shrimp due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for activities conducted, funded, permitted, or authorized by Federal agencies.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed revised critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for Riverside fairy shrimp. The DEA describes the economic impacts of all known potential conservation efforts for Riverside fairy shrimp; some of these costs will likely be incurred regardless of whether we designate revised critical habitat.

The DEA separates conservation efforts into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections that are already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of revised critical habitat for the species. In other words, the

incremental conservation efforts and associated economic impacts would not occur but for the designation. Conservation efforts implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these efforts are not quantified. Economic impacts are only quantified for conservation efforts implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the background and methodology of the analysis, including relevant court case precedent, see Chapter 2, ''Framework for the Analysis'' of the DEA (Industrial Economics, Inc. (IEC) 2011, pp. 2–1 to 2–24). The DEA also discusses the potential benefits associated with the designation of critical habitat, but does not monetize these benefits.

The 2005 Economic Analysis considered both pre-designation (from the listing of the species in 1993 through 2004) and post-designation (2005 through 2025) impacts to activities occurring within the study area (which is defined as the area proposed for critical habitat designation), referred to as a ''co-extensive analysis.'' Since that time, however, courts in other cases have held that an incremental analysis of impacts stemming solely from the critical habitat rulemaking is proper, and as such, is the current DEA framework approach used by the Service.

The DEA provides estimated costs of the probable economic impacts of the proposed critical habitat designation for the Riverside fairy shrimp over a 24-year time horizon (beginning in 2012 and ending in 2035), which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 24-year timeframe (for example, regional development projections end in 2035). The DEA identifies potential incremental costs as a result of the proposed revised critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies potential economic impacts of Riverside fairy shrimp conservation efforts associated with the following categories of activity: (1) Agricultural, commercial, and residential development; (2) transportation; and (3) livestock grazing and other activities (IEC 2011, p. ES–4 and in Exhibit ES–3). The DEA presents a distribution of future impacts to development activities using a ''low-end'' scenario (10th percentile development costs with a low-end cost of transportation) with a ''high-end'' scenario (90th percentile development costs with the high-end costs from transportation) (IEC 2011, p. ES–5). Both totals include the incremental costs attributable to habitat management activities.

In total, the potential incremental impacts of proposed revised critical habitat designation for Riverside fairy shrimp are estimated to be $1.75 million to $2.87 million ($166,000 to $273,000 on an annualized basis), assuming a 7 percent discount rate (IEC 2011, p. ES–5). Approximately 90 percent of these incremental costs result from time delays to development activities; the remaining portion results from administrative costs of considering adverse modification in section 7 consultations and conducting environmental assessments to comply with the California Environmental Quality Act (CEQA). Baseline impacts associated with consideration of Riverside fairy shrimp and its habitat were not quantified.

For development activities within the study area from year 2012 to year 2035, we estimate the 10th to 90th percentile of incremental impacts (including direct and indirect costs) for forecasted development activities to be $1.71 million to $2.77 million, assuming a 7 percent discount rate, which is $163,000 to $265,000 in annualized impacts. These cost estimates include the direct costs of section 7 consultations, as well as the indirect costs of project time delays and CEQA assessments. Time delays account for approximately 90 percent of the total impacts. Given spatial and regulatory uncertainties within the proposed revised critical habitat area, the analysis presents incremental impacts to development activities as a distribution of possible outcomes (see ''Chapter 4– Potential Economic Impacts to Development Activities''; IEC 2011, pp. 4–1 to 4–34).

Total estimated incremental impacts to transportation activities are limited to the administrative costs of consultation. These consultations may result in project modifications; however, the timing and nature of any such modifications remain uncertain and, therefore, are not quantified in the analysis. Generally, impacts to transportation activities are limited due to the low density of roads and the few planned transportation projects within areas of proposed critical habitat. Incremental impacts to transportation activities are estimated to be $9,560 (low-end scenario) to $37,500 (high-end scenario) ($779 low end to $3,050 high-end, when annualized), at a 7 percent discount rate (IEC 2011, p. 5–3 and in Exhibit 5–1).

Estimated incremental impacts to habitat conservation activities (years 2012–2035) are estimated to be $46,200 ($3,770 annualized), at a 7 percent discount rate (IEC 2011, pp. 5–4 and in Exhibit 5–2). Impacts are attributed to future incremental administrative costs of section 7 consultations related to habitat management activities. Incremental costs are assumed to be $405 per technical assistance and $2,380 per informal consultation. Because these projects generally benefit critical habitat, incremental project modifications are not anticipated.

Incremental costs are generally limited to administrative efforts of new and reinitiated consultations to consider adverse modification of critical habitat for Riverside fairy shrimp, administrative costs of complying with the CEQA, and time delays resulting from both processes. The proposed critical habitat area is unlikely to generate economic impacts beyond administrative costs of section 7 consultation for several reasons:

(1) Forty-one percent of the proposed revised critical habitat designation already receives protection through the various regional Habitat Conservation Plans (HCPs) and areas proposed as revised critical habitat receive a significant level of baseline protection through various Federal and State regulations, in addition to avoidance, minimization and mitigation measures afforded by existing HCPs.

(2) All subunits except for one are currently known to be occupied by the species, and thus these areas will require consultation regardless of the designation due to the species being listed. In subunits without existing baseline protection (Subunit 1b), surveys are frequently undertaken to comply with the CEQA because all subunits contain vernal pools or seasonally ponded habitats.

(3) Additionally, we recognize project modifications necessary to avoid a determination of adverse modification of critical habitat under section 7 of the Act may be different from the measures necessary to avoid a jeopardy determination for the species. However, at this point in time, we do not know what these specific project modifications are likely to be. We are seeking public comments to provide information on what the additional project modifications associated with an adverse modification analysis might represent.

(4) Little development activity is forecasted within the proposed revised critical habitat units. Twenty-four of the

25 subunits contain some privately owned land; however, a major portion of proposed revised critical habitat falls within existing HCP habitat preserves, or other conservation areas. Furthermore, many of the privately owned acres are already set aside for mitigation.

We also do not anticipate designation of revised critical habitat to result in any appreciable incremental economic benefits. Any economic benefits related to conservation efforts would flow from the listing of the species, rather than the designation of critical habitat, and would fall within the economic baseline. The analysis also addresses the distribution of impacts associated with the designation, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation efforts on small entities and the energy industry.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed revised rule and our amended required determinations. We may revise the proposal or supporting documents to incorporate or address information we receive during the public comment periods. In particular, we may exclude an area from revised critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided that exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our June 1, 2011, proposed revised rule (76 FR 33880), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for Riverside fairy shrimp would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development, transportation, and other human activities, which include habitat management and livestock grazing. In order to determine whether it is appropriate for our agency to certify that this proposed revised rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually (for example, ''small business,'' ''small governmental jurisdiction,'' and ''small organization''). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the RFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Revised critical habitat designation will not affect activities that do not have any Federal involvement; designation of revised critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed revised critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation efforts related to the proposed critical habitat for Riverside fairy shrimp. The analysis is based on the estimated impacts associated with the proposed rulemaking as described in Chapters 4, 5, and Appendix A of the DEA, and evaluates the potential for economic impacts related to activity categories including residential development, transportation, and other human activities, including habitat management, livestock grazing and

water management, as well as impacts to the energy industry (IEC 2011, pp. 4–1 to 6–6; pp. A–1 to A–7).

As described in Chapters 4 and 5 of the DEA, estimated incremental impacts consist primarily of administrative costs and time delays associated with section 7 consultation and CEQA review. The Service and the action agency are the only entities with direct compliance costs associated with this proposed critical habitat designation, although small entities may participate in section 7 consultation as a third party. It is, therefore, possible that the small entities may spend additional time considering critical habitat during section 7 consultation for the Riverside fairy shrimp. The DEA indicates that the incremental impacts potentially incurred by small entities are limited to development activities.

In the DEA, to understand the potential impacts on small entities attributable to development activities, we conservatively assumed that all of the private owners of developable lands affected by proposed revised critical habitat designation are developers. We estimated that a total of 34.2 development projects may be affected by the proposed revised critical habitat designation, or 1.42 projects per year. Costs per project range from $5,000 where incremental costs are limited to the additional cost of considering adverse modification during a section 7 consultation, to $1.07 million where additional effort to comply with CEQA may be required and time delays occur in areas with the highest land values. Because we are unable to identify the specific entities affected, the impact relative to those entities' annual revenues or profits is unknown. Assuming that the entities are small land subdividers with annual revenues less than $7 million, the high-end impacts represent approximately 15.2 percent of annual revenues. Of the total number of entities engaged in land subdivision and residential, commercial, industrial and institutional construction, 97 percent are small entities. Provided the assumptions that development activity occurs at a constant pace throughout the timeframe of the analysis, and each project is undertaken by a separate entity, we estimated that approximately two to three developers may be affected by the proposed revised critical habitat designation each year. Conservatively assuming that costs are borne by current landowners, and all landowners are land subdividers or construction firms, less than 3 percent or 1 percent, respectively, of all small entities in these sectors would be affected when the final rule is published (IEC 2011, p. A–5).

Our analysis constitutes an evaluation of not only potentially directly affected parties, but those also potentially indirectly affected. Under the RFA and following recent case law, we are only required to evaluate the direct effects of a regulation to determine compliance. Since the regulatory effect of critical habitat is through section 7 of the Act, which applies only to Federal agencies, we have determined that only Federal agencies are directly affected by this rulemaking. Other entities, such as small businesses, are only indirectly affected. However, to better understand the potential effects of a designation of critical habitat, we frequently evaluate the potential impact to those entities that may be indirectly affected, as was the case for this rulemaking. In doing so, we focus on the specific areas being designated as critical habitat and compare the number of small business entities potentially affected in that area with other small business entities in the regional area, versus comparing the entities in the area of designation with entities nationally—which is more commonly done. This analysis results in an estimation of a higher number of small businesses potentially affected. In this rulemaking, we calculate that less than 3 percent or 1 percent (assuming that all landowners are land subdividers or construction firms), respectively, of all small entities in the area would be affected when the final rule is published. If we were to calculate that value based on the proportion nationally, then our estimate would be significantly lower than 1 percent. Following our evaluation of potential effects to small business entities from this rulemaking, we do not believe that the small businesses in the affected sector represent a substantial number.

The DEA also concludes that none of the government entities with which the Service might consult on Riverside fairy shrimp for transportation or habitat management activities meet the definitions of small as defined by the Small Business Act (SBA) (IEC 2011, p. A–6); therefore, impacts to small government entities due to transportation and habitat management activities are not anticipated. A review of the consultation history for Riverside fairy shrimp suggests future section 7 consultations on livestock grazing (for example, ranching operations) and water management are unlikely, and as a result are not anticipated to be affected by the proposed rule (IEC 2011, pp. A–6 to A–7).

In summary, we have considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities and the energy industry. Information for this analysis was gathered from the Small Business Administration, stakeholders, and from Service files. We determine that less than three percent of land subdividers or one percent of construction firms engaged in development activity within the area proposed for designation would be affected if the final rule is published as proposed (IEC 2011, p. A–5). For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff from the Carlsbad Fish and Wildlife Office, Pacific Southwest Region, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 22, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Notices

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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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Hawaii Advisory Committee (Committee) to the Commission will meet on Wednesday, March 14, 2012. The meeting will begin at 1 p.m. and adjourn on or about 3 p.m. The purpose of the meeting is to plan future Committee activities. The meeting will be held at the Aina Haina Public Library, 5246 Kalanianaole Highway, Honolulu, HI 96821.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by Monday, April 16, 2012. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Office Manager, Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *atrevino@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Western Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 25, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–4940 Filed 2–29–12; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, March 9, 2012; 9:30 a.m. EST.

PLACE: 624 Ninth Street NW., Room 540, Washington, DC 20425.

MEETING AGENDA This meeting is open to the public.

I. Approval of Agenda

II. Approval of the February 3, 2012 Meeting Minutes

III. Program Planning Update and Discussion of Projects:

- VRA Statutory Enforcement Report Update
- Human Trafficking Briefing Update
- Immigration Briefing Update. Discussion of potential field briefing.
- Discussion on 2013 Statutory Report Selection Process

IV. Management and Operations

- Staff Director's report
- Chief of Regional Programs' report
- Discussion on Agency Staffing

V. State Advisory Committee Issues:

- Review of two Hawaii SAC applicants
- Re-chartering the Indiana SAC
- Re-chartering the District of Columbia SAC
- Re-chartering the Utah SAC
- Re-chartering the Maine SAC
- Re-chartering the Nevada SAC

VI. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: February 28, 2012.

Kimberly Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2012–5112 Filed 2–28–12; 2:00 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review

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

SUMMARY: On October 28, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the second administrative review of the antidumping duty order [1] on steel wire garment hangers from the People's Republic of China (''PRC'').[2] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. We continue to find that certain exporters have sold subject merchandise at less than normal value during the period of review (''POR''), October 1, 2009, through September 30, 2010.

DATES: *Effective Date:* March 1, 2012.

FOR FURTHER INFORMATION CONTACT: Bob Palmer, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

[1] *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers From the People's Republic of China,* 73 FR 58111 (October 6, 2008).

[2] *See Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review,* 76 FR 66903 (October 28, 2011) (''*Preliminary Results*'').

Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–9068.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2011, the Department published in the **Federal Register** the *Preliminary Results* of this administrative review. On November 17, 2011, Fabriclean Supply Inc. (''Fabriclean''), a U.S. importer, submitted additional surrogate value (''SV'') information.

On November 28, 2011, Petitioner,[3] Shanghai Wells Hanger Co., Ltd.[4] (''Shanghai Wells''), and Fabriclean filed case briefs. On December 5, 2011, Petitioner filed a rebuttal brief. The Department did not hold a public hearing pursuant to 19 CFR 351.310(d), as no interested party requested one.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Steel Wire Garment Hangers from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Second Antidumping Duty Administrative Review,'' which is dated concurrently with this notice (''Decision Memo''). A list of the issues which parties raised and to which we respond in the Decision Memo is attached to this notice as an Appendix. The Decision Memo is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU''), Main Commerce Building, Room 7046. In addition, a complete version of the Decision Memo can be accessed directly on the Internet at *http://www.trade.gov/ia.* The paper copy and electronic versions of the Decision Memo are identical in content.

Final Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), the Department preliminarily rescinded the review, in part, with respect to Ningbo Dasheng Hanger Ind. Co., Ltd.; Shangyu Baoxiang Metal Manufactured Co., Ltd.; Shaoxing Andrew Metal Manufactured; Shaoxing Shunji Metal Clotheshorse Co., Ltd.; Shaoxing Gangyuan Metal Manufacture; Shaoxing Tongzhou Metal Manufactured Co., Ltd.; Shaoxing Zhongbao Metal Manufactured Co., Ltd.;[5] and Zhejiang Lucky Cloud Hanger Co., Ltd.[6] Because the Department did not receive any information to the contrary, we continue to find that these companies did not make any shipments during the POR. Thus, for these final results, we are rescinding this review, in part, with respect to the eight above-named companies, in accordance with 19 CFR 351.213(d)(3).

Changes Since the Preliminary Results

Based on comments received from parties regarding our *Preliminary Results,* we have made changes to the surrogate financial ratio calculations, the labor surrogate value (''SV''), and the dumping margin calculation for Shanghai Wells in the final results.[7] We have also corrected an error contained in the *Preliminary Results* as alleged by Shanghai Wells.[8]

Scope of the Order

The merchandise subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7326.20.0020, 7323.99.9060, and 7323.99.9080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.[9] In our *Preliminary Results,* we determined that Shanghai Wells met the criteria for separate rate status.[10] We did not receive any information after the issuance of the *Preliminary Results* that provides a basis for the reconsideration of our preliminary separate rate determination. Therefore, the Department continues to find that Shanghai Wells meets the criteria for a separate rate.

Additionally, as stated in the *Preliminary Results,* because Jiaxing Boyi Medical Device Co. (''Jiaxing Boyi''); Pu Jiang County Command Metal Products Co., Ltd. (''Command Metal Products''); Shaoxing Guochao Metal Products Co., Ltd. (''Guochao Metal Products''); Shaoxing Liangbao Metal Manufactured Co., Ltd. (''Shaoxing Liangbao''); Shaoxing Meideli Metal Hanger Co., Ltd. (''Meideli''); and Yiwu Ao-Si Metal Products Co., Ltd. (''Yiwu'') did not participate in this administrative review, we preliminarily assigned to Jiaxing Boyi, Command Metal Products, Guochao Metal Products, Shaoxing Liangbao, Meideli, and Yiwu total adverse facts available.[11] We further stated that, because of their termination of participation from this proceeding, we did not grant these six companies a separate rate and considered them part of the PRC-wide entity.[12] Because we

[3] M&B Metal Products Co., Inc. (''Petitioner'').

[4] In the first administrative review, the Department found that Shanghai Wells, Hong Kong Wells Limited (''HK Wells'') and Hong Kong Wells Limited (USA) (''USA Wells'') (collectively, ''Wells Group'') are affiliated and that Shanghai Wells and HK Wells comprise a single entity. Because there were no changes from the previous review, we continue to find Shanghai Wells, HK Wells, and USA Wells are affiliated and that Shanghai Wells and HK Wells comprise a single entity. *See Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review,* 75 FR 68758, 68761 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994, 27996 (May 13, 2011) (''*AR 1 Hangers*'').

[5] *See* Decision Memo at Comment 2.

[6] *See Preliminary Results,* 76 FR at 66904.

[7] *See* Decision Memo at Comments 4 and 5; *see also* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: ''Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Final Results,'' dated concurrently with this notice.

[8] *See* Decision Memo at Comments 6; *see also* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: ''Program Analysis for the Final Results of Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Shanghai Wells Hanger Co., Ltd.,'' dated concurrently with this notice.

[9] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53080 (September 8, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

[10] *See Preliminary Results,* 76 FR at 66906.

[11] *See Preliminary Results,* 76 FR at 66906–08.

[12] *Id.*

have not received any information after the *Preliminary Results* that provides a basis for a reconsideration of that finding, we continue to find that these six companies are not eligible for a separate rate for these final results and are part of and subject to the PRC-wide entity rate.[13]

PRC–Wide Rate and PRC-Wide Entity

In the *Preliminary Results,* the Department used the highest rate assigned in any segment of this proceeding (*i.e.,* 187.25 percent) as the PRC-wide rate for the current review.[14] In the *Preliminary Results,* for purposes of corroboration, the Department found that margin is both reliable and relevant.[15] No information has been presented in the current review that calls into question the reliability of this information and we find it appropriate to continue to apply the PRC-wide rate of 187.25 percent for the final results.[16]

Final Results of Review

The final weighted-average dumping margins for the POR are as follows:

Exporter	Weighted-average margin (%)
Shanghai Wells Hanger Co., Ltd. and/or Hong Kong Wells Limited[17]	0.72
PRC–Wide Entity[18]	187.25

Assessment

Pursuant to 19CFR 351.212(b)(1), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purpose, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. *See* 19 CFR 351.212(b)(1). Where appropriate, we calculated an ad valorem rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer's (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (''the Act''): (1) For the exporters listed above, the cash deposit rate will be established by the final results of this review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate established in the final results of this review (*i.e.,* 187.25 percent); and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 23, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Decision Memorandum

General Issues

Comment 1: Zeroing

Comment 2: Whether to Rescind the Review with Respect to Zhongbao

Comment 3: Adverse Facts Available for Non-Responsive Companies

Surrogate Values

Comment 4: Selection of Surrogate Financial Statements

Comment 5: Proper Inflator for Labor Surrogate Value

Company-Specific Issue

Comment 6: Correct Importer Name

[FR Doc. 2012–4875 Filed 2–29–12; 8:45 a.m.]

BILLING CODE 3510–DS–P

[13] *See* Decision Memo at 3.

[14] *See Preliminary Results,* 76 FR at 66907, 66908; *accord AR 1 Hangers,* 76 FR at 27997.

[15] *See Preliminary Results,* 76 FR at 66307, 66308.

[16] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 52049, 52051 (September 12, 2007).

[17] As stated above, Shanghai Wells and HK Wells comprise a single entity. *See AR 1 Hangers,* 76 FR at 27997 n.10.

[18] The PRC-wide entity includes Jiaxing Boyi Medical Device Co.; Shaoxing Liangbao Metal Manufactured Co., Ltd.; Pu Jiang County Command Metal Products Co., Ltd.; Shaoxing Guochao Metal Products Co., Ltd.; Yiwu Ao-Si Metal Products Co., Ltd.; and Shaoxing Meideli Metal Hanger Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review

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

SUMMARY: On September 12, 2011, the Department of Commerce (''Department'') published the preliminary results of the second administrative review of the antidumping duty order on certain steel nails (''steel nails'') from the People's Republic of China (''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results of this review. The final weighted-average margins are listed below in the ''Final Results of the Review'' section of this notice. The period of review (''POR'') is August 1, 2009, through July 31, 2010.

DATES: *Effective Date:* March 1, 2012.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, Javier Barrientos, or Ricardo Martinez Rivera, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3927, (202) 482–2243, or (202) 482–4532, respectively.

Case History

On September 12, 2011, the Department published in the **Federal Register** the *Preliminary Results.* Thereafter, on September 12, and 14, 2011, we issued questionnaires directly to unaffiliated suppliers in order to obtain certain factors of production (''FOP'') data. Between October 11, 2011, and November 9, 2011, we received case and rebuttal briefs from the petitioner,[2] the mandatory respondents,[3] and other interested parties[4] in this administrative review. On December 5, 2011, the Department rescinded the new shipper review aligned with this administrative review.[5] Between January 12, 2012, and February 1, 2012, counsel for certain interested parties met with Department officials to discuss issues raised in their case and rebuttal briefs.[6] On December 7, 2011, the Department extended the final results to February 9, 2012.[7] On February 7, 2012, the Department extended the final results to February 23, 2012.[8]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the ''Certain Steel Nails from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Second Antidumping Duty Administrative Review,'' dated concurrently with this notice (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues which parties raised is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU'') of the main Commerce Building, Room 7046. In addition, a complete version of the Issues and Decision Memorandum is accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Partial Rescission of Administrative Review

In the *Preliminary Results,* the Department announced its intent to rescind the review with respect to certain companies[9] that certified they made no shipments of subject merchandise during the POR.[10] For the final results, we continue to find that these companies did not make shipments during the POR. Thus, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,[11] we are rescinding this review with respect to these companies.

Changes Since the Preliminary Results

Based on a review of the record, as well as comments received from parties

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[1] *See Certain Steel Nails From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review and Preliminary Intent To Rescind New Shipper Review,* 76 FR 56147 (September 12, 2011) (''*Preliminary Results*'').

[2] Mid Continent Nail Corporation (''Petitioner'').

[3] The Stanley Works (Langfang) Fastening Systems Co., Ltd. (''Stanley (Langfang)'') and Stanley Black & Decker, Inc. (''The Stanley Works'')/Stanley Fastening Systems, LP (collectively ''Stanley''); Tianjin Jinchi Metal Products Co., Ltd. (''Jinchi''); and Tianjin Jinghai County Hongli Industry & Business Co. (''Hongli'').

[4] Zhejiang Gem-Chun Hardware Accessory Co., Ltd. Additionally, the following companies filed combined case briefs with two of the mandatory respondents, Jinchi and Hongli: Itochu Building Products Co., Inc., Certified Products International Inc., Chiieh Yungs Metal Ind. Corp., Huanghua Jinhai Hardware Products Co., Ltd., Co., Ltd., Shangdong Dinglong Import & Export Co., Ltd., Tianjin Zhonglian Metals Ware Co., Ltd., Hengshui Mingyao Hardware & Mesh Products Co., Ltd., Huanghua Xionghua Hardware Products Co., Ltd., Shanghai Jade Shuttle Hardware Tools Co., Ltd., Shanghai Yueda Nails Industry Co., Ltd., Shanxi Tianli Industries Co., Ltd., China Staple Enterprise (Tianjin) Co., Ltd., Qidong Liang Chyuan Metal Industry Co., Ltd., Romp (Tianjin) Hardware Co., Ltd., CYM (Nanjing) Ningquan Nail Manufacture Co., Ltd. a.k.a. CYM (Nanjing), Nail Manufacture Co., Ltd., Shanxi Pioneer Hardware Industrial Co., Ltd. and Mingguang Abundant Hardware Productions Co., Ltd.

[5] *See Certain Steel Nails from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Review,* 76 FR 75871 (December 5, 2011).

[6] *See* Memorandum to the File, From Alexis Polovina, Senior Case Analyst, 2nd Administrative Review of Certain Steel Nails from the People's Republic of China: *Ex Parte* Meeting with Counsel to Petitioner, dated January 13, 2012; Memorandum to the File, From Alexis Polovina, Senior Case Analyst, 2nd Administrative Review of Certain Steel Nails from the People's Republic of China: Meeting with Counsel, dated January 17, 2012; Memorandum to the File, From Alexis Polovina, Senior case Analyst, 2nd Administrative Review of Certain Steel Nails form the People's Republic of China: *Ex Parte* Meeting with Counsel to Respondent, dated January 20, 2012; and Memorandum to the File, From Alexis Polovina, Senior Case Analyst, 2nd Administrative Review of Certain Steel Nails from the People's Republic of China: *Ex Parte* Meeting with Interested Parties, dated February 6, 2012.

[7] *See Certain Steel Nails From the People's Republic of China: Extension of Time Limit for the Final Results of the Second Antidumping Duty Administrative Review* 76 FR 77205 (December 7, 2011).

[8] *See Certain Steel Nails From the People's Republic of China: Extension of Time Limit for the Final Results of the Second Antidumping Duty Administrative Review,* 77 FR 8808 (February 15, 2012).

[9] Those companies are: (1) Beijing Hongsheng Metal Co., Ltd.; (2) Besco Machinery Industry (Zhejiang) Co., Ltd.; (3) Certified Products International Inc. (''CPI''); (4) Chiieh Yung Metal Ind. Corp.; (5) China Staple Enterprise (Tianjin) Co., Ltd.; (6) CYM (Nanjing) Nail Manufacture Co., Ltd.; (7) Jining Huarong Hardware Products Co., Ltd.; (8) Nanjing Yuechang Hardware Products Co., Ltd.; (9) PT Enterprise Inc.; (10) Qidong Liang Chyuan Metal Industry Co., Ltd.; (11) Shanghai Tengyu Hardware Tools Co., Ltd.; (12) Shanxi Yuci Broad Wire Products Co., Ltd.; and (13) Zhejiang Gem-Chun Hardware Accessory Co., Ltd.; (collectively, the ''No Shipment Respondents'').

[10] *See Preliminary Results,* 75 FR at 56071–56072; *see also* Memorandum to James C. Doyle, Office 9 Director, through Alex Villanueva, Office 9 Program Manager, from Matthew Renkey, Senior Case Analyst and Emeka Chukwudebe, Case Analyst, First Antidumping Duty Administrative Review of Certain Steel Nails from the Peoples' Republic of China (''PRC''): Partial Rescission of the First Antidumping Duty Administrative Review, dated September 7, 2010.

[11] *See, e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15480 (March 24, 2008).

regarding our *Preliminary Results,* we have made certain changes to the margin calculations. Specifically, we have applied partial adverse facts available (''AFA'') to one respondent, Jinchi, as well as changed several surrogate values used in the *Preliminary Results.* For all changes to the calculations, *see* the Issues and Decision Memorandum and company-specific analysis memoranda. For changes to the surrogate values, *see* ''Memorandum to the File, through Matthew Renkey, Acting Program Manager, AC/CVD Operations, Office 9, from Ricardo Martinez, case analyst, AD/CVD Operations, Office 9, Second Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Final Results,'' dated concurrently with this notice.

Scope of the Order

The merchandise covered by this order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times), phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope of this order are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: (1) Non-collated (*i.e.,* hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; and an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive; (2) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; (3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; and (4) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive.

Also excluded from the scope of this order are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of this order are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of this order are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of this order are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of this order are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy (''NME'') country.[12] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this review. Therefore, the Department continues to treat the PRC as an NME country for purposes of these final results.

Surrogate Country

In the *Preliminary Results,* the Department stated that it selected India as the appropriate surrogate country to use in this administrative review for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a comparable level of economic development pursuant to section 773(c)(4) of the Act; and (3) the Department has reliable data from India that it can use to value the factors of production. As no party submitted additional comments challenging our selection of the primary surrogate country, we are continuing to use India as the surrogate country for the final results of this administrative review.

Separate Rates

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise 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.[13]

In the *Preliminary Results,* we determined that in addition to the mandatory respondents, the Separate Rate Applicants[14] also met the criteria

[12] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[13] *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[14] These companies include: (1) Dezhou Hualude Hardware Products Co., Ltd.; (2) Hengshui Mingyao

Continued

for separate-rate status. No party challenged these preliminary separate rate findings, we therefore continue to find that mandatory respondents and Separate Rate Applicants met the criteria for separate rate status. The margin assigned to the Separate Rate Applicants is based on the estimated weighted-average antidumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on AFA.[15]

PRC-Wide Rate and PRC-Wide Entity

In the *Preliminary Results,* because reviews were requested for several companies that failed to demonstrate that they operate free of government control, the Department determined that these companies were part of the PRC-wide entity. In the most recently completed review, we assigned a rate of 118.04 percent to the PRC-wide entity. Since the *Preliminary Results,* none of the companies that did not file separate rate applications or certifications submitted comments regarding these findings of government control. Therefore, we are assigning these companies the PRC-wide rate of 118.04 percent assigned to the PRC-wide entity in the most recently completed administrative review of this antidumping order.[16] The Department is applying a single antidumping rate, *i.e.,* the PRC-wide rate of 118.04 percent, to all other exporters of subject merchandise from the PRC because only the mandatory respondents and Separate-Rate Applicants have overcome that presumption that they are not part of the PRC-wide entity. The PRC-wide rate applies to all entries of the merchandise under consideration, except for those from companies which have received a separate rate.

Final Results of the Review

The weighted-average dumping margins for the POR are as follows:

Exporter	Weighted average margin (percent)
(1) The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc./Stanley Fastening Systems, LP	3.80
(2) Tianjin Jinghai County Hongli Industry & Business Co.	47.76
(3) Tianjin Jinchi Metal Products Co., Ltd.	78.27
(4) Dezhou Hualude Hardware Products Co., Ltd.	19.30
(5) Hengshui Mingyao Hardware & Mesh Products Co., Ltd.	19.30
(6) Huanghua Jinhai Hardware Products Co., Ltd.	19.30
(7) Huanghua Xionghua Hardware Products Co., Ltd.	19.30
(8) Koram Panagene Co., Ltd.	19.30
(9) Qingdao D & L Group Ltd.Co., Ltd.	19.30
(10) Romp (Tianjin) Hardware Co., Ltd.	19.30
(11) Shandong Dinglong Import & Export Co., Ltd.	19.30
(12) Shanghai Curvet Hardware Products Co., Ltd.	19.30
(13) Shanghai Jade Shuttle Hardware Tools Co., Ltd.	19.30
(14) Shanghai Yueda Nails Industry Co., Ltd.	19.30
(15) Shanxi Tianli Industries Co., Ltd.	19.30
(16) Tianjin Lianda Group Co., Ltd.	19.30
(17) Tianjin Universal Machinery Imp & Exp Corporation	19.30
(18) Tianjin Zhonglian Metals Ware Co., Ltd.	19.30
(19) PRC-wide Entity	118.04

Those companies not eligible for a separate rate will be considered part of the PRC-wide entity:[17] [18]

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party

Hardware & Mesh Products Co., Ltd.; (3) Huanghua Jinhai Hardware Products Co., Ltd.; (4) Huanghua Xionghua Hardware Products Co., Ltd.; (5) Koram Panagene Co., Ltd.; (6) Qingdao D & L Group Ltd.; (7) Romp (Tianjin) Hardware Co., Ltd.; (8) Shandong Dinglong Import & Export Co., Ltd.; (9) Shanghai Curvet Hardware Products Co., Ltd.; (10) Shanghai Jade Shuttle Hardware Tools Co., Ltd.; (11) Shanghai Yueda Nails Industry Co., Ltd.; (12) Shanxi Tianli Industries Co., Ltd.; (13) Tianjin Lianda Group Co., Ltd.; (14) Tianjin Universal Machinery Imp & Exp Corporation; and (15) Tianjin Zhonglian Metals Ware Co., Ltd., (collectively, ''Separate Rate Applicants'').

[15] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 52273, 52275 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6.

[16] *See Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Administrative Review,* 76 FR 16379, 16382 (March 23, 2011).

[17] These companies include: (1) Aironware (Shanghai) Co., Ltd.; (2) Beijing Daruixing Global Trading Co., Ltd.; (3) Beijing Daruixing Nail Products Co., Ltd.; (4) Beijing Hong Sheng Metal Products Co., Ltd.; (5) Beijing Tri-Metal Co., Ltd.; (6) China Silk Trading & Logistics Co., Ltd.; (7) Chongqing Hybest Tools Group Co., Ltd.; (8) Faithful Engineering Products Co., Ltd.; (9) Handuk Industrial Co., Ltd.; (10) Hong Kong Yu Xi Co., Ltd.; (11) Huanghua Huarong Hardware Products Co., Ltd.; (12) Jinding Metal Products Ltd.; (13) Kyung Dong Corp.; (14) Nanjing Dayu Pneumatic Gun Nails Co., Ltd.; (15) Rizhao Handuck Fasteners Co., Ltd.; (16) Senco-Xingya Metal Products (Taicang) Co., Ltd.; (17) Shandong Minmetals Co., Ltd.; (18) Shanghai Chengkai Hardware Product Co., Ltd.; (19) Shanghai Seti Enterprise International Co., Ltd.; (20) Shanxi Tianli Enterprise Co., Ltd.; (21) Shouguang Meiqing Nail Industry Co., Ltd.; (22) Sinochem Tianjin Imp & Exp Shenzhen Corp.; (23) Superior International Australia Pty Ltd.; (24) Suzhou Xingya Nail Co., Ltd.; (25) Tianjin Jurun Metal Products Co., Ltd.; (26) Wintime Import & Export Corporation Limited of Zhongshan; (27) Wuxi Qiangye Metalwork Production Co., Ltd.; (28) Xuzhou CIP International Group Co., Ltd.; (29) Yitian Nanjing Hardware Co., Ltd.; and (30) Zhongshan Junlong Nail Manufactures Co., Ltd.

[18] In the *Preliminary Results,* the Department also identified four companies with the above group: Cana (Tianjin) Hardware Ind., Co., Ltd.; Huanghua Jinhai Metal Products Co., Ltd.; Qingdao Jisco Co., Ltd., and Tianjin Baisheng Metal Products Co., Ltd. However, the review was rescinded for these four companies. These four companies do not have separate rates. *See Certain Steel Nails from the Peoples' Republic of China: Notice of Extension of Time Limits and Partial Rescission of the Second Antidumping Duty Administrative Review,* 76 FR 23788 (April 28, 2011). Therefore, the Department intends to issue liquidation instructions for the PRC-wide entity 15 days after publication of the final results of this review. *Id.*

by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Stanley, Hongli, Jinchi, and the Separate Rate Applicants, the cash deposit rate will be their respective rates established in the final results of this review, except if the rate is zero or de minimis no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 118.04 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 23, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

General Issues

Comment 1: Zeroing
Comment 2: Surrogate Financial Ratios
Comment 3: Wire Rod Surrogate Value
Comment 4: Cash Deposit and Liquidation Instructions

Company-Specific Issues

Stanley

Comment 5: Application of Partial FA or Partial AFA
Comment 6: Stanley's Surrogate Values
A. Copper Plated Steel Welding Wire
B. Sodium Sulfate
C. Glass Balls
D. Plastic Film
E. Plastic Strapping
Comment 7: Foreign Inland Freight

Hongli

Comment 8: Application of Partial FA or Partial AFA
Comment 9: Steel Plate Surrogate Value
Comment 10: Shrink Wrap Surrogate Value
Comment 11: Pallet Surrogate Value

Jinchi

Comment 12: Application of Partial FA or Partial AFA
Comment 13: Saw Dust
Comment 14: Sigma Cap Distances

Gem-Chun

Comment 15: No Shipments

[FR Doc. 2012–4877 Filed 2–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Brenda E. 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.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO

applications on the date of publication of the initiation notice, or as soon thereafter as possible. 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 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 to19 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 March 2012, 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.

The Department is providing this notice on its Web site, as well as in its ''Opportunity To Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request a Review: Not later than the last day of March 2012,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period of review
Antidumping Duty Proceedings	
Brazil: Orange Juice, A–351–840	3/1/11–2/29/12
Canada: Iron Construction Castings, A–122–503	3/1/11–2/29/12
France: Brass Sheet & Strip, A–427–602	3/1/11–2/29/12
Germany: Brass Sheet & Strip, A–428–602	3/1/11–2/29/12
India: Sulfanilic Acid, A–533–806	3/1/11–2/29/12
Italy: Brass Sheet & Strip, A–475–601	3/1/11–2/29/12
Russia: Silicon Metal, A–821–817	3/1/11–2/29/12
Spain: Stainless Steel Bar, A–469–805	3/1/11–2/29/12
Taiwan:	
Light-Walled Rectangular Welded Carbon Steel Pipe and Tube, A–583–803	3/1/11–2/29/12
Polyvinyl Alcohol, A–583–841	9/13/11–2/29/12
Thailand: Circular Welded Carbon Steel Pipe & Tube, A–549–502	3/1/11–2/29/12
The People's Republic of China:	
Circular Welded Austenitic Stainless Pressure Pipe, A–570–930	3/1/11–2/29/12
Chloropicrin, A–570–002	3/1/11–2/29/12
Drill Pipe[2], A–570–965	3/3/11–2/29/12
Glycine, A–570–836	3/1/11–2/29/12
Sodium Hexametaphosphate, A–570–908	3/1/11–2/29/12
Tissue Paper Products, A–570–894	3/1/11–2/29/12
Countervailing Duty Proceedings	
India: Sulfanilic Acid, C–533–807	1/1/11–12/31/11
Iran: In-Shell Pistachios Nuts, C–507–501	1/1/11–12/31/11
The People's Republic of China:	
Circular Welded Austenitic Stainless Pressure Pipe, C–570–931	1/1/11–12/31/11
Drill Pipe, C–570–966	3/3/11–12/31/11
Turkey: Welded Carbon Steel Pipe and Tube, C–489–502	1/1/11–12/31/11

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration web site at *http://ia.ita.doc.gov*.

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov*. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of March 2012. If the Department does not receive, by the last day of March 2012, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

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.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 15, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–5015 Filed 2–29–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for April 2012

The following Sunset Reviews are scheduled for initiation in April 2012 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping duty proceedings	Department contact
Folding Gift Boxes From the People's Republic of China (A–570–866) (2nd Review)	Jennifer Moats (202) 482–5047.
Seamless Pipe and Pressure Pipe From Germany (A–428–820) (3rd Review)	Dana Mermelstein (202) 482–1391.

[2] In the notice of opportunity to request administrative reviews that published on February 1, 2012 (77 FR 4990) the Department incorrectly listed Drill Pipe from the PRC in the month of February. This is the correct month of review for this case.

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Countervailing Duty Proceedings

No Sunset Review of suspended investigations is scheduled for initiation in April 2012.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in April 2012.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 8, 2012

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–5012 Filed 2–29–12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 10–2A001]

Export Trade Certificate of Review

ACTION: Notice of Application (10–2A001) to Amend the Export Trade Certificate of Review Issued to Alaska Longline Cod Commission (''ALCC''), Application no. 10–2A001.

SUMMARY: The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 10–2A001.''

ALCC's original Certificate was issued on May 13, 2010 (75 FR 29514, May 26, 2010). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Alaska Longline Cod Commission (''ALCC''), 271 Wyatt Way NE., Suite 106, Bainbridge Island, WA 98110.

Contact: Duncan R. McIntosh, Attorney, Telephone: (206) 624–5950.

Application No.: 10–2A001.

Date Deemed Submitted: February 14, 2012.

Proposed Amendment: ALCC seeks to amend its Certificate to:

1. Add the following company as new Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Coastal Villages Longline, LCC, #711 H Street, #200, Anchorage, AK 99501.

Dated: February 24, 2012.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2012–4917 Filed 2–29–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* March 1, 2012.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998), and in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

DOC case No.	ITC case No.	Country	Product	Department contact
A–570–904	731–TA–1103	China	Activated Carbon (1st Review)	Jennifer Moats, (202) 482–5047.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an AD/CVD 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 AD/CVD investigations or 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) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: February 27, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–5010 Filed 2–29–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 120221142–2118–01]

Manufacturing Extension Partnership (MEP) Centers for South Dakota and Kentucky; Availability of Funds

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: NIST invites proposals from eligible proposers for funding projects to provide manufacturing extension services to primarily small- and medium-sized manufacturers in the United States. These projects will establish MEP centers in South Dakota and Kentucky.

DATES: All proposals, paper and electronic, must be received no later than 5 p.m. Eastern Time on April 30, 2012.

ADDRESSES: The standard application package may be obtained by contacting Diane Henderson, National Institute of Standards and Technology, Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, Gaithersburg, MD 20899–4800, phone 301–975–5105, or by downloading the application package through Grants.gov. Paper submissions should be sent to: Diane Henderson, National Institute of Standards and Technology, Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, Gaithersburg, MD 20899–4800. Electronic submissions should be submitted to *www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Administrative, budget, cost-sharing, and eligibility questions and other programmatic questions should be directed to Diane Henderson at Tel: (301) 975–5105; Email: *diane.henderson@nist.gov;* Fax: (301) 963–6556. Grants Administration questions should be addressed to: Melinda Chukran, Grants and Agreements Management Division, National Institute of Standards and Technology, 100 Bureau Drive, Stop 1650, Gaithersburg, MD 20899–1650; Tel: (301) 975–5266. For assistance with using Grants.gov contact Christopher Hunton at Tel: (301) 975–5718; Email: *Christopher.hunton@nist.gov;* Fax: (301) 840–5976. All questions and responses will be posted on the MEP Web site, *www.nist.gov/mep.*

SUPPLEMENTARY INFORMATION:

Electronic access: Proposers are strongly encouraged to read the Federal Funding Opportunity (FFO) announcement available at *www.grants.gov* for complete information about this program, including all program requirements and instructions for applying by paper or electronically. The FFO may be found by searching under the Catalog of Federal Domestic Assistance Name and Number provided below.

Authority: 15 U.S.C. 278k, as implemented in 15 CFR part 290.

Catalog of Federal Domestic Assistance Name and Number: Manufacturing Extension Partnership—11.611.

Information Session: NIST MEP will hold an information session for organizations considering applying to this opportunity. An information session in the form of a webinar will be held approximately 14 business days after publication of this notice in the **Federal Register**. The exact date and time of the webinar will be posted on the MEP Web site at *www.nist.gov/mep.* Organizations wishing to participate in the webinar must sign up by contacting Diane Henderson at *diane.henderson@nist.gov.*

Program Description: NIST invites proposals from eligible proposers for funding two (2) separate MEP centers to provide manufacturing extension services to primarily small- and medium-sized manufacturers in two separate locations, South Dakota and/or Kentucky. These MEP centers will become part of the MEP national system of extension service providers, currently comprised of more than 400 centers and field offices located throughout the United States and Puerto Rico.

The objective of an MEP center is to provide manufacturing extension services that enhance productivity, innovative capacity, and technological performance, and strengthen the global competitiveness of primarily small- and medium-sized U.S.-based manufacturing firms in its service region. Manufacturing extension services are provided by utilizing the most cost effective, local, leveraged resources for those services through the coordinated efforts of a regionally-based MEP center and local technology resources. The management and operational structure of an MEP center is not prescribed, but should be based upon the characteristics of the manufacturers in the region and locally available resources with demonstrated experience working with manufacturers.

It is not the intent of this program that the centers perform research and development.

Information regarding MEP and these centers is available at *www.nist.gov/mep.*

Funding Availability: Approximately $1,000,000 for new awards. NIST anticipates funding one (1) proposal at the level of up to $400,000 for an MEP Center in the state of South Dakota and one (1) proposal at the level of up to $600,000 for an MEP Center in the state of Kentucky. The projects awarded under this notice will have a budget and performance period of one (1) year. Each award may be renewed on an annual basis subject to the review requirements described in 15 CFR 290.8. Renewal of each project shall be at the sole discretion of NIST and shall be based upon satisfactory performance, priority of the need for the service, existing legislative authority, and availability of funds.

Cost Share Requirements: This Program requires a non-Federal cost share of at least 50 percent of the total project cost for the first year of operation. Any renewal funding of an award will require non-Federal cost sharing as follows:

Year of center operation	Maximum NIST share	Minimum non-federal share
1–3	½	½
4	⅖	⅗
5 and beyond	⅓	⅔

Non-Federal cost sharing is that portion of the project costs not borne by the Federal Government. The proposer's share of the MEP center expenses may include cash, services, and third party in-kind contributions, as described at 15 CFR 14.23 or 24.24, as applicable, and the MEP program rule, 15 CFR 290.4(c). No more than 50% of the proposer's total non-Federal cost share may be third party in-kind contributions of part-time personnel, equipment, software, rental value of centrally located space, and related contributions, per 15 CFR 290.4(c)(5). The source and detailed rationale of the cost share, including cash, full- and part-time personnel, and in-kind donations, must be documented in the budget submitted with the proposal and will be considered as part of the evaluation review.

All non-Federal cost share contributions require a letter of commitment signed by an authorized official from each source.

Any cost sharing must be in accordance with the ''cost sharing or matching'' provisions of 15 CFR part 14, *Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations* and 15 CFR part 24, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.*

As with the Federal share, any proposed costs included as non-Federal cost sharing must be an allowable/eligible cost under this Program and the following applicable Federal cost principles: (1) Institutions of Higher Education: 2 CFR part 220 (OMB Circular A–21); (2) Nonprofit

Organizations: 2 CFR part 230 (OMB Circular A–122); and (3) State, Local and Indian Tribal Governments: 2 CFR part 225.

As with the Federal share, any proposed non-Federal cost sharing will be made a part of the cooperative agreement award and will be subject to audit if the project receives MEP funding.

Eligibility: The eligibility requirements given in this section will be used in lieu of those published in the MEP regulations found at 15 CFR part 290, specifically 15 CFR 290.5(a)(1). Each award recipient must be a U.S.-based nonprofit institution or organization. For the purpose of this notice, nonprofit organizations include, but are not limited to, universities and state and local governments. An eligible organization may work individually or include proposed subawards or contracts with others in a project proposal, effectively forming a team. Existing MEP centers are eligible.

Proposal Requirements: Proposals must be submitted in accordance with the requirements set forth in the corresponding FFO announcement.

Evaluation Criteria: The evaluation criteria provided in this section will be used for this competition in lieu of that provided in the MEP regulations found at 15 CFR part 290, specifically 15 CFR 290.6 (*http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=8652afebd3b81ef821cdaba9a0b5197c&rgn=div5&view=text&node=15:1.2.2.10.13&idno=15*).

The proposals will be evaluated based on the evaluation criteria described below, which are set in the context of the proposer's ability to align the proposal for accomplishing the objectives of NIST MEP's Next Generation Strategy: Continuous Improvement, Technology Acceleration, Supplier Development, Sustainability and Workforce. The NIST MEP Next Generation Strategy can be found at *www.nist.gov/mep.*

The evaluation criteria that will be used in evaluating proposals are as follows:

1. *Identification of Target Firms in Proposed Region.* Does the proposal clearly address the entire service region, providing for a large enough population of target firms of small- and medium-sized manufacturers that the proposer understands and can serve, and which is not presently served by an existing Center?

a. *Market Analysis.* Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

b. *Geographical Location.* Physical size, concentration of industry, and economic significance of the service region's manufacturing base. Geographical diversity of the Center as compared to existing Centers will be a factor in evaluation of proposals.

2. *Technology Resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of technology to develop and transfer technologies related to NIST research results and expertise in the technical areas noted in the MEP regulations found at 15 CFR Part 290 as well as from other sources of technology research and development?

3. *Technology Delivery Mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers and mechanism(s) for accelerating the adoption of technologies for both process improvement and new product adoption?

a. *Linkages.* Development of effective partnerships or linkages to third parties such as industry, universities, nonprofit economic organizations, and state governments who will amplify the Center's technology delivery to reach a large number of clients in its service region.

b. *Program Leverage.* Provision of an effective strategy to amplify the Center's technology delivery approaches to achieve the proposed objectives as described in 15 CFR 290.3(e).

4. *Management and Financial Plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective Center?

a. *Organizational Structure.* Completeness and appropriateness of the organizational structure, and its focus on the mission of the Center. Assurance of local full-time top management of the Center. This includes a clearly presented Oversight Board structure with a membership representing small- and medium- sized manufacturers in the region. MEP has determined that centers clearly benefit when a majority or more of its Board members/Trustees compose a membership representing principally small and medium manufacturing as well as committed partners and do not have dual obligations to more than one Center. Two-thirds of the members of the Center's oversight board must not be members of any other MEP Center boards.

b. *Program Management.* Effectiveness of the planned methodology of program management. This includes committed local partners and demonstrated experience of the leadership team in manufacturing, outreach and partnership development.

c. *Internal Evaluation.* Effectiveness of the planned continuous internal evaluation of program activities. The proposal must provide the methodology for continuous internal evaluation of the program activities and demonstrate the effectiveness of defined methodology.

d. *Plans for Financial Cost Share.* Demonstrated stability and duration of the proposer's funding commitments. Identification of the sources of cost share and the general terms of funding commitments. The total level of cost share and detailed rationale of the cost share, including cash and in-kind, must be documented in the budget submitted with the proposal.

e. *Budget.* Suitability and focus of the proposer's detailed one-year budget and budget outline for years two (2) through five (5).

Each of these criteria will be given equal weight in the evaluation process.

Review and Selection Process: The review and selection process and selection factors provided in this section will be used for this competition in lieu of that provided in the MEP regulations found at 15 CFR part 290, specifically 15 CFR 290.6 and 290.7.

1. *Initial Administrative Review of Proposals.* An initial review of timely received proposals will be conducted to determine eligibility, completeness, and responsiveness to this notice and the scope of the stated program objectives. Proposals determined to be ineligible, incomplete, and/or non-responsive may be eliminated from further review.

2. *Full Review of Eligible, Complete, and Responsive Proposals.* Proposals that are determined to be eligible, complete, and responsive will proceed for full reviews in accordance with the review and selection processes below:

a. *Evaluation and Review.* NIST will appoint an evaluation panel, consisting of at least three technically qualified reviewers to evaluate each proposal based on the evaluation criteria listed above and assign a numeric score for each proposal. If more than one non-Federal employee reviewer is used on the panel, the panel member reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. Proposals with an average score of 70 or higher out of 100 will be deemed finalists.

b. *Site Visits.* Site visits may be required to make full evaluation of a

proposal that has been determined to be a finalist. If site visits are deemed necessary, all finalists will receive site visits conducted by the same evaluation panel reviewers referenced in the preceding paragraph. NIST may enter into negotiations with the finalists concerning any aspect of their proposal. Finalists will be reviewed, evaluated, and assigned numeric scores based on the evaluation criteria listed above.

c. *Ranking and Selection.* Based on the average of the panel member reviewers' scores, a rank order will be prepared and provided to the Selecting Official for further consideration. The Selecting Official, who is the Director of the NIST MEP Program, will then select funding recipients based upon the rank order and the following selection factors.

(1) The availability of Federal funds.

(2) The need to assure appropriate regional distribution.

(3) Whether the project duplicates other projects funded by DoC or by other Federal agencies.

(4) Proposer's performance under current or previous Federal financial assistance awards. Note: Proposals from existing or previous MEP centers or partners must contain specific information that addresses whether the proposer's past performance with the program is indicative of expected performance under a possible new award and describing how and why performance is expected to be the same or different.

NIST reserves the right to negotiate the budget costs with the proposers that have been selected to receive awards, which may include requesting that the proposer remove certain costs. Additionally, NIST may request that the proposer modify objectives or work plans and provide supplemental information required by the agency prior to award. NIST also reserves the right to reject a proposal where information is uncovered that raises a reasonable doubt as to the responsibility of the proposer. NIST may select part, some, all, or none of the proposals. The final approval of selected proposals and issuance of awards will be by the NIST Grants Officer. The award decisions of the NIST Grants Officer are final.

Unsuccessful proposers will be notified in writing. The Program will retain one copy of each unsuccessful proposal for three (3) years for record keeping purposes. The remaining copies will be destroyed. After three (3) years the remaining copy will be destroyed.

Administrative and National Policy Requirements

The Department of Commerce Pre-Award Notification Requirements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696), are applicable to this notice. Please refer to *http://www.gpo.gov/fdsys/pkg/FR-2008-02-11/pdf/E8-2482.pdf.*

Employer/Taxpayer Identification Number (EIN/TIN), Dun and Bradstreet Data Universal Numbering System (DUNS), and Central Contractor Registration (CCR): All proposers for Federal financial assistance are required to obtain a universal identifier in the form of DUNS number and maintain a current registration in the CCR database. On the form SF–424 items 8.b. and 8.c., the proposer's 9-digit EIN/TIN and 9-digit DUNS number must be consistent with the information on the CCR (*www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS number MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Confirm that the EIN/TIN and DUNS numbers are consistent with the information on the CCR and ASAP.

Per the requirements of 2 CFR part 25, each proposer must:

1. Be registered in the CCR before submitting a proposal;
2. Maintain an active CCR registration with current information at all times during which it has an active Federal award or a proposal under consideration by an agency; and
3. Provide its DUNS number in each application or proposal it submits to the agency.

See also the **Federal Register** notice published on September 14, 2010, at 75 FR 55671.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. MEP program-specific application requirements have been approved by OMB under Control Number 0693–0056.

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

Funding Availability and Limitation of Liability: Funding for the program listed in this notice is contingent upon the availability of appropriations. In no event with NIST or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of agency priorities. Publication of this notice does not oblige NIST or the Department of Commerce to award any specific project or to obligate any available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Proposals under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: February 24, 2012.

Phillip Singerman,

Associate Director for Innovation & Industry Services.

[FR Doc. 2012–4959 Filed 2–29–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Region Coral Reef Ecosystems Logbook and Reporting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 30, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275 or *Walter.Ikehara@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is an extension of a current information collection.

National Marine Fisheries Service (NMFS) requires United States (U.S.) fishing vessels registered for use with, or any U.S. citizen issued with, a Special Coral Reef Ecosystem Fishing Permit (authorized under the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region), to complete logbooks and submit them to NMFS. The information in the logbooks is used to obtain fish catch/fishing effort data on coral reef fishes and invertebrates harvested in designated low-use marine protected areas and on those listed in the regulations as potentially-harvested coral reef taxa in waters of the U.S. exclusive economic zone in the western Pacific region. These data are needed to determine the condition of the stocks and whether the current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to incidental takes of endangered and threatened marine animals. NMFS Fishery Management Plans are developed per Section 303 of the Magnuson-Stevens Fishery Conservation and Management Plan.

II. Method of Collection

Information is submitted to NMFS in the form of paper logbook sheets and paper transshipment forms within 30 days of each landing of coral reef harvest.

III. Data

OMB Control Number: 0648–0462.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 5.

Estimated Time per Response: Pre-trip and pre-landing notifications, 3 minutes; logbook reports, 30 minutes; transshipment reports, 15 minutes.

Estimated Total Annual Burden Hours: 382.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–4938 Filed 2–29–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Submission of Conservation Efforts To Make Listings Unnecessary Under the Endangered Species Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 30, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Marta Nammack, (301) 427–8469 or *Marta.Nammack@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is an extension of a currently approved information collection.

On March 28, 2003, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (Services) announced a final policy on the criteria the Services will use to evaluate conservation efforts by states and other non-Federal entities (68 FR 15100). The Services take these efforts into account when making decisions on whether to list a species as threatened or endangered under the Endangered Species Act. The efforts usually involve the development of a conservation plan or agreement, procedures for monitoring the effectiveness of the plan or agreement, and an annual report.

II. Method of Collection

NMFS does not require, but will accept, plans and reports electronically. NMFS has not developed a form to be used for submission of plans or reports. In the past, NMFS has made plans and

annual reports from states available through the Internet and plans to continue this practice.

III. Data

OMB Control Number: 0648–0466.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations; and State, local or tribal governments.

Estimated Number of Respondents: 3.

Estimated Time per Response: 2,500 hours to complete each agreement or plan that has the intention of making listing unnecessary; 320 hours to conduct monitoring for successful agreements; and 80 hours to prepare a report for successful agreements.

Estimated Total Annual Burden Hours: 3,300.

Estimated Total Annual Cost to Public: $165,000 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–4939 Filed 2–29–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB205

Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

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

ACTION: Notice of eligible voters; public meetings.

SUMMARY: NMFS issues this notice to inform persons of their eligibility to vote in the fishing capacity reduction program referendum for the Southeast Alaska Purse Seine Salmon Fishery. NMFS will hold a series of public meetings with Southeast Alaska purse seine salmon permit holders and interested individuals.

DATES: Comments must be submitted on or before 5 p.m. EST March 16, 2012. The meetings will be held between March 5 and March 7, 2012. For specific times, please see the Public Meetings heading in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The meetings will be held in Seattle, WA, Petersburg, AK, Ketchikan, AK, and Sitka, AK. For specific locations, please see Public Meetings heading in the **SUPPLEMENTARY INFORMATION** section. Send comments about this notice to Paul Marx, Chief, Financial Services Division, NMFS, Attn: SE Alaska Purse Seine Salmon Buyback, 1315 East-West Highway, Silver Spring, MD 20910 (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant at (301) 427–8799, fax (301) 713–1306, or *michael.a.sturtevant@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Southeast Alaska purse seine salmon fishery is a commercial fishery in Alaska state waters and adjacent Federal waters. It encompasses the commercial taking of salmon with purse seine gear, and participation is limited to fishermen designated by the Alaska Commercial Fisheries Entry Commission (CFEC).

NMFS published proposed program regulations on May 23, 2011 (76 FR 29707), and final program regulations on October 6, 2011 (76 FR 61986), to implement the reduction program. Interested persons should review these for further program details. The final regulations require NMFS to publish this notice before conducting a referendum to determine the industry's willingness to repay a fishing capacity reduction loan to purchase the permits identified in the reduction plan. Subsequently, the Southeast Revitalization Association submitted a capacity reduction plan to NMFS and NMFS approved the plan.

As of February 24, 2012, there are 379 permits in the fishery designated as S01A by CFEC. These permanent permit holders are eligible to vote in the referendum. Comments may address: (1) Persons who appear on the below list but should not; (2) persons who do not appear on the list but should; (3) persons whose names and/or business mailing addresses are incorrect; and (4) any other pertinent matter. NMFS will update the list, as necessary, immediately before mailing referendum ballots. Mailed ballots will be accompanied by NMFS' detailed voting guidance.

II. Public Meetings

NMFS will hold a series of public informational meetings with Southeast Alaska purse seine salmon permit holders and interested individuals. The first will be Monday, March 5, 2012, from 10 a.m. to 12 p.m. The meeting will be held in Seattle, WA, at the Nordby Conference Center at Fishermen's Terminal (3919 18th Avenue West). The second will be Tuesday, March 6, 2012, from 12 p.m. to 2 p.m. The meeting will be held in Petersburg, AK, at the City Council Chambers (Municipal Building, No. 12 South Nordic Drive). The third will be Wednesday, March 7, 2012, from 10 a.m. to 12 p.m. The meeting will be held in Ketchikan, AK, at the Ted Ferry Civic Center (888 Venetia Avenue). The fourth meeting will be Wednesday, March 7, 2012, from 7 p.m. to 9 p.m. The meeting will be held in Sitka, AK, at the Northern Southeast Regional Aquaculture Association (1308 Sawmill Creek Road). Comments and questions regarding any aspect of the fishing capacity reduction program are welcome.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michael A. Sturtevant (see **ADDRESSES**), at least 5 working days prior to the meeting date.

The following list of eligible voters was provided by CFEC on February 24, 2012, and follows below:

	Permit holder name	Permit serial No.	Address	City	State	Zip
1	BEAUDIN DAVID L	55603	BOX 983	BELLINGHAM	WA	98227
2	OLNEY VIRGINIA	57720	BOX 2456	SITKA	AK	99835
3	NUGENT MATTHEW J	55689	31605 NE 123RD ST	DUVALL	WA	98019
4	NUGENT MARK J	60509	BOX 5382	KETCHIKAN	AK	99901
5	MENTEN ERIK K	57726	BOX 506	TENAKEE	AK	99841
6	SOLNIT RUTH P	58109	3401 W LAWTON ST	SEATTLE	WA	98199
7	MICHAEL MERCURY A	55386	14580 MADISON AVE NE	BAINBRIDGE ISLAND	WA	98110
8	JACKLET ALAN C	58062	4521 325TH AVE NE	CARNATION	WA	98014
9	MARRESE ANDREW B2	57909	2442 NW MARKET ST PMB #411	SEATTLE	WA	98107
10	MARRESE ANDREW B2	58486	2442 NW MARKET ST PMB #411	SEATTLE	WA	98107
11	LINDEMUTH LONNIE M	57282	BOX 2069	SNOHOMISH	WA	98291
12	HUESTIS STEPHEN B	61590	12704 471ST AVE SE	NORTH BEND	WA	98045
13	PAWLAK THOMAS R	57669	435 LAWRENCE ST	PORT TOWNSEND	WA	98368
14	GEORGE RICHARD D	57062	515 N FOREST	BELLINGHAM	WA	98225
15	BACON JAMES E	58921	1410 TONGASS AVE	KETCHIKAN	AK	99901
16	JONES KENNETH M	57345	BOX 1044	HOMER	AK	99603
17	FRANKLIN C. DAVID	59066	3401 W LAWTON ST	SEATTLE	WA	98199
18	CORNWELL CHRIS	55501	4220 CRYSTAL SPRINGS DR	BAINBRIDGE ISLAND	WA	98110
19	DOBRYDNIA RANDALL	59224	69 W MATTLE RD #N	KETCHIKAN	AK	99901
20	LAUKITIS MICHAEL	63826	59065 MEADOW LN	HOMER	AK	99603
21	FINNEY PAUL G	64933	1588 HILLSIDE PL	HOMER	AK	99603
22	VAUGHAN JAMES	58807	BOX 770	CRAIG	AK	99921
23	TREINEN CHARLES W	60055	2054 ARLINGTON DR	ANCHORAGE	AK	99517
24	SIMPSON BRIAN	59362	3104 PLYMOUTH DR	BELLINGHAM	WA	98107
25	BROADHEAD WILLIAM T	59507	BOX 221	WILSON	WY	83014
26	GIAMBRONE MATTHEW	57070	124 W GEORGE ST	SAINT PAUL	MN	55107
27	MARSH KIRT O	60058	BOX 1421	PETERSBURG	AK	99833
28	JENSEN DOUGLAS R	59714	BOX 92535	ANCHORAGE	AK	99509
29	GOLDEN JEFFREY J	59571	8322 SILVER LAKE RD	MAPLE FALLS	WA	98266
30	YOUNG MARK N	58490	BOX 2016	SITKA	AK	99835
31	VELER WILLIAM	58051	BOX 387	HOONAH	AK	99829
32	DENKINGER TROY	59031	2221 HALIBUT POINT RD	SITKA	AK	99835
33	ROCHELEAU RICK B	58478	BOX 631	SITKA	AK	99835
34	PHIPPEN KENNETH S	57895	312 TILSON ST	SITKA	AK	99835
35	FANNING CHRISTINE	60909	1116 SLIM WILLIAMS WAY	JUNEAU	AK	99801
36	KITTAMS ANDREW W	55341	BOX 1544	PETERSBURG	AK	99833
37	SCUDDER BRADFORD C	56000	266 S MOBLEY LN	BOISE	ID	83712
38	MANOS THOMAS G	60642	BOX 749	GIRDWOOD	AK	99587
39	BLAIR ANDREW R	59085	BOX 108	FOX ISLAND	WA	98333
40	WAMSER WILLIAM G	60071	2245 CR 306	PARACHUTE	CO	81635
41	JONES DAVID C	59142	BOX 64	WINTHROP	WA	98862
42	GIERARD BRIAN M	58386	BOX 7343	KETCHIKAN	AK	99901
43	LEESE WILLIAM O	56794	530 VIEW RIDGE DR	EVERETT	WA	98203
44	MONSAAS BARRETT A	57025	2618 NW 204TH	SHORELINE	WA	98177
45	KYLE JAMES J	55813	4102 LINNELL RD	DEMING	WA	98244
46	LINDBLOM RICHARD L	56144	2971 TILLICUM BEACH DR	CAMANO ISLAND	WA	98282
47	CURRY CLYDE	55389	BOX 572	PETERSBURG	AK	99833
48	THURSTON DONALD A	56147	9224 LOHRER LN NE	OLYMPIA	WA	98516
49	VEITEHANS GREGORY K	57703	302 GARDEN CLUB RD	NORDLAND	WA	98358
50	DEMMERT LAWRENCE EJ	57796	16136 41ST AVE NE	LAKE FOREST PARK	WA	98155
51	ONEIL PATRICK	55388	349 RAVEN HILL RD	LOPEZ	WA	98261
52	ALFIERI MICHAEL J	59221	2273 66TH AVE SE	MERCER ISLAND	WA	98040
53	PATRICK KEVIN C	56423	2888 S 355TH ST	FEDERAL WAY	WA	98003
54	NASH PAUL C	57907	BOX 1761	FRIDAY HARBOR	WA	98250
55	GRIN JEFFREY P	56621	BOX 397	WRANGELL	AK	99929
56	HANSON BRET	56915	2916 ST CLAIR ST	BELLINGHAM	WA	98226
57	SORENSEN DAVID E	55233	510 OLMSTEAD LN SW	OLYMPIA	WA	98512
58	BARKHOEFER TY	56496	413 ARROWHEAD ST	SITKA	AK	99835
59	MANDICH VIC	61404	520 SUNSET DR	HOQUIAM	WA	98550
60	WYMAN SETH K	59640	5024 ROBINWOOD LN	BOW	WA	98232
61	JERKOVICH MARC E	56607	3710 HARBORVIEW DR	GIG HARBOR	WA	98332
62	DOBSZINSKY LEIF	56403	932 MADISON ST	PORT TOWNSEND	WA	98368
63	CHRISTENSEN DALE R	60803	18912 88TH AVE W	EDMONDS	WA	98026
64	DONTOS LARRY A	59708	2334 FAIRWAY LN	OAK HARBOR	WA	98277
65	PEELER ALFRED W	60605	BOX 761	PETERSBURG	AK	99833
66	BILL DAVID E	58338	3042 CENTER RD	LOPEZ	WA	98261
67	JOLIBOIS TIMOTHY L	56018	3725 N 24TH ST	TACOMA	WA	98407
68	CONNOR WILLIAM HJ	61566	BOX 1124	PETERSBURG	AK	99833
69	TROKA PAUL J	59203	8602 SOBEK LN	CONCRETE	WA	98237
70	WEYNANDS MICHAEL	55723	12759 EAGLE DR	BURLINGTON	WA	98233
71	BABICH MICHAEL	60873	13510 GOODNOUGH DR NW	GIG HARBOR	WA	98332
72	GLENOVICH ROBERT P	59601	480 S STATE ST #102	BELLINGHAM	WA	98225

	Permit holder name	Permit serial No.	Address	City	State	Zip
73	BURKE ARNOLD	58318	1541 MADISON AVE	BLAINE	WA	98230
74	MUSTAPPA FRANK M	58836	1517 HARRIS AVE	BELLINGHAM	WA	98225
75	MARKUSEN KENNETH L	55584	9728 N HARVEY RD	BLAINE	WA	98230
76	EINARSON ED	56252	9311 VALLEY VIEW RD	BLAINE	WA	98230
77	GOOD STEVEN E	60710	BOX 85540	SEATTLE	WA	98145
78	TARABOCHIA DOMINICK JJ.	56600	8021 SHIRLEY AVE	GIG HARBOR	WA	98332
79	MARICICH TIMOTHY R	59569	13680 DONNELL RD	ANACORTES	WA	98221
80	MANN BRUCE A	56187	816 S 216TH ST #424	SEATTLE	WA	98198
81	PETERSON CHRIS-TOPHER C.	61414	BOX 3982	KETCHUM	ID	83340
82	PETERSON STEVE E	55395	109 RIBELIN RD	CHEHALIS	WA	98532
83	CHENEY SCOTT W	61619	8 LOOKOUT MOUNTAIN LN	BELLINGHAM	WA	98229
84	EDGAR ALLEN M	63230	BOX 427	WESTPORT	WA	98595
85	KOETJE JEFFREY A	58557	18180 DUNBAR RD	MOUNT VERNON	WA	98273
86	HANSON JEFF W	57976	5639 WHITEHORN WAY	BLAINE	WA	98230
87	JOHNSON RONALD C	61616	BOX 2232	WRANGELL	AK	99929
88	CHRISTENSEN DAVID B	57498	7302 164TH PL SW	EDMONDS	WA	98026
89	PURATICH ROBERT J	59736	BOX 1223	GIG HARBOR	WA	98335
90	LOVROVICH TOM A	58510	9705 JACOBSEN LN	GIG HARBOR	WA	98332
91	OKSVOLD OLE A	58105	2601 NW 86TH	SEATTLE	WA	98117
92	BURRILL PAUL W	58044	1664 2ND ST	DOUGLAS	AK	99824
93	PEELER JUSTIN	56148	BOX 1482	PETERSBURG	AK	99833
94	HANSEN WILLIAM R	55442	7602 76TH AVE SW	LAKEWOOD	WA	98498
95	MARBLE DALE H	59248	478 DE HARO LN	FRIDAY HARBOR	WA	98250
96	COLE RALPH W	56327	14084 MADRONA DR	ANACORTES	WA	98221
97	UTTLEY ROSS H	65483	2201 5TH ST	EVERETT	WA	98201
98	ZUANICH SHIRLEY	57288	812 W CONNECTICUT ST	BELLINGHAM	WA	98225
99	BABICH RANDALL P	55657	BOX 429	LAKEBAY	WA	98349
100	JOHNSON HANS A	57756	BOX 2742	TELLURIDE	CO	81435
101	FILE SCOTT	55392	4515 TRAFALGAR	JUNEAU	AK	99801
102	FILE MICHAEL A	58928	BOX 1666	PETERSBURG	AK	99833
103	PURATICH JOSEPH M	55385	BOX 272	GIG HARBOR	WA	98335
104	ERICKSON JEFF	55396	BOX 53	PETERSBURG	AK	99833
105	KAPP RYAN	58391	955 COLONY CT	BELLINGHAM	WA	98229
106	PATRICK KELLAN	57194	2888 S 355TH ST	FEDERAL WAY	WA	98003
107	WALLACE BRUCE H	55827	410 CALHOUN AVE	JUNEAU	AK	99801
108	BARRETT DAVIS C	58501	BOX 842	PORT TOWNSEND	WA	98368
109	ZUANICH JAMES P	58102	812 W CONNECTICUT ST	BELLINGHAM	WA	98225
110	BRISCOE JIM	56245	1714 WILSON AVE	BELLINGHAM	WA	98225
111	BEZMALINOVIC IVO R	59235	1916 PIKE PL #1255	SEATTLE	WA	98101
112	FRANULOVICH ANTHONY G.	56785	1302 N AVE	ANACORTES	WA	98221
113	JENSEN ERIC D	56143	17403 COLONY RD	BOW	WA	98232
114	GENTHER CURT	55457	3214 LILY LAKE RD	BOW	WA	98232
115	ROOD RICHARD C	55955	BOX 3466	LYNNWOOD	WA	98046
116	GOSPODINOVIC DENNIS	61548	5087 ZANDER DR	BELLINGHAM	WA	98226
117	PIECUCH CHARLES R	56077	4737 4TH AVE NE	SEATTLE	WA	98105
118	THORSTENSON GINA	58048	829 GOLDBELT AVE	JUNEAU	AK	99801
119	GRANBERG KEVIN M	59394	BOX 2002	PETERSBURG	AK	99833
120	MARKUSEN JEFF	58500	9653 RONALD DR	BLAINE	WA	98230
121	BOTSFORD WALLACE E	63175	721 15TH ST	BELLINGHAM	WA	98225
122	SPEARIN JAMES K	59372	BOX 1019	HOMER	AK	99603
123	NELSON STANLEY J	56278	24 SHOREWOOD DR	BELLINGHAM	WA	98225
124	CHRISTENSEN STEVE W	60180	6302 VISTA DR	FERNDALE	WA	98248
125	BUATTE DOUGLAS C	61174	201 PARK RIDGE	BELLINGHAM	WA	98225
126	GLENOVICH JAMES A	58476	818 17TH ST	BELLINGHAM	WA	98225
127	HALDANE R D	56620	4611 SUNNYSIDE AVE N	SEATTLE	WA	98103
128	HOLMSTROM MICHAEL G	58862	17952 MCLEAN RD	MOUNT VERNON	WA	98273
129	MOLLER RICHARD D	64994	BOX 1081	GIG HARBOR	WA	98332
130	JENSEN BRAD A	56400	813 52ND	PORT TOWNSEND	WA	98368
131	DOBSZINSKY MARK	60416	17002 12TH AVE SW	NORMANDY PARK	WA	98166
132	CHANEY DOUGLAS W	57153	11719 MADERA DR SW	LAKEWOOD	WA	98499
133	WALTZ JAMES T	57898	1418 191ST DR SE	SNOHOMISH	WA	98290
134	SCHONBERG JULIA E	56193	BOX 877	PETERSBURG	AK	99833
135	BABICH NICK AJ	55452	13310 PURDY DR NW	GIG HARBOR	WA	98332
136	BABICH ANDREW P	56801	8306 25TH AVE CT NW	GIG HARBOR	WA	98332
137	MALICH JOHN	58564	7809 OLYMPIC VIEW DR	GIG HARBOR	WA	98335
138	STROOSMA SVEN	58503	18273 W BIG LAKE BLVD	MOUNT VERNON	WA	98274
139	ANDERSON BENJAMIN	59997	601 SW 189TH ST	SEATTLE	WA	98166
140	MCGEE GARY D	56559	40 DRAYTON CT	BLAINE	WA	98230
141	FUGLVOG MILDRED	60652	18204 CHAMPIONS DR	ARLINGTON	WA	98223

	Permit holder name	Permit serial No.	Address	City	State	Zip
142	WARFEL FRANK LS	55164	BOX 517	WRANGELL	AK	99929
143	BUSCHMANN RONN	55479	BOX 1367	PETERSBURG	AK	99833
144	STEWART RANDY L	56672	11374 WALKER RD	MOUNT VERNON	WA	98273
145	MOROVIC DARKO L	58355	BOX 756	WESTPORT	WA	98595
146	DEGROEN JOHN	58508	9810 SW 148TH ST	VASHON	WA	98070
147	LEITZKE GERALD W	58593	12015 MARINE DR #239	TULALIP	WA	98271
148	ANK ROBERT	56299	19316 133RD PL SE	RENTON	WA	98058
149	JURLIN NICK J	60158	133 THE PROMENADE N #317	LONG BEACH	CA	90802
150	GRUENHEIT MICHAEL H	55083	2605 E ST	BELLINGHAM	WA	98225
151	ROBERTS RALPH W	60693	BOX 1957	PORT HARDY	BC	VON2PO
152	MANOS ANDREW G	59222	3014 EMORY ST	ANCHORAGE	AK	99508
153	BERITICH MITCHELL C	58923	2128 N FRACE	TACOMA	WA	98406
154	KAPP DARRELL G	55673	338 BAYSIDE RD	BELLINGHAM	WA	98225
155	MCILRAITH THOMAS J	57080	BOX 1198	ORTING	WA	98360
156	VERRALL LARRY J	57244	12364 RAINIER DR	BURLINGTON	WA	98233
157	CURRY JOHN HJ	56854	9445 SUNRISE RD	BLAINE	WA	98230
158	MATSON PAUL H	56976	1752 NW MARKET ST #800	SEATTLE	WA	98107
159	HENRY RONALD R	55833	2417 TONGASS AVE #111–141	KETCHIKAN	AK	99901
160	SEABECK KEVIN J	61447	8555 30TH NW	SEATTLE	WA	98117
161	SELIVANOFF DOUGLAS	57856	3000 BIG MOUNTAIN RD	WHITEFISH	MT	59937
162	DOBSZINSKY KURT D	58537	2023 E SIMS WAY #353	PORT TOWNSEND	WA	98368
163	LUNDE JAN O	56995	14202 BEVERLY PARK RD	EDMONDS	WA	98026
164	BOROVINA MICHAEL J	57667	3616 COLBY #731	EVERETT	WA	98201
165	BRISCOE ROBERT JJ	56014	BOX 10	FERNDALE	WA	98248
166	ZUANICH MICHELLE M	56881	6727 37TH AVE NW	SEATTLE	WA	98117
167	ZUANICH MICHELLE M	57849	6727 37TH AVE NW	SEATTLE	WA	98117
168	KANDOLL BRIAN W	59192	BOX 1363	PETERSBURG	AK	99833
169	LOVROVICH TIM	61459	7021 120TH ST CT NW	GIG HARBOR	WA	98332
170	SORENSEN PAIGE	58511	510 OLMSTEAD LN SW	OLYMPIA	WA	98512
171	JOHANSON NICHOLAS C	56347	1900 W NICKERSON ST #213	SEATTLE	WA	98119
172	MACNAB WILLIAM	60177	BOX 711	PETERSBURG	AK	99833
173	DEMMERT BRENDA K	60176	16136 41ST AVE NE	LAKE FOREST PARK	WA	98155
174	GILBERTSEN RICHARD E	55317	722 OSTRANDER RD	KELSO	WA	98626
175	PIECUCH JUSTIN J	60056	1923 NE LAURIE VIEW	POULSBO	WA	98370
176	TANAKA RICHARD D	57716	BOX 2345	PORT HARDY	BC	VON2PO
177	BAILEY KWIN	60076	BOX 1369	PORT TOWNSEND	WA	98368
178	BERITICH GREGORY N	56054	1810 23RD AVE CT SE	PUYALLUP	WA	98374
179	LEACH LAUCHLIN	56330	2318 NE 105TH ST	SEATTLE	WA	98125
180	DEMMERT NICK	56948	16136 41ST AVE NE	LAKE FOREST PARK	WA	98155
181	SMITH ALLEN M	55435	3974 SALT SPRINGS DR	FERNDALE	WA	98248
182	JONES KENNETH G	64527	4092 GINNETT RD	ANACORTES	WA	98221
183	MANOS WILLIAM J	56564	BOX 1365	WARD COVE	AK	99928
184	MANOS STEVEN T	56397	5224 NE VARCO RD	TACOMA	WA	98422
185	JERKOVICH NICK JJ	56659	3710 HARBORVIEW DR	GIG HARBOR	WA	98332
186	LUNDQUIST LOREN D	58350	723 SHELTER BAY DR	LACONNER	WA	98257
187	DEMMERT LONNIE EJ	59987	BOX 2683	STANWOOD	WA	98292
188	DEMMERT STEVEN L	59391	3814 SERENE WAY	LYNNWOOD	WA	98087
189	LOVROVICH GREGG	60719	5310 72ND AVE NW	GIG HARBOR	WA	98335
190	JOHANSON JOHN M	58267	BOX 276	KLAWOCK	AK	99925
191	MANNING EDWARD NJ	57795	11170 RIDGERIM TRAIL SE	PORT ORCHARD	WA	98367
192	FRANKLIN KYLE	58247	BOX 62	PETERSBURG	AK	99833
193	FLINN CHRIS P	65398	927 15TH ST	BELLINGHAM	WA	98225
194	BERNTSEN JACK D	57724	BOX 98	SAND POINT	AK	99661
195	SLAVEN GARY A	60374	BOX 205	PETERSBURG	AK	99833
196	ESQUIRO GEORGE C	60721	BOX 1993	PORT TOWNSEND	WA	98368
197	ESQUIRO IZAAK J	60528	BOX 984	WARM SPRINGS	OR	97761
198	MCALLISTER THOMAS S	56619	BOX 23272	JUNEAU	AK	99802
199	JW-PFUNDT MICHELE	56392	BOX 1162	PETERSBURG	AK	99833
200	KRIGBAUM MICHAEL C	58031	BOX 564	GRAYLAND	WA	98547
201	KRIEGER KENNETH J	59613	36813 S WIND CREST DR	TUCSON	AZ	85739
202	BRUNSMAN JAMES P	62650	BOX 105	DAYVILLE	OR	97825
203	ERTZBERGER ROCKY L	56309	404 BARR RD	GRAYS RIVER	WA	98621
204	TODD ALYCE C	56164	609 OJA ST	SITKA	AK	99835
205	SCHWANTES J.CARLOS	58197	BOX 2335	SITKA	AK	99835
206	HANSEN KURT N	55801	5266 35TH AVE NE	SEATTLE	WA	98105
207	NAGAMINE ROSS N	58246	930 CARLANNA LAKE RD, #2–B	KETCHIKAN	AK	99901
208	GEIST RICHARD J	56244	3401 W LAWTON ST	SEATTLE	WA	98199
209	WARTMAN BRIAN C	57228	2144 NW 204TH	SEATTLE	WA	98177
210	OTNESS NELS K3	56304	BOX 2058	PETERSBURG	AK	99833
211	PETERMAN CHAD	55986	178 KASNYKU LN	FRIDAY HARBOR	WA	98250
212	ALFIERI JOE P	60791	1340 PLUM ST	SAN DIEGO	CA	92106
213	JURLIN MARIE	58547	3312 45TH ST NW	GIG HARBOR	WA	98335

	Permit holder name	Permit serial No.	Address	City	State	Zip
214	GROSS BEN	58987	7362 W PARK HWY #696	WASILLA	AK	99654
215	OLNEY-MILLER BAE	57638	622 MERRILL ST	SITKA	AK	99835
216	OLNEY-MILLER NICK	55730	3006 BARKER ST	SITKA	AK	99835
217	PYLE DAVID P	60282	17423 SCHALIT WY	LAKE OSWEGO	OR	97035
218	SCHONBERG PETER R	56601	75–816F HIONA ST	HOLUALOA	HI	96725
219	PETERMAN TIMOTHY C	60508	BOX 2336	WRANGELL	AK	99929
220	BENKMAN BRYAN	55659	10533 14TH AVE NW	SEATTLE	WA	98177
221	ALFIERI ANTHONY	55646	1266 MOANA DR	SAN DIEGO	CA	92107
222	SVENSSON JOHN A	56492	BOX 2059	KALAMA	WA	98625
223	MCFADYEN JEFFREY J	55737	BOX 592	PETERSBURG	AK	99833
224	SCHONBERG MART T	56882	465 RT 23	CLAVERACK	NY	12513
225	LIDDICOAT JOHN	59395	4115 BAKER AVE NW	SEATTLE	WA	98107
226	WADSWORTH RAY G	56391	200 E MAIN ST	OAKLEY	ID	83346
227	PECKHAM JOHN P	55481	BOX 8394	KETCHIKAN	AK	99901
228	THOMAS NYLE D	57862	BOX 1744	PETERSBURG	AK	99833
229	WHITE JACOB S	55660	BOX 361	HOONAH	AK	99829
230	JOHANSON RUDY M	57681	BOX 276	KLAWOCK	AK	99925
231	SUYDAM ANTRIL C	57910	BOX 257	MUKILTEO	WA	98275
232	SKEEK LEONARD C	56853	BOX 742	PETERSBURG	AK	99833
233	HOFSTAD ALBERT J	55939	BOX 1030	PETERSBURG	AK	99833
234	JOHANSON RUDOLPH K	56161	BOX 23359	KETCHIKAN	AK	99901
235	MURPHY FRANCIS CJ	55505	BOX 1158	WARD COVE	AK	99928
236	KOHLHASE ERNEST J	56199	BOX 240524	DOUGLAS	AK	99824
237	GUTHRIE GLENN J	57896	BOX 686	METLAKATLA	AK	99926
238	JAMES GEORGE SJ	58513	1123 BLACK BEAR RD	KETCHIKAN	AK	99901
239	WAGNER WALTER H	57905	BOX 107	METLAKATLA	AK	99926
240	ALEX WAYNE E	56609	BOX 20095	JUNEAU	AK	99802
241	WILLS CHARLES M	58070	BOX 7554	KETCHIKAN	AK	99901
242	HALTINER FRED EJ	55617	BOX 408	PETERSBURG	AK	99833
243	REIFENSTUHL IVAN	55171	218 SHOTGUN ALLEY	SITKA	AK	99835
244	PORTER RONALD F	55937	630 CHATHAM AVE	KETCHIKAN	AK	99901
245	STEVENS GARY J	60488	BOX 1572	WRANGELL	AK	99929
246	HALTINER ROBERT G	56408	BOX 808	PETERSBURG	AK	99833
247	EIDE L R	61632	BOX 15	PETERSBURG	AK	99833
248	LEEKLEY ROBERT J	60299	BOX 217	PETERSBURG	AK	99833
249	KADAKE HENRICH BS	57718	BOX 188	KAKE	AK	99830
250	CARLE ARLENE	58580	BOX 32	HYDABURG	AK	99922
251	SKULTKA CHARLES GS	63109	BOX 665	SITKA	AK	99835
252	WELLINGTON VICTOR CS	57300	BOX 69	METLAKATLA	AK	99926
253	OTNESS ALAN D	61440	BOX 317	PETERSBURG	AK	99833
254	KVERNVIK CAROLYN	55231	BOX 1081	PETERSBURG	AK	99833
255	PETTICREW CHARLES JS	60800	BOX 971	WRANGELL	AK	99929
256	WILLIAMS MARY A	57721	BOX 103	KAKE	AK	99830
257	JOHNS JUSTNA D	55403	BOX 726	CRAIG	AK	99921
258	MATHISEN SIGURD R	56389	BOX 1460	PETERSBURG	AK	99833
259	REIMNITZ HARTMUT	57899	23505 80TH AVE SW	VASHON	WA	98070
260	WRIGHT FRANK J	55964	BOX 497	HOONAH	AK	99829
261	CARROLL GLEN O	58248	BOX 551	HOMER	AK	99603
262	ROONEY ROBERT M	55588	BOX 2179	WRANGELL	AK	99929
263	KALK DONALD B	56399	3980 N DOUGLAS HWY	JUNEAU	AK	99801
264	CARLE MATTHEW JS	56070	BOX 32	HYDABURG	AK	99922
265	SWANSON ROBERT L	56940	BOX 924	PETERSBURG	AK	99833
266	MAGILL FREDERICK S	55299	BOX 1201	SITKA	AK	99835
267	INGMAN ROGER L	57529	BOX 1155	SITKA	AK	99835
268	SVENSON MIKE W	56237	104 SHARON DR	SITKA	AK	99835
269	OLSON CHARLES R	55989	3009 HALIBUT POINT RD	SITKA	AK	99835
270	GAMBLE GERALD M	56099	3602 ENTRADA DR NE	OLYMPIA	WA	98506
271	MAJORS DANIEL AJ	57950	BOX 5358	KETCHIKAN	AK	99901
272	DEMMERT ARTHUR JJ	57741	BOX 180	KLAWOCK	AK	99925
273	MENISH WILLIAM R	57940	BOX 877	PETERSBURG	AK	99833
274	VEERHUSEN DANIEL F	56638	BOX 971	HOMER	AK	99603
275	MILLER JAMES L	56708	BOX 1184	PETERSBURG	AK	99833
276	DEMMERT DAVID RJ	56339	16116 68TH AVE W	EDMONDS	WA	98026
277	PETERMAN BRUCE	59306	610 SHEEHY RD	NIPOMO	CA	93444
278	MACDONALD CLIFFORD	55545	BOX 575	PETERSBURG	AK	99833
279	SWANSON JOHN R	55928	BOX 1546	PETERSBURG	AK	99833
280	NELSON NORVAL EJ	58899	1625 FRITZ COVE RD	JUNEAU	AK	99801
281	ROSVOLD ERIC O	59035	BOX 1144	PETERSBURG	AK	99833
282	HAYWARD ROYCE L	57901	BOX 161	METLAKATLA	AK	99926
283	MCCAY RODERICK D	57722	BOX 161	PETERSBURG	AK	99833
284	OLSON JAMES R	58999	80840 DUFUR VALLEY RD	DUFUR	OR	97021
285	HAYNES GARY L	55828	625 SUNSET DR	KETCHIKAN	AK	99901

	Permit holder name	Permit serial No.	Address	City	State	Zip
286	HAYNES DANNY J	56454	BOX 7036	KETCHIKAN	AK	99901
287	SEVERSON MARK	60655	BOX 1502	PETERSBURG	AK	99833
288	COCKRUM RUSSELL L	61617	5791 N TONGASS HWY	KETCHIKAN	AK	99901
289	JENSEN JAMES C	55903	BOX 402	PETERSBURG	AK	99833
290	SUYDAM LINDA	58045	BOX 987	KODIAK	AK	99615
291	CHRISTENSEN CHARLES L.	56722	BOX 824	PETERSBURG	AK	99833
292	MATHISEN WAYNE T	57991	BOX 671	PETERSBURG	AK	99833
293	DEMMERT ARCHIE W3	57270	BOX 223	KLAWOCK	AK	99925
294	ALBER NINA L	56173	BOX 111	CORDOVA	AK	99574
295	MCLEAN JOHN S	56270	BOX 2191	HOMER	AK	99603
296	BIERRIA ALBERT J	58973	10418 BOCA CANYON DR	SANTA ANA	CA	92705
297	KAVANAUGH RONALD J	55228	1533 SAWMILL CIR	KODIAK	AK	99615
298	CASTLE DANIEL F	57678	4430 S TONGASS HWY	KETCHIKAN	AK	99901
299	SAVLAND STANLEY J	60512	2413 KA SEE ANN DR	JUNEAU	AK	99801
300	EICHNER KEN	56262	5166 SHORELINE DR N	KETCHIKAN	AK	99901
301	JACKSON JEFFREY S	59496	BOX 297	KAKE	AK	99830
302	JOHNS LEROY E	56434	BOX 290	CRAIG	AK	99921
303	EDENSHAW SIDNEY C	55830	BOX 352	HYDABURG	AK	99922
304	DEMMERT KARL W	57115	BOX 556	CRAIG	AK	99921
305	KADAKE DELBERT BJ	57725	BOX 554	KAKE	AK	99830
306	MARVIN-DENKINGER VICTORIA.	58429	2221 HALIBUT POINT RD	SITKA	AK	99835
307	BLANDOV BRIAN JS	57897	BOX 436	METLAKATLA	AK	99926
308	NEWMAN DONALD J	58505	415 NW 120TH	SEATTLE	WA	98177
309	YOUNG LAWRENCE	55663	224 MAKA HOU PL W	WAILUKU	HI	96793
310	ENLOE GLENDA	58238	2609 HALIBUT POINT RD	SITKA	AK	99835
311	JOHNSON MOSES P	55404	1413 HALIBUT POINT RD	SITKA	AK	99835
312	MARIFERN BRUCE E	57277	BOX 917	PETERSBURG	AK	99833
313	TISSYCHY JAMES A	56504	554 EAST ST	KETCHIKAN	AK	99901
314	ONEIL DENNIS J	57990	BOX 1083	PETERSBURG	AK	99833
315	DAUGHERTY RICHARD M	56729	BOX 34864	JUNEAU	AK	99803
316	EIDE MITCHEL	55243	BOX 981	PETERSBURG	AK	99833
317	BARTELDS DALE A	56507	301 WORTMAN LP	SITKA	AK	99835
318	RECORDS RONALD J2	57723	BOX 307	HYDABURG	AK	99922
319	ROSTAD PAUL D	55338	BOX 183	KAKE	AK	99830
320	GREGG RANDAL J	59331	BOX 20373	JUNEAU	AK	99802
321	HOWEY BRYAN	57719	BOX 506	SITKA	AK	99835
322	WHITE VINCE H	57717	BOX 5454	KETCHIKAN	AK	99901
323	EVENS CHRIS R	57894	BOX 886	PETERSBURG	AK	99833
324	THOMASSEN JAY R	60201	BOX 836	SEWARD	AK	99664
325	THORSTENSON PEDER	59806	24121 SW NEWLAND RD	WILSONVILLE	OR	97070
326	BECKER ROBERT J	56206	BOX 240238	DOUGLAS	AK	99824
327	JENSEN JEREMY C	55611	BOX 1688	PETERSBURG	AK	99833
328	HALTINER DEAN R	60762	BOX 443	PETERSBURG	AK	99833
329	THORSTENSON ROBERT MJ.	55582	410 CALHOUN AVE	JUNEAU	AK	99801
330	THORSTENSON ROBERT MJ.	55974	410 CALHOUN AVE	JUNEAU	AK	99801
331	PFUNDT ALEC	57851	BOX 1342	PETERSBURG	AK	99833
332	PFUNDT BRYON	58936	BOX 1162	PETERSBURG	AK	99833
333	THOMASSEN STEVEN HJ	55967	BOX 424	WRANGELL	AK	99929
334	EVENS CRAIG J	60558	BOX 585	PETERSBURG	AK	99833
335	CASTLE JAMES W	56409	87 SHOUP ST	KETCHIKAN	AK	99901
336	NEBL NIKOULAS A	60054	3828 EVERGREEN AVE	KETCHIKAN	AK	99901
337	RAMSEY JAMISON T	63735	BOX 9631	KETCHIKAN	AK	99901
338	THYNES DEREK M	56788	BOX 1624	PETERSBURG	AK	99833
339	CARROLL WESTON J	56359	1170 QUEETS CIR	HOMER	AK	99603
340	NEVERS TODD	61134	712 SIRSTAD ST	SITKA	AK	99835
341	MARSDEN DANIEL M	58512	BOX 15	METLAKATLA	AK	99926
342	CARLE JOHN	60110	BOX 1	HYDABURG	AK	99922
343	ETHELBAH HARLEY E	55230	BOX 972	PETERSBURG	AK	99833
344	MCCOLLUM KENT	57755	BOX 2096	PETERSBURG	AK	99833
345	CURRALL TIMOTHY H	58507	540 WATER ST #101	KETCHIKAN	AK	99901
346	GREGG DINA I	58789	BOX 20373	JUNEAU	AK	99802
347	PENNEWELL RICHARD D	57112	3224 89TH AVE E	EDGEWOOD	WA	98371
348	KOHLHASE JASON	57333	10753 HORIZON DR	JUNEAU	AK	99801
349	BLANKENSHIP BRIAN V	64176	4316 VALLHALLA DR	SITKA	AK	99835
350	BLANKENSHIP ERIC	56922	2089 SAWMILL CREEK RD	SITKA	AK	99835
351	BLANKENSHIP JEFF S	56268	1709 HALIBUT POINT RD #12	SITKA	AK	99835
352	EVENS ERIC	55898	BOX 1412	PETERSBURG	AK	99833
353	THOMASSEN TROY R	55489	BOX 152	PETERSBURG	AK	99833

	Permit holder name	Permit serial No.	Address	City	State	Zip
354	GREEN KIRBY B	57925	418 HIGHLAND DR #3	SEATTLE	WA	98109
355	VERSTEEG KORY	56296	BOX 1752	PETERSBURG	AK	99833
356	WARFEL FRANK W	56371	BOX 1512	WRANGELL	AK	99929
357	BLANKENSHIP PAUL V	56055	3208 HALIBUT POINT RD #23	SITKA	AK	99835
358	CISNEY JOE A	64528	BOX 582	PETERSBURG	AK	99833
359	CROME DANIEL J	62606	BOX 1243	PETERSBURG	AK	99833
360	BARRY JOHN W	63280	3944 N COTTONWOOD PL	BUCKEYE	AZ	85396
361	BARRY DAVID	61551	BOX 6276	SITKA	AK	99835
362	BARRY DAVID	61628	BOX 6276	SITKA	AK	99835
363	NILSEN YANCEY L	55523	BOX 1822	PETERSBURG	AK	99833
364	BALOVICH FRANK L	58602	BOX 1503	SITKA	AK	99835
365	HAYNES BRADLEY S	57495	BOX 1152	WARD COVE	AK	99928
366	HAYNES BRADLEY S	60572	BOX 1152	WARD COVE	AK	99928
367	MILLER AARON L	60175	BOX 2144	PETERSBURG	AK	99833
368	BRIGHT JARED	60484	BOX 2097	PETERSBURG	AK	99833
369	MARTENS COLLIN B	55367	BOX 1123	PETERSBURG	AK	99833
370	JOHNSON JOSH	57699	103 HORIZON WAY	SITKA	AK	99835
371	WHITETHORN LUKE J	60267	BOX 1716	PETERSBURG	AK	99833
372	BUSCHMANN CHRISTIAN	60001	BOX 898	PETERSBURG	AK	99833
373	MCCULLOUGH CHARLES	60545	BOX 707	PETERSBURG	AK	99833
374	CRANE VERNON M	61736	2300 BLACK SPRUCE CT	FAIRBANKS	AK	99709
375	HUDSON ERRON B	57906	BOX 737	METLAKATLA	AK	99926
376	SCUDDER ANDREW C	65418	266 S MOBLEY LN	BOISE	ID	83712
377	SCHILE GEORGE V	60511	1807 4TH ST	BELLINGHAM	WA	98225
378	ALLBRETT JASPER	56833	BOX 2223	SITKA	AK	99835
379	UNDERHILL JOHN E	58297	103 KRESTOF DR	SITKA	AK	99835

Dated: February 27, 2012.

Lindsay Fullenkamp,

Acting Director, Office of Management and Budget, National Marine Fisheries Service.

[FR Doc. 2012–4985 Filed 2–29–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB037

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in April, May, and June of 2012. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2012 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held April 5, May 3, and June 7, 2012.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on April 3, April 5, May 9, May 16, June 6, and June 20, 2012.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Bohemia, NY; Panama City Beach, FL; and Wilmington, NC.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Wilmington, NC; Panama City, FL; Boston, MA; Kenner, LA; Port St. Lucie, FL; and Ronkonkoma, NY.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for three years. Approximately 71 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop

certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. April 5, 2012, 12 p.m.–4 p.m., LaQuinta Inn & Suites (at Islip MacArthur Airport), Meeting Room B, 10 Aero Road, Bohemia, NY 11716.

2. May 3, 2012, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 7115 Coastal Palms Boulevard, Panama City Beach, FL 32408.

3. June 7, 2012, 12 p.m.–4 p.m., Hampton Inn & Suites, 1989 Eastwood Road, Wilmington, NC 28403.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

• Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.

• Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for three years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 130 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. April 3, 2012, 9 a.m.–5 p.m., Hilton Garden Inn, 6745 Rock Spring Road, Wilmington, NC 28405.

2. April 5, 2012, 9 a.m.–5 p.m., Holiday Inn Select, 2001 Florida 77, Panama City, FL 32405.

3. May 9, 2012, 9 a.m.–5 p.m., Hilton Inn (at Logan airport), 1 Hotel Drive, Boston, MA 02128.

4. May 16, 2012, 9 a.m.–5 p.m., Hilton Inn (at Armstrong airport), 901 Airline Drive, Kenner, LA 70062.

5. June 6, 2012, 9 a.m.–5 p.m., Holiday Inn, 10120 Northwest Federal Highway, Port St. Lucie, FL 34952.

6. June 20, 2012, 9 a.m.–5 p.m., Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

• Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.

• Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.

• Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 24, 2012.

Steven Thur,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–4990 Filed 2–29–12; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 7, 2012, 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: *Decisional Matter:* Fiscal Year 2012 Operating Plan.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast.*

TIME AND DATE: Wednesday, March 7, 2012; 11 a.m.—12 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED: *Compliance Status Report:* The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: February 28, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–5137 Filed 2–28–12; 2:00 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Veterans' Advisory Board on Dose Reconstruction; Meeting

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Advisory Board Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), the Defense Threat Reduction Agency (DTRA), and the Department of Veterans Affairs (VA) announce the following advisory board meeting of the Veterans' Advisory Board on Dose Reconstruction (VBDR).

DATES: Friday, March 23, 2012, from 8 a.m. to 12 p.m. and from 1 p.m. to 6 p.m. and Saturday, March 24, 2012, from 9 a.m. to 12 p.m. The public is invited to attend. A public comment session is scheduled from 4 p.m. to 5 p.m. on Friday and from 9:30 a.m. to 10:20 a.m. on Saturday.

ADDRESSES: Embassy Suites Riverwalk Hotel, E. Houston Street, San Antonio, TX 78205.

FOR FURTHER INFORMATION CONTACT: The Veterans' Advisory Board on Dose Reconstruction Toll Free at 1–866–657–VBDR (8237). Additional information may be found at *http://vbdr.org.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review, and evaluate information related to the Board's mission to provide guidance and review of the dose reconstruction and claims compensation programs for veterans of U.S.-sponsored atmospheric nuclear weapons tests from 1945–1962; veterans of the 1945–1946 occupation of Hiroshima and Nagasaki, Japan; and veterans who were prisoners of war in those regions at the conclusion of World War II. In addition, the advisory board will assist the VA and DTRA in communicating with the veterans. The meeting will also include public presentations regarding dose reconstruction efforts related to the Fukushima incident in Japan and the McMurdo Station in Antarctica.

Meeting Agenda: The meeting will open on Friday morning with a Call to Order from the Designated Federal Official. Dr. Charles Roadman, the VBDR Chairman will make opening remarks and will introduce the members of the Board. After introductions, the remainder of the morning will include the following briefings: ''Review of Atomic Veterans Epidemiology Study'' by Dr. John Boice; ''Review of Atomic Veterans Demographic Study'' by Dr. John Lathrop, ''Review of the Navy's PM–3A (McMurdo Sound Nuclear Reactor) Dose Reconstruction Effort'' by LCDR Greg Fairchild, USN; ''Review of the DoD Population of Interest Dose Reconstruction from the Fukushima incident in Japan'' by Dr. Gerald Falo, Dr. Steven Rademacher, and CDR James Cassata, USN, and an ''Update on the Nuclear Test Personnel Review (NTPR) Dose Reconstruction Program'', by Dr. Paul Blake. The afternoon session will include additional briefings: ''Update on the VA Radiation Claims Compensation Program for Veterans'', by Mr. Brad Flohr, ''Presentation on the VA/DTRA/VBDR Atomic Veterans Communications Plan'' by Mr. Jim Benson, VA, Mr. Richard Cole, DTRA and Mr. Kenneth Groves and ''Overview of the VA's Office of Public Health'' by Dr. Paul Ciminera. Next, the four active subcommittees established during the inaugural VBDR session will report on their activities since March 2011. These subcommittees consist of the following: Subcommittee on DTRA Dose Reconstruction Procedures; the Subcommittee on VA Claims Adjudication Procedures; the Subcommittee on Quality Management and VA Process Integration with DTRA Nuclear Test Personnel Review Program; and the Subcommittee on Communication and Outreach. The afternoon session also includes a one hour open public comment session. The remainder of the Friday afternoon meeting will be devoted to an overview discussion on the VBDR activities. The meeting will reconvene on Saturday morning with an introduction to the Special Session by the VBDR Chairman, Dr. Charles Roadman. The morning session includes an open public comment period and opportunities for discussion with VA and DTRA NTPR representatives. The Designated Federal Official will close the meeting at 12 p.m.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited by the size of the meeting room. All persons must sign in legibly at the registration desk.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140(c), interested persons may submit a written statement for consideration by the Veterans' Advisory Board on Dose Reconstruction. Written statements should be no longer than two type-written pages and must address the following: the issue, discussion, and recommended course of action for the VBDR. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals submitting a written statement may submit their statement to the Board at 801 N. Quincy Street, Suite 700, Arlington, VA 22203, at any time. However, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Veterans' Advisory Board on Dose Reconstruction until its next open meeting.

The Chairperson will review all timely submissions with the Designated Federal Officer, and ensure they are provided to members of the Veterans' Advisory Board on Dose Reconstruction before the meeting that is the subject of this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose

to invite the submitter of the comments to orally present his or her statements during the Public Comment session of this meeting or at a future meeting.

Public Comments: The March 23–24, 2012 meeting is open to the public. Two, approximately one-hour session will be reserved for public comments on issues related to the tasks of the Veterans' Advisory Board on Dose Reconstruction. Speaking time will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is nominally five minutes each. All persons who wish to speak at the meeting must sign in legibly at the registration desk. Speakers who wish to expand on their oral statements are invited to submit a written statement to the Veterans' Advisory Board on Dose Reconstruction at 801 N. Quincy Street, Suite 700, Arlington, VA 22203.

Dated: February 24, 2012.

Aaron Siegel,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–4898 Filed 2–29–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense (DoD) Medicare-Eligible Retiree Health Care Board of Actuaries; Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the DoD Medicare-Eligible Retiree Health Care Board of Actuaries will take place.

DATES: Friday, August 3, 2012, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: 4800 Mark Center Drive, Conference Room 18, Level B1, Alexandria, VA 22350.

FOR FURTHER INFORMATION CONTACT: Committee's Designated Federal Officer or Point of Contact: Persons desiring to attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting, must notify Kathleen Ludwig at (571) 372–1993, or *Kathleen.Ludwig@osd.pentagon.mil,* by June 29, 2012. For further information contact Ms. Ludwig at the Defense Human Resource Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 06J25–01, Alexandria, VA 22350–4000.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to execute the provisions of Chapter 56, Title 10, United States Code (10 U.S.C. 1114 et. seq). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda:

1. Meeting Objective

Approve actuarial assumptions and methods needed for calculating:

a. FY 2014 per capita full-time and part-time normal cost amounts.

b. September 30, 2011 unfunded liability (UFL).

c. October 1, 2012 Treasury UFL amortization payment.

d. Restatement of FY 2013 per capita full-time and part-time normal cost amounts.

2. Trust Fund Update

3. Medicare-Eligible Retiree Health Care Fund Update

4. September 30, 2010 Actuarial Valuation Results

5. September 30, 2011 Actuarial Valuation Proposals

6. Decisions

Approve actuarial assumptions and methods needed for calculating:

a. FY 2014 per-capita full-time and part-time normal cost amounts.

b. September 30, 2011 UFL.

c. October 1, 2012 Treasury UFL amortization payment and normal cost payment.

d. Restatement of FY 2013 per capita full-time and part-time normal cost amounts.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first come basis. The Mark Center is an annex of the Pentagon. Those without a valid DoD Common Access Card must contact Kathleen Ludwig at 571–372–1993 no later than June 29, 2012. Failure to make the necessary arrangements will result in building access being denied. It is strongly recommended that attendees plan to arrive at the Mark Center at least 30 minutes prior to the start of the meeting.

Dated: February 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–4981 Filed 2–29–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense (DoD) Board of Actuaries; Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: Under the provision of the Federal Advisory Committee Act of 1972 (5 U.S.C., appendix as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the DoD Board of Actuaries will take place.

DATES: July 19, 2012, from 1 p.m. to 5 p.m. and July 20, 2012, from 10 a.m. to 1 p.m.

ADDRESSES: 4800 Mark Center Drive, Conference Room 20, Level B1, Alexandria, VA 22350.

FOR FURTHER INFORMATION CONTACT: Committee's Designated Federal Officer or Point of Contact: Persons desiring to attend the DoD Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting must notify Kathleen Ludwig at (571) 372–1993, or *Kathleen.Ludwig@osd.pentagon.mil,* by June 15. For further information contact Ms. Ludwig at the Defense Human Resource Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 06J25–01, Alexandria, VA 22350–4000.

SUPPLEMENTARY INFORMATION: Purpose of the meeting: The purpose of the meeting is for the Board to review DoD actuarial methods and assumptions to be used in the valuations of the Education Benefits Fund, the Military Retirement Fund, and the Voluntary Separation Incentive Fund, in accordance with the provisions of Section 183, Section 2006, Chapter 74 (10 U.S.C. 1464 *et. seq*), and Section 1175 of Title 10.

Agenda: Education Benefits Fund (July 19, 1 p.m.–5 p.m.)

1. Briefing on Investment Experience.
2. September 30, 2011, Valuation Proposed Economic Assumptions.*

3. September 30, 2011, Valuation Proposed Methods and Assumptions—Reserve Programs.*
4. September 30, 2011, Valuation Proposed Methods and Assumptions—Active Duty Programs.*
5. Developments in Education Benefits.

Military Retirement Fund (July 20, 10 a.m.–1 p.m.)

1. Briefing on Investment Experience.
2. September 30, 2011, Valuation of the Military Retirement Fund.*
3. Proposed Methods and Assumptions for September 30, 2012, Valuation of the Military Retirement Fund.*
4. Proposed Methods and Assumptions for December 31, 2011, Voluntary Separation Incentive (VSI) Fund Valuation.*
5. Recent and Proposed Legislation.

* Board approval required.

Public's accessibility to the meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first come basis. The Mark Center is an Annex of the Pentagon. Those without a valid DoD Common Access Card must contact Kathleen Ludwig at 571–372–1993 no later than June 15, 2012. Failure to make the necessary arrangements will result in building access being denied.

It is strongly recommended that attendees plan to arrive at the Mark Center at least 30 minutes prior to the start of the meeting.

Dated: February 27, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–4980 Filed 2–29–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; C&C Ventures, Doing Business as Randolph Products

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to C&C Ventures, doing business as Randolph Products, a revocable, nonassignable, exclusive license to practice in the fields of use of polyurethane coatings, method of making polyurethane coatings and resins in the United States, the Government-owned inventions described in U.S. Patent No. 7,432,399: Diols Formed by Ring-Opening of Epoxies, Navy Case No. 084,472.//U.S. Patent No. 7,615,604: Diols Formed by Ring-Opening of Epoxies, Navy Case No. 084,472.//U.S. Patent 7,622,541: Polyurethane Coating, Navy Case No. 084,472 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than March 16, 2012.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to U.S. Postal delays, please fax 202–404–7920, email: *rita.manak@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: February 22, 2012.

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–4952 Filed 2–29–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Friday, April 6, 2012 from 8 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at The Basic School in the Fox Discussion Room. The address is: 24164 Belleau Avenue Quantico, Virginia 22134.

FOR FURTHER INFORMATION CONTACT: Joel Westa, Director of Academic Support, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–784–4037.

Dated: February 22, 2012.

J.M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–4954 Filed 2–29–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–33–000.
Applicants: Kawailoa Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generation Status of Kawailoa Wind, LLC.
Filed Date: 2/21/12.
Accession Number: 20120221–5272.
Comments Due: 5 p.m. ET 3/13/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3445–002.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance Filing in Docket Nos. ER11–12–001 and ER11–3445–000 to be effective 6/1/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5241.
Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1129–000.
Applicants: MidAmerican Energy Company.
Description: Upper Rock Energy QF Contract to be effective 2/20/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5213.
Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1130–000.
Applicants: PJM Interconnection, L.L.C.
Description: RTEP Clean Up Filing to be effective 2/16/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5239.
Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1131–000.
Applicants: Parkview AMC Energy, LLC.

Description: Tariff Filing V 1.0.0 to be effective 2/3/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5240.
Comments Due: 5 p.m. ET 3/13/12.
Docket Numbers: ER12–1132–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Original Service Agreement No. 3238—Queue Position W2–078 to be effective 1/20/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5245.
Comments Due: 5 p.m. ET 3/13/12.
Docket Numbers: ER12–1133–000.
Applicants: NorthWestern Corporation.
Description: Service Agreement No. 621—Central Montana Coop to be effective 2/22/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5275.
Comments Due: 5 p.m. ET 3/13/12.
Docket Numbers: ER12–1134–000.
Applicants: East Coast Power and Gas, LLC.
Description: East Coast Power & Gas Baseline Filing to be effective 2/21/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5286.
Comments Due: 5 p.m. ET 3/13/12.
Docket Numbers: ER12–1135–000.
Applicants: Terra-Gen Dixie Valley, LLC.
Description: Compliance Filing to Bring Approved Schedule 7 into eTariff to be effective 1/23/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5287.
Comments Due: 5 p.m. ET 3/13/12.
Docket Numbers: ER12–1136–000.
Applicants: Pacific Gas and Electric Company.
Description: CCSF IA—2012 Annual Adjustment to Traffic Light Costs to be effective 2/1/2012.
Filed Date: 2/22/12.
Accession Number: 20120222–5000.
Comments Due: 5 p.m. ET 3/14/12.
Docket Numbers: ER12–1137–000.
Applicants: Entra Energy LLC.
Description: Baseline New to be effective 2/22/2012.
Filed Date: 2/22/12.
Accession Number: 20120222–5003.
Comments Due: 5 p.m. ET 3/14/12.
Docket Numbers: ER12–1138–000.
Applicants: Public Service Company of Colorado.
Description: 2012–2–22_PSC–WAPA–Bijou SS BA Mtr 322 to be effective 1/27/2012.
Filed Date: 2/22/12.
Accession Number: 20120222–5071.
Comments Due: 5 p.m. ET 3/14/12.
Docket Numbers: ER12–1139–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company Notice of Cancellation of Letter Agreement with Granite Wind SA 62.
Filed Date: 2/22/12.
Accession Number: 20120222–5079.
Comments Due: 5 p.m. ET 3/14/12.
Docket Numbers: ER12–1140–000.
Applicants: PacifiCorp.
Description: BPA Cooperative Communications Agreement 3rd Revised to be effective 12/2/2010.
Filed Date: 2/22/12.
Accession Number: 20120222–5080.
Comments Due: 5 p.m. ET 3/14/12.
Docket Numbers: ER12–1141–000.
Applicants: El Paso Electric Company.
Description: Mesquite Solar Amended and Restated IA to be effective 4/22/2012.
Filed Date: 2/22/12.
Accession Number: 20120222–5097.
Comments Due: 5 p.m. ET 3/14/12.

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: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4874 Filed 2–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13124–003]

Copper Valley Electric Association, Inc.; Notice of Extension of Time for Filing of Comments, Final Terms and Conditions, Recommendations, and Prescriptions

As stated in a letter dated January 27, 2012, in this proceeding by the Director, Division of Hydropower Licensing, the date for filing of comments, final terms and conditions, recommendations, and prescriptions, and pursuant to the Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions to Intervene and Protests, and Soliciting Comments, and Final Terms and Conditions, Recommendations, and Prescriptions issued on December 9, 2011, for the Allison Creek Hydroelectric Project No. 13124–003 has been extended to April 6, 2012.

Dated: February 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4951 Filed 2–29–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9641–4]

Notification of a Public Meeting of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Chartered SAB to conduct quality reviews of a draft report on the President's requested FY 2013 budget for EPA research and a draft report on science integration at EPA; to plan for a joint meeting of the SAB and Office of Research and Development's (ORD's) Board of Scientific Counselors (BOSC); to receive a briefing on ORD and sustainability science; and to discuss the scientific and technical bases for four proposed agency actions.

DATES: The public meeting will be held on Thursday, March 22, 2012 from 10 a.m. to 6 p.m. and Friday, March 23, 2012 from 8 a.m. to 1 p.m. (Eastern Daylight Time).

ADDRESSES: The meeting will be held at The Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218, fax (202) 202–564–2218; or email at *nugent.angela@epa.gov*. General

information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public meeting to discuss and deliberate on the topics below.

Draft Report on the President's Requested FY 2013 Research Budget for EPA

The chartered SAB will conduct a quality review of an SAB draft report on the President's requested FY 2013 EPA research budget. Information about this advisory activity can be found on the Web at: *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Science%20Integration?OpenDocument.*

Draft SAB Report on Science Integration at EPA

The chartered SAB will conduct a quality review of a draft report providing recommendations to strengthen science integration for EPA's environmental decisions. Information about this advisory activity can be found on the Web at: *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Science%20Integration?OpenDocument.*

ORD Research: Future Strategic Directions and Current Sustainability Research

The SAB and ORD's BOSC provided a joint report to the Administrator in October 2012 entitled *Office of Research and Development (ORD) New Strategic Research Directions: A Joint Report of the Science Advisory Board (SAB) and ORD Board of Scientific Councilors (BOSC)* EPA–SAB–12–001. The SAB will discuss plans for a follow up joint meeting with the BOSC to provide additional advice on ORD strategic research directions. The SAB will also receive a briefing on recent ORD activities responding to the National Academy of Science report *Sustainability and the U.S. EPA.*

Discussion of the Scientific and Technical Bases for Four Proposed Agency Actions

EPA has recently underscored the need to routinely inform the SAB about proposed Agency actions that have a scientific or technical basis. Recently, EPA's Office of Air and Radiation has informed the SAB about several proposed regulations [Commercial and Industrial Solid Waste Incineration (CISWI) Units: Reconsideration and Proposed Amendments; Non-Hazardous Secondary Materials That Are Solid Waste (76 FR 80452–80530); National Emission Standards for HAPs for Area Sources: Industrial, Commercial, and Institutional Boilers (76 FR 80532–805520; National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (76 FR 80598–80672); and EPA and DOT's Proposed Light-duty GHG and CAFE Vehicle Standard (76 FR 74854–75420)]. The SAB will discuss the proposed regulations to determine whether there are any scientific or technical issues that may merit future SAB attention.

Availability of Meeting Materials: A meeting agenda and other materials for the meeting will be placed on the SAB Web site at *http://epa.gov/sab.*

Procedures for Providing Public Input: Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments pertaining to EPA's charge, meeting materials, or the group providing advice. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Persons interested in providing oral statements at the March 22–23, 2012 meeting should contact Dr. Angela Nugent, DFO, in writing (preferably via email) at the contact information noted above.

Written Statements: Written statements for the March 22–23, 2012 meeting should be received in the SAB Staff Office by no later than March 16, 2012, so that the information may be made available to the SAB for its consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide electronic versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 24, 2012.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–5014 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9641–7]

Public Water System Supervision Program Revision for the State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the state of Colorado has revised its Public Water System Supervision (PWSS) Program by adopting federal regulations for the Ground Water Rule that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR parts 141 and 142. The EPA has completed its review of this revision in accordance with the SDWA and proposes to approve Colorado's primacy revision for the Ground Water Rule.

Today's approval action does not extend to public water systems in Indian country as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by April 2, 2012. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and

appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective April 2, 2012. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the RA issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: James B. Martin, Regional Administrator, c/o Robert Clement, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Unit (7th floor), 1595 Wynkoop Street, Denver, CO 80202–1129; (2) Colorado Department of Public Health and Environment (CDPHE), Drinking Water Section, 4300 Cherry Creek Drive South, Denver, CO.

FOR FURTHER INFORMATION CONTACT: Robert Clement, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, 303–312–6653.

SUPPLEMENTARY INFORMATION: EPA approved Colorado's application for assuming primary enforcement authority for the PWSS Program, pursuant to section 1413 of the SDWA, 42 U.S.C. 300g–2, and 40 CFR part 142. Colorado Department of Public Health and Environment administers Colorado's PWSS Program.

A. Why are revisions to state programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How does today's action affect Indian country (18 U.S.C. 1151) in Colorado?

Colorado is not authorized to carry out its PWSS Program in Indian country, as that term is defined at 18 U.S.C. 1151. Indian country includes, but is not limited to, land within the formal Indian Reservations located within or abutting the state of Colorado, including the Southern Ute Indian Reservation and the Ute Mountain Ute Indian Reservation, any land held in trust by the United States for an Indian Tribe, and any other areas which are ''Indian Country'' within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and in a newspaper of general circulation in the state. A notice will also be sent to both the person(s) requesting the hearing and the state. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: November 3, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–5022 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9641–5]

Public Water System Supervision Program Revision for the State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the state of Montana has revised its Public Water System Supervision (PWSS) Program by adopting federal regulations for the Long Term 2 Enhanced Surface Water Treatment Rule, Stage 2 Disinfectants and Disinfection Byproducts Rule and Ground Water Rule that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141 and 142. The EPA has completed its review of these revisions in accordance with the SDWA and proposes to approve Montana's primacy revisions for the above stated rules.

Today's approval action does not extend to public water systems in Indian country, as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by April 2, 2012. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective April 2, 2012. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the RA issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: James B. Martin, Regional Administrator, c/o Robert Clement, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Unit (7th floor), 1595 Wynkoop Street, Denver, CO 80202–1129, (2) Montana Department of Environmental Quality, Public Water Supply, 1520 East 6th Avenue, Helena, MT 59620–0901.

FOR FURTHER INFORMATION CONTACT: Robert Clement, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, 303–312–6653.

SUPPLEMENTARY INFORMATION: EPA approved Montana's application for assuming primary enforcement authority for the PWSS Program, pursuant to section 1413 of the SDWA, 42 U.S.C. 300g–2, and 40 CFR part 142. Montana Department of Environmental Quality administers Montana's PWSS Program.

A. Why are revisions to state programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How does today's action affect Indian country (18 U.S.C. 1151) in Montana?

Montana is not authorized to carry out its PWSS Program in Indian country, as that term is defined at 18 U.S.C. 1151. Indian country includes, but is not limited to, land within the formal Indian Reservations located within or abutting the state of Montana, including the Blackfeet, Crow, Flathead, Fort Belknap, Fort Peck, Northern Cheyenne and Rocky Boy's Indian Reservations, any land held in trust by the United States for an Indian Tribe, and any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and a newspaper of general circulation in the state. A notice will also be sent to both the person(s) requesting the hearing and the state. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: November 9, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–5026 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9641–6]

Public Water System Supervision Program Revision for the State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the state of North Dakota has revised its Public Water System Supervision (PWSS) Program by adopting federal regulations for the Lead/Copper Rule Short-Term Regulatory Revisions and Clarifications and the Public Notice Rule that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR parts 141 and 142. The EPA has completed its review of these revisions in accordance with the SDWA and proposes to approve North Dakota's primacy revisions for the above stated rules. Today's approval action does not extend to public water systems in Indian country, as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by April 2, 2012. Please see Supplementary Information, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective April 2, 2012. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the RA issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: James B. Martin, Regional Administrator, c/o Michael Copeland, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129. All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Drinking Water Unit (7th floor), 1595 Wynkoop Street, Denver, CO 80202–1129, (2) North Dakota Department of Health, Drinking Water Program, 918 East Divide Avenue, 3rd Floor, Bismarck, North Dakota 58501–1947.

FOR FURTHER INFORMATION CONTACT: Michael Copeland, Drinking Water Unit (8P–W–DW), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, 303–312–6010.

SUPPLEMENTARY INFORMATION: EPA approved North Dakota's application for assuming primary enforcement authority for the PWSS Program, pursuant to section 1413 of the SDWA, 42 U.S.C. 300g–2, and 40 CFR part 142. North Dakota Department of Health administers North Dakota's PWSS Program.

A. Why are revisions to state programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How does today's action affect Indian country (18 U.S.C. 1151) in North Dakota?

North Dakota is not authorized to carry out its PWSS Program in Indian country, as that term is defined at 18 U.S.C. 1151. Indian country includes, but is not limited to, land within the formal Indian Reservations located within or abutting the state of North Dakota, including the Fort Berthold, Spirit Lake, Standing Rock and Turtle Mountain Indian Reservations, any land held in trust by the United States for an Indian Tribe, and any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal**

Register and a newspaper of general circulation in the state. A notice will also be sent to both the person(s) requesting the hearing and the state. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–5023 Filed 2–29–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

ASL Global Logistics, Inc. (NVO & OFF), 19051 Kenswick Drive, Suite 190A, Humble, TX 77338, Officers: Nidal Y. Younes, C.O.O. (Qualifying Individual), Agha Wassim, President, Application Type: Add NVO Service.

ATI Container Services, LLC (NVO & OFF), 11700 NW 36th Avenue, Miami, FL 33167, Officers: Claudia M. Hermo, President (Qualifying Individual), Calos Hermo, Vice President, Application Type: New NVO & OFF License.

B2B Global Logistics Incorporated (NVO & OFF), 14611 S. Broadway Street, Gardena, CA 90248, Officers: Won Bae Lee, President (Qualifying Individual), Henry Yun, Secretary, Application Type: New NVO & OFF License.

Cargo Distribution Export Inc (NVO & OFF), 1932 NW 82nd Avenue, Miami, FL 33126, Officers: Charlie Diaz, President (Qualifying Individual), Claudia Quintero, Application Type: License Transfer & Add NVO Service.

CDS Air Freight, Inc. (NVO & OFF), 107 Executive Drive, #A, Dulles, VA 20166, Officers: Philippe Pierson, Vice President of Ocean Exports (Qualifying Individual), Joseph J. Place, President, Application Type: New NVO & OFF License.

Everplus Logistics Inc (NVO & OFF), 80 Old Tappan Road, Old Tappan, NJ 07675, Officers: Yun S. Kang, President (Qualifying Individual), Danny Shin, Secretary, Application Type: QI Change.

Fastway Moving and Services Corp. dba Fastway Cargo (NVO), 701 Penhorn Avenue, Unit 1, Secaucus, NJ 07094, Officers: Luciana Line, Secretary (Qualifying Individual), Francisco J. Eguiguren, President, Application Type: Trade Name Change/QI Change.

Fastway Moving and Storage Inc. dba Dream Cargo (NVO & OFF), 155 West Street, #2, Wilmington, MA 01887, Officers: Luciana Lina, Secretary (Qualifying Individual), Francisco J. Eguiguren, President, Application Type: Trade Name Change/QI Change.

Forward System Logistics Inc. (NVO), 145–54 156th Street, Jamaica, NY 11434, Officers: Philip Po, Secretary (Qualifying Individual), Carrie Law, President/Treasurer, Application Type: QI Change.

friendship logistics LLC (NVO & OFF), 7823 New London Drive, Springfield, VA 22153, Officer: Feras Hindi, Member (Qualifying Individual), Application Type: New NVO & OFF License.

Global Container Line, Inc. dba Global Container Line (NVO & OFF), 1930 Sixth Avenue South, Suite 401, Seattle, WA 98134, Officers: Kevin J. Krause, VP Pricing & Supplier Management (Qualifying Individual), Peter F.J. Knapp, President, Application Type: QI Change.

Global Logistics New Jersey Limited Liability Company (NVO & OFF) 275 Veterans Boulevard, Rutherford, NJ 07070, Officers: Ohmoon Kwon, Manager/CEO (Qualifying Individual), Jihyuk Lim, Treasurer, Application Type: New NVO & OFF License.

Han C. Kim dba Harvest Global International (NVO & OFF), 3050 W. 4th Street, #209, Los Angeles, CA 90020, Officer: Han C. Kim, Sole Proprietor (Qualifying Individual), Application Type: New NVO & OFF License.

International Cargo Shipping LLC (NVO & OFF), 11354 Burbank Blvd., #C, North Hollywood, CA 91601, Officers: Hovannes ''Leo'' Bagdasarian, Member (Qualifying Individual), Karine Bagdasaryan, Member, Application Type: New NVO & OFF License.

Knight Global Solutions, Inc. (NVO & OFF), 51263 Nicolette Drive, Chesterfield TWP., MI 48047. Officer: Donald E. Finnerty, President/Secretary/Treasurer (Qualifying Individual). Application Type: New NVO & OFF License.

LOA, Inc. (NVO & OFF), 9911 Inglewood Avenue, #106, Inglewood, CA 90301, Officer: Robin G. Djordjevic, President/Secretary/Treasurer (Qualifying Individual), Application Type: New NVO & OFF License.

Nakamura Air Express (U.S.A.), Inc. dba Nax (USA), INC., dba KRN Logistics (NVO & OFF), 5343 W. Imperial Highway, #100, Los Angeles, CA 90045, Officers: Shiro Kobayashi, Operating Officer (Qualifying Individual), Fumio Tamada, President/CEO, Application Type: Trade Name Change.

Talwin Transport Service LLC (NVO & OFF), 2025 NW 102nd Avenue, Suite 110, Doral, FL 33172, Officers: Orestes G. Wrves, Secretary/Treasurer/Manager Member (Qualifying Individual), Gabriel Taberna, President/Manager Member, Application Type: New NVO & OFF License.

Transport Logistic International, Corp. (NVO & OFF), 7345 NW 79th Terrace, Medley, FL 33166, Officers: Juan J. Avendano, Vice President/Director (Qualifying Individual), Jennifer Granada, President/Director, Application Type: Add OFF Service.

Worldwide Integrated Logistics, LLC dba WIL Lines (NVO & OFF), 13290 NW 45th Avenue, Miami, FL 33054, Officers: Chadi Karam, Vice President/Treasurer (Qualifying Individual), Bassam Mourad, President, Application Type: QI Change.

Dated: February 24, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–4943 Filed 2–29–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
002178F	Leschaco, Inc., One Evertrust Plaza, Suite 304, Jersey City, NJ 07302	January 18, 2012.
003729F	Tratto International Forwarders Corporation, 801 Madrid Street, Suite 1, Miami, FL 33134	January 20, 2012.
022436NF	RLE International, Inc., 1400 NW 96th Avenue, Suite 106, Doral, FL 33172	January 20, 2012.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–4945 Filed 2–29–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 004621F.
Name: Global Forwarding, Inc. dba Global Connection.
Address: 305 Joyce Avenue, Arcadia, CA 91006.
Date Revoked: February 10, 2012.
Reason: Failed to maintain a valid bond.

License Number: 016207N.
Name: Admiral Overseas Shipping Company, Inc.
Address: 323 South Swing Road, Greensboro, NC 27409.
Date Revoked: January 28, 2012.
Reason: Failed to maintain a valid bond.

License Number: 018164N.
Name: Cibao Cargo, Inc.
Address: 1345 Cromwell Avenue, Bronx, NY 10452.
Date Revoked: February 2, 2012.
Reason: Failed to maintain a valid bond.

License Number: 1900F.
Name: U.S.A. Shipping Corporation.
Address: 1890 NW 82nd Avenue, Suite 101, Miami, FL 33126.
Date Revoked: February 4, 2012.
Reason: Failed to maintain a valid bond.

License Number: 020275N.
Name: Global Tech Investments, L.L.C. dba Global Freight Forwarding.
Address: 1851 Central Place South, Suite 122, Kent, WA 98030.
Date Revoked: February 9, 2012.
Reason: Failed to maintain a valid bond.

License Number: 020479F.
Name: Karon Jones dba Keene Machinery and Export.
Address: 425 Sandy Lane, Dublin, TX 76446.
Date Revoked: February 11, 2012.
Reason: Failed to maintain a valid bond.

License Number: 020527NF.
Name: Fast Logistics, Inc.
Address: 3350 SW 3rd Avenue, Suite 207, Fort Lauderdale, FL 33315.
Date Revoked: February 1, 2012.
Reason: Failed to maintain valid bonds.

License Number: 021014N.
Name: Magic Transport, Inc.
Address: Pepsi Industrial Park, PR–2, KM 19.5, Interior BO Candelaria, Toa Baja, PR 00949.
Date Revoked: February 2, 2012.
Reason: Failed to maintain a valid bond.

License Number: 021869F.
Name: Merco Air & Ocean Cargo, Inc.
Address: 6 Fir Way, Cooper City, FL 33026.
Date Revoked: February 1, 2012.
Reason: Failed to maintain a valid bond.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–4944 Filed 2–29–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 16, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Jimmy Enriquez,* The Woodlands, Texas, individually and as trustee for JE Trust No. 2, The Woodlands, Texas; to acquire voting shares of Uvalde Bancshares, Inc., Dover, Delaware, and thereby indirectly acquire voting shares of Uvalde National Bank, Uvalde, Texas.

Board of Governors of the Federal Reserve System,
February 27, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–4956 Filed 2–29–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3053]

Gorell Enterprises, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the

draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Gorell Enterprises, File No. 112 3053'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/gorellenterprisesconsent,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James A. Kohm (202–326–2640) or Joshua S. Millard (202–326–2454), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 22, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 23, 2012. Write ''Gorell Enterprises, File No. 112 3053'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/gorellenterprisesconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Gorell Enterprises, File No. 112 3053'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 23, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Gorell Enterprises, Inc., a corporation (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and sale of replacement windows for use in residences. According to the FTC complaint, respondent represented that consumers who replace their windows with respondent's Thermal Master III® glass system windows are likely to achieve residential energy savings of 40% or save 40% on residential heating and cooling costs. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Many factors determine the savings homeowners can realize by replacing their windows, including the home's geographic location, size, insulation package, and existing windows. Consumers who replace single or double-paned wood or vinyl-framed windows—common residential window types in the United States—with Gorell replacement windows are not likely to achieve a 40% reduction in residential energy consumption or heating and cooling costs. The complaint also alleges that, by providing

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

its independent dealers and installers with advertising and other promotional materials making the above unsubstantiated representations, respondent provided the means and instrumentalities to engage in deceptive practices. Thus, the complaint alleges that respondent engaged in unfair or deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains three provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of windows. It prohibits respondent from making any representation that: (A) Consumers who replace their windows with respondent's windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; or (B) respondent guarantees or pledges that consumers who replace their windows with respondent's windows will achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that all or almost all consumers are likely to receive the maximum represented savings or reduction. Further, if respondent represents, guarantees, or pledges that consumers achieve such energy savings or heating and cooling cost reductions under specified circumstances, it must: Disclose those circumstances clearly and prominently in close proximity to such representation, guarantee, or pledge; and substantiate that all or almost all consumers are likely to receive the maximum represented, guaranteed, or pledged savings or reduction under those circumstances (*e.g.,* when replacing a window of a specific composition in a building having a specific level of insulation in a specific region). The performance standard imposed under this Part constitutes fencing-in relief reasonably necessary to ensure that any future energy savings or reduction claims are not deceptive.

Part I of the order requires substantiation for representations including the words ''up to'' because the respondent may elect to make such representations in the future. The words ''up to'' do not effectively qualify representations regarding the energy savings or cost reductions likely to be achieved through replacement windows. Therefore, Part I requires the same level of substantiation regardless of whether the covered representation includes the words ''up to.'' The FTC's proposed consent order should not be interpreted as a general statement of how the Commission may interpret or take other action concerning representations including the words ''up to'' for other products or services in the future.

Parts II and III address any product or service for which respondent makes any energy-related efficacy representation. Part II prohibits respondent from making any representation: (A) That any specific number or percentage of consumers who replace their windows with respondent's windows achieve energy savings or reduction in heating and cooling costs; or (B) about energy consumption, energy savings, energy costs, heating and cooling costs, U-factor, solar heat gain coefficient, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy; unless the representation is non-misleading and substantiated by competent and reliable scientific evidence. Part III prohibits respondent from providing to others the means and instrumentalities with which to make any false, unsubstantiated, or otherwise misleading representation of material fact. It defines ''means and instrumentalities'' to mean any information, including any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any such product or service.

Parts IV though VII require respondent to: Keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission, Commissioner Rosch abstaining.

Donald S. Clark,

Secretary.

[FR Doc. 2012–4997 Filed 2–29–12; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3001]

Serious Energy, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Serious Energy, File No. 112 3001'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/seriousenergyconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James A. Kohm (202–326–2640) or Joshua S. Millard (202–326–2454), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment

describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 22, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 23, 2012. Write ''Serious Energy, File No. 112 3001'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals= home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/seriousenergyconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Serious Energy, File No. 112 3001'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 23, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Serious Energy, Inc., a corporation (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and sale of replacement windows for use in residences. According to the FTC complaint, respondent represented that consumers who replace their windows with SeriousWindows 600 Quantum 2 Series windows are likely to achieve residential energy savings of 49% or save 49% on residential heating and cooling costs. Additionally, according to the FTC complaint, respondent represented that consumers who replace their windows with SeriousWindows 501 Series windows are likely to achieve residential energy savings of 40% or save 40% on residential heating and cooling costs. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Many factors determine the savings homeowners can realize by replacing their windows, including the home's geographic location, size, insulation package, and existing windows. Consumers who replace single or double-paned wood or vinyl-framed windows—common residential window types in the United States—with SeriousWindows replacement windows are not likely to achieve a 40% or 49% reduction in residential energy consumption or heating and cooling costs. The complaint also alleges that, by providing its independent dealers and installers with advertising and other promotional materials making the above unsubstantiated representations, respondent provided the means and instrumentalities to engage in deceptive practices. Thus, the complaint alleges that respondent engaged in unfair or deceptive practices in violation of Section 5(a) of the FTC Act.

Some promotional materials challenged in the FTC's complaint include the words ''up to'' in an apparent attempt to qualify representations that consumers who replace windows with respondent's windows are likely to achieve specified amounts of residential energy savings or reduction in residential heating and cooling costs. In the context of specific ads in this case, the words ''up to'' do not effectively qualify such representations for replacement windows. The FTC's complaint and the proposed consent order should not be interpreted as a general statement of how the Commission may interpret or take other action concerning representations including the words ''up to'' for other products or services in the future.

The proposed consent order contains three provisions designed to prevent respondent from engaging in similar

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

acts and practices in the future. Part I addresses the marketing of windows. It prohibits respondent from making any representation that: (A) Consumers who replace their windows with respondent's windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; or (B) respondent guarantees or pledges that consumers who replace their windows with respondent's windows will achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that all or almost all consumers are likely to receive the maximum represented savings or reduction. Further, if respondent represents, guarantees, or pledges that consumers achieve such energy savings or heating and cooling cost reductions under specified circumstances, it must: Disclose those circumstances clearly and prominently in close proximity to such representation, guarantee, or pledge; and substantiate that all or almost all consumers are likely to receive the maximum represented, guaranteed, or pledged savings or reduction under those circumstances (e.g., when replacing a window of a specific composition in a building having a specific level of insulation in a specific region). The performance standard imposed under this Part constitutes fencing-in relief reasonably necessary to ensure that any future energy savings or reduction claims are not deceptive.

Parts II and III address any product or service for which respondent makes any energy-related efficacy representation. Part II prohibits respondent from making any representation: (A) That any specific number or percentage of consumers who replace their windows with respondent's windows achieve energy savings or reduction in heating and cooling costs; or (B) about energy consumption, energy savings, energy costs, heating and cooling costs, U-factor, solar heat gain coefficient, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy; unless the representation is non-misleading and substantiated by competent and reliable scientific evidence. Part III prohibits respondent from providing to others the means and instrumentalities with which to make any false, unsubstantiated, or otherwise misleading representation of material fact. It defines ''means and instrumentalities'' to mean any information, including any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any such product or service.

Parts IV through VII require respondent to: Keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission, Commissioner Rosch abstaining.

Donald S. Clark,

Secretary.

[FR Doc. 2012–4999 Filed 2–29–12; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3005]

Long Fence & Home, LLLP; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Long Fence & Home, File No. 112 3005'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/longfencehomeconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James A. Kohm (202–326–2640) or Joshua S. Millard (202–326–2454), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 22, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 23, 2012. Write ALong Fence & Home, File No. 112 3005'' on your comment. Your comment B including your name and your state B will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state

identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/longfencehomeconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Long Fence & Home, File No. 112 3005'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 23, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Long Fence & Home, LLLP, a partnership (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and sale of replacement windows for use in residences. According to the FTC complaint, respondent represented that consumers who replace their windows with Long Windows' Quantum2 replacement windows with SuperPak Glass are likely to achieve residential energy savings of 50% or save 50% on residential heating and cooling costs. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Many factors determine the savings homeowners can realize by replacing their windows, including the home's geographic location, size, insulation package, and existing windows. Consumers who replace single or double-paned wood or vinyl-framed windows—common residential window types in the United States—with LongWindows replacement windows are not likely to achieve a 50% reduction in residential energy consumption or heating and cooling costs. Thus, the complaint alleges that respondent engaged in unfair or deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains two provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of windows. It prohibits respondent from making any representation that: (A) consumers who replace their windows with respondent's windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; or (B) respondent guarantees or pledges that consumers who replace their windows with respondent's windows will achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that all or almost all consumers are likely to receive the maximum represented savings or reduction. Further, if respondent represents, guarantees, or pledges that consumers achieve such energy savings or heating and cooling cost reductions under specified circumstances, it must: disclose those circumstances clearly and prominently in close proximity to such representation, guarantee, or pledge; and substantiate that all or almost all consumers are likely to receive the maximum represented, guaranteed, or pledged savings or reduction under those circumstances (e.g., when replacing a window of a specific composition in a building having a specific level of insulation in a specific region). The performance standard imposed under this Part constitutes fencing-in relief reasonably necessary to ensure that any future energy savings or reduction claims are not deceptive.

Part I of the order requires substantiation for representations including the words ''up to'' because the respondent may elect to make such representations in the future. The words ''up to'' do not effectively qualify representations regarding the energy savings or cost reductions likely to be achieved through replacement windows. Therefore, Part I requires the same level of substantiation regardless of whether the covered representation includes the words ''up to.'' The FTC's proposed consent order should not be interpreted as a general statement of how the Commission may interpret or take other action concerning representations including the words ''up to'' for other products or services in the future.

Part II addresses any product or service for which respondent makes any energy-related efficacy representation. It prohibits respondent from making any representation: (A) That any specific number or percentage of consumers who replace their windows with respondent's windows achieve energy savings or reduction in heating and cooling costs; or (B) about energy consumption, energy savings, energy

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

costs, heating and cooling costs, U-factor, solar heat gain coefficient, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy; unless the representation is non-misleading and substantiated by competent and reliable scientific evidence.

Parts III though VI require respondent to: Keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission, Commissioner Rosch abstaining.

Donald S. Clark,

Secretary.

[FR Doc. 2012–4998 Filed 2–29–12; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 102 3171]

Winchester Industries; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Winchester, File No. 102 3171'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/winchesterconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James A. Kohm (202–326–2640) or Joshua S. Millard (202–326–2454), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 22, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 23, 2012. Write ''Winchester, File No. 102 3171'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/winchesterconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Winchester, File No. 102 3171'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 23, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Winchester Industries, a partnership (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and sale of replacement windows for use in residences. According to the FTC complaint, respondent represented that consumers who replace their windows with Bristol and Winter Lock Super Triple-E A-Plus with Alpha-10 windows are likely to achieve residential energy savings of 47% or to save 47% on their heating and cooling costs. The complaint alleges that respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Many factors determine the savings homeowners can realize by replacing their windows, including the home's geographic location, size, insulation package, and existing windows. Consumers who replace single or double-paned wood or vinyl-framed windows—common residential window types in the United States—with Winchester replacement windows are not likely to achieve a 47% reduction in residential energy consumption or heating and cooling costs. The complaint also alleges that, by providing its independent dealers and installers with advertising and other promotional materials making the above unsubstantiated representations, respondent provided the means and instrumentalities to engage in deceptive practices. Thus, the complaint alleges that respondent engaged in unfair or deceptive practices in violation of Section 5(a) of the FTC Act.

Some promotional materials challenged in the FTC's complaint include the words ''up to'' in an apparent attempt to qualify representations that consumers who replace windows with respondent's windows are likely to achieve specified amounts of residential energy savings or reduction in residential heating and cooling costs. In the context of specific ads in this case, the words ''up to'' do not effectively qualify such representations for replacement windows. The FTC's complaint and the proposed consent order should not be interpreted as a general statement of how the Commission may interpret or take other action concerning representations including the words ''up to'' for other products or services in the future.

The proposed consent order contains three provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of windows. It prohibits respondent from making any representation that: (A) Consumers who replace their windows with respondent's windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; or (B) respondent guarantees or pledges that consumers who replace their windows with respondent's windows will achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that all or almost all consumers are likely to receive the maximum represented savings or reduction. Further, if respondent represents, guarantees, or pledges that consumers achieve such energy savings or heating and cooling cost reductions under specified circumstances, it must: disclose those circumstances clearly and prominently in close proximity to such representation, guarantee, or pledge; and substantiate that all or almost all consumers are likely to receive the maximum represented, guaranteed, or pledged savings or reduction under those circumstances (*e.g.,* when replacing a window of a specific composition in a building having a specific level of insulation in a specific region). The performance standard imposed under this Part constitutes fencing-in relief reasonably necessary to ensure that any future energy savings or reduction claims are not deceptive.

Parts II and III address any product or service for which respondent makes any energy-related efficacy representation. Part II prohibits respondent from making any representation: (A) that any specific number or percentage of consumers who replace their windows with respondent's windows achieve energy savings or reduction in heating and cooling costs; or (B) about energy consumption, energy savings, energy costs, heating and cooling costs, U-factor, solar heat gain coefficient, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy; unless the representation is non-misleading and substantiated by competent and reliable scientific evidence. Part III prohibits respondent from providing to others the means and instrumentalities with which to make any false, unsubstantiated, or otherwise misleading representation of material fact. It defines ''means and instrumentalities'' to mean any information, including any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any such product or service.

Parts IV though VII require respondent to: Keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission, Commissioner Rosch abstaining.

Donald S. Clark

Secretary.

[FR Doc. 2012–5001 Filed 2–29–12; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 112 3057]

THV Holdings LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 23, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''THV Holdings, File No. 112 3057'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/thvholdingsconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James A. Kohm (202–326–2640) or Joshua S. Millard (202–326–2454), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 22, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 23, 2012. Write ''THV Holdings, File No. 112 3057'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/thvholdingsconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''THV Holdings, File No. 112 3057'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 23, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from THV Holdings LLC, a limited liability company (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing and sale of replacement windows for use in residences. According to the FTC complaint, respondent represented that its windows likely pay for themselves in energy savings alone within eight years, when consumers replace their windows with THV Compozit windows with Alter-Lite® triple pane glass. The respondent also allegedly represented that consumers who replace their windows with these THV windows are likely to achieve residential energy savings of 40%, save 40% on residential heating and cooling costs, or reduce their energy bills by half. In addition, the respondent allegedly represented that homeowners have saved 35%–55%

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

off their energy bills by replacing their windows with THV windows. According to the complaint, respondent did not possess and rely upon a reasonable basis substantiating these representations when it made them. Many factors determine the savings homeowners can realize by replacing their windows, including the home's geographic location, size, insulation package, and existing windows. Consumers who replace single or double-paned wood or vinyl-framed windows—common residential window types in the United States—with THV replacement windows are not likely to achieve a 40%, 50%, or 35%–55% reduction in residential energy consumption or heating and cooling costs. The complaint also alleges that, by providing its independent dealers and installers with advertising and other promotional materials making the above unsubstantiated representations, respondent provided the means and instrumentalities to engage in deceptive practices. Thus, the complaint alleges that respondent engaged in unfair or deceptive practices in violation of Section 5(a) of the FTC Act.

Some promotional materials challenged in the FTC's complaint include the words ''up to'' in an apparent attempt to qualify representations that consumers who replace windows with respondent's windows are likely to achieve specified amounts of residential energy savings or reduction in residential heating and cooling costs. In the context of specific ads in this case, the words ''up to'' do not effectively qualify such representations for replacement windows. The FTC's complaint and the proposed consent order should not be interpreted as a general statement of how the Commission may interpret or take other action concerning representations including the words ''up to'' for other products or services in the future.

The proposed consent order contains three provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I addresses the marketing of windows. It prohibits respondent from making any representation that: (A) Consumers who replace their windows with respondent's windows achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; or (B) respondent guarantees or pledges that consumers who replace their windows with respondent's windows will achieve up to or a specified amount or percentage of energy savings or reduction in heating and cooling costs; unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence to substantiate that all or almost all consumers are likely to receive the maximum represented savings or reduction. Further, if respondent represents, guarantees, or pledges that consumers achieve such energy savings or heating and cooling cost reductions under specified circumstances, it must: Disclose those circumstances clearly and prominently in close proximity to such representation, guarantee, or pledge; and substantiate that all or almost all consumers are likely to receive the maximum represented, guaranteed, or pledged savings or reduction under those circumstances (e.g., when replacing a window of a specific composition in a building having a specific level of insulation in a specific region). The performance standard imposed under this Part constitutes fencing-in relief reasonably necessary to ensure that any future energy savings or reduction claims are not deceptive.

Parts II and III address any product or service for which respondent makes any energy-related efficacy representation. Part II prohibits respondent from making any representation: (A) About the ability of respondent's windows to pay for themselves in energy savings alone within any specific number of years or other time period, when consumers replace their windows with respondent's windows; (B) that any specific number or percentage of consumers who replace their windows with respondent's windows achieve energy savings or reduction in heating and cooling costs; or (C) about energy consumption, energy savings, energy costs, heating and cooling costs, U-factor, solar heat gain coefficient, R-value, K-value, insulating properties, thermal performance, or energy-related efficacy; unless the representation is non-misleading and substantiated by competent and reliable scientific evidence. Part III prohibits respondent from providing to others the means and instrumentalities with which to make any false, unsubstantiated, or otherwise misleading representation of material fact. It defines ''means and instrumentalities'' to mean any information, including any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any such product or service.

Parts IV though VIII require respondent to: Train personnel who direct or engage in the promotion or sale of any product or service covered by the order not to make representations prohibited by the order; keep copies of advertisements and materials relied upon in disseminating any representation covered by the order; provide copies of the order to certain personnel, agents, and representatives having supervisory responsibilities with respect to the subject matter of the order; notify the Commission of changes in its structure that might affect compliance obligations under the order; and file a compliance report with the Commission and respond to other requests from FTC staff. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or the proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission, Commissioner Rosch abstaining.

Donald S. Clark,

Secretary.

[FR Doc. 2012–5000 Filed 2–29–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Ventron Corporation Site in Beverly, MA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Ventron Corporation site in Beverly, Massachusetts, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Ventron Corporation.

Location: Beverly, Massachusetts.

Job Titles and/or Job Duties: All Atomic Weapons Employees.

Period of Employment: January 1, 1942 through December 31, 1948.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–4953 Filed 2–29–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Rocky Flats Plant in Golden, CO, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Rocky Flats Plant in Golden, Colorado, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Rocky Flats Plant.

Location: Golden, Colorado.

Job Titles and/or Job Duties: All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors.

Period of Employment: January 1, 1972 through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–4961 Filed 2–29–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30-Day–12–12BL]

Agency Forms Undergoing Paperwork Reduction Act Review

The Agency for Toxic Substances and Disease Registry (ATSDR) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the Centers for Disease Control and Prevention (CDC) Reports Clearance Officer at (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Biomonitoring of Great Lakes Populations Program—New—Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Great Lakes Basin has suffered decades of pollution and ecosystem damage. In 1987, the Great Lakes Water Quality Agreement listed 40 Areas of Concern (AOCs) representing the most polluted areas in the Great Lakes Basin. Many chemicals persist in Great Lakes sediments, as well as in wildlife and humans. These chemicals can build up in the aquatic food chain. Eating contaminated fish is a known route of human exposure.

In 2009, the Great Lakes Restoration Initiative (GLRI) was enacted in Public Law 111–88. The GLRI makes Great Lakes restoration a national priority for 16 federal agencies. The GLRI is led by the U.S. Environmental Protection Agency (U.S. EPA). Under a 2010 interagency agreement with the U.S. EPA, the Agency for Toxic Substances and Disease Registry (ATSDR) announced a funding opportunity called the ''Biomonitoring of Great Lakes Populations Program'' (CDC–RFA–TS10–1001).

This applied public health program aims to measure Great Lakes chemicals in human blood and urine. These measures will be a baseline for the GLRI and future restoration activities. The measures will be compared to available national estimates. This program also aims to take these measures from people who may be at higher risk of harm from chemical exposures.

Three states were funded for this program: Michigan, Minnesota, and New York. The health departments in these states will look at seven AOCs and four types of sensitive adults: Michigan—urban anglers in the Detroit River and the Saginaw River and Bay AOCs; Minnesota—American Indians near the St. Louis River AOC; and New York—licensed anglers and immigrants from Burma and their family members living in four Lake Ontario and Lake Erie AOCs. These include the Rochester Embayment AOC, the Eighteenmile Creek AOC, and the AOCs along the Niagara and Buffalo Rivers.

Each state will use its own way to ask people to take part in the study. In Michigan, people fishing along the shores of the Detroit River and Saginaw River and Bay will be asked a few questions to see if they are willing to take part in the study. In Minnesota, American Indians will be randomly chosen from a list of people who get local tribal health clinic and social services. They will be contacted by trained staff to take part in the study. In New York, names from the state licensed angler database will be chosen at random. These people will be contacted by mail and telephone to take part in the study. Another group, immigrants who moved from Burma to Buffalo, NY, will work with trained study staff to get their people to take part in the study.

All respondents who consent will give blood and urine specimens. Their blood and urine will be tested for polychlorinated biphenyls (PCBs), mercury, lead, and pesticides. Pesticides will include mirex, hexachlorobenzene, dichlorodiphenyltrichloroethane (DDT) and dichlorodiphenyldichloroethylene (DDE). Each state will test blood and urine for other chemicals of local concern. Respondents will also be interviewed. They will be asked about demographic and lifestyle factors, hobbies, and types of jobs, which can contribute to chemical exposure. Some diet questions will be asked, too, with a focus on eating Great Lakes fish. There is no cost to respondents other than their time spent in the study. The estimated annualized burden hours are 713 hours. The ATSDR is requesting approval to conduct this information collection for two years.

The ATSDR is authorized to conduct this program under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund

Amendments and Reauthorization Act of 1986.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
Michigan Shoreline Anglers	Screening Questionnaire	350	1	5/60
	Telephone Questions for Scheduling Appointments.	250	1	7/60
	Informed Consent	200	1	1/60
	Biomonitoring Questionnaire	200	1	54/60
American Indians from Minnesota	Recruitment Calling Script	312	1	5/60
	Refusal Questions Form	62	1	2/60
	Individual Consent Form	250	1	3/60
	Contact Information Form	250	1	2/60
	Study Participant Questionnaire	250	1	30/60
	Clinic Visit Form	250	1	1/60
	Participation Record	250	1	3/60
New York State Licensed Anglers	Mail-in Eligibility Screening Survey	300	1	5/60
	Online Eligibility Screening Survey	450	1	5/60
	Telephone Script for Non-responders to Screening.	500	1	5/60
	Telephone Script for Eligible Responders to Screening.	150	1	5/60
	Informed Consent	200	1	1/60
	Interview Questionnaire	200	1	30/60
Immigrants from Burma and Descendants	Eligibility Screening Survey	92	1	5/60
	Informed Consent	50	1	1/60
	Interview Questionnaire	50	1	1
	Network Size Questions for Respondent Driven Sampling.	50	1	5/60

Kimberly S. Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–4947 Filed 2–29–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–12–0338]

Agency Forms Undergoing Paperwork Reduction Act Review

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Annual Submission of the Ingredients Added to, and the Quantity of Nicotine Contained in, Smokeless Tobacco Manufactured, Imported, or Packaged in the U.S. (OMB No. 0920–0338, exp. 9/30/2012)—Extension—Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The oral use of smokeless tobacco (SLT) products represents a significant health risk. Smokeless tobacco products contain carcinogens which can cause cancer and a number of non-cancerous oral conditions, as well as leading to nicotine addiction and dependence. Furthermore, SLT use is not a safe substitute for cigarette smoking. Adolescents who use smokeless tobacco are more likely to become cigarette smokers.

The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH), has primary responsibility for the Department of Health and Human Services (HHS) smoking and health program. HHS's overall goal is to reduce death and disability resulting from the use of smokeless tobacco products and other forms of tobacco through programs of information, education and research.

The Comprehensive Smokeless Tobacco Health Education Act of 1986 (CSTHEA, 15 U.S.C. 4401 *et seq.,* Pub. L. 99–252) requires each person who manufactures, packages, or imports smokeless tobacco products to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of smokeless tobacco products. CSTHEA further requires submission of the quantity of nicotine contained in each smokeless tobacco product. Finally, the legislation authorizes HHS to undertake research, and to report to Congress (as

deemed appropriate) discussing the health effects of these ingredients.

HHS has delegated responsibility for implementing the required information collection to CDC's Office on Smoking and Health. Respondents are not required to submit specific forms; however, they are required to meet reporting guidelines and to submit the ingredient report by chemical name and Chemical Abstract Service (CAS) Registration Number, consistent with accepted reporting practices for other companies that are required to report ingredients added to other consumer products. Typically, respondents submit a summary report to CDC with the ingredient information for multiple products, or a statement that there are no changes to their previously submitted ingredient report. Respondents may submit the required information to CDC through a designated representative. The information collection is subject to strict confidentiality provisions.

Ingredient reports for new SLT products are due at the time of first importation. Thereafter, ingredient reports are due annually on March 31. Information is submitted to OSH by mailing a written report on the respondent's letterhead, by CD, three-inch floppy disk, or thumb drive. Electronic mail submissions are not accepted. Upon receipt and verification of the annual nicotine and ingredient report, OSH issues a Certificate of Compliance to the respondent.

There are no changes to information collection procedures or the estimated burden per response. There is an increase in total estimated burden due to an increase in the estimated number of respondents, from 11 to 13. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Smokeless Tobacco Manufacturers, Packagers, and Importers.	SLT Nicotine and Ingredient and Report.	13	1	1,713	22,269

Kimberly S. Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–4950 Filed 2–29–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Objective Work Plan (OWP), Objective Progress Report (OPR) and Project Abstract.

OMB No.: 0980–0204.

Description: Content changes are being proposed for the OPR and OWP ONLY. The information in the OPR is collected on a quarterly basis to monitor the performance of grantees and better gauge grantee progress. The standardized format allows ANA to report results across all its program areas and flag grantees that may need additional training and/or technical assistance to successfully implement their projects. The following are proposed changes within specific sections of the OPR form:

Objective Work Plan Update Section: ANA has added fields for 1st through 4th Quarter (Q1,Q2,Q3,Q4) to report the results for activities within each Project Objective. The grantee may continue to add to this form each quarter (rather than to a new form), reflecting cumulative results throughout the project period instead of a single quarter.

Financial Section: ANA has added 2 questions to: (1) Provide details on any income generated as a result of ANA project activities; (2) Provide details on any changes made to the budget during the reporting period.

Native American Youth and Elder Opportunities Section: ANA has added a question to: (1) Request details on any intergenerational activities between grandparents and their grandchildren. Finally, ANA has added a new section (last section) to the form titled: PROJECT SUSTAINABILITY, to: (1) Request details on the grantee's intention to continue the project benefits and/or services after ANA's funding period for the project has ended.

End of Changes to the OPR

The OWP: The information collected through the OWP is needed to properly administer and monitor the Administration for Native Americans (ANA) programs. The OWP assists applicants in describing their projects' objectives and activities, and also assists independent panel reviewers, ANA staff and the ANA Commissioner during review and funding decision process.

Changes Specific Sections of the OWP

Problem Statement: ANA added a field for applicants to include the problem statement they identified in their grant application.

Position Performing the Activity: On the previous OWP, ANA requested applicants to identify the position responsible for each activity. ANA has changed this title to ''position performing the activity'' and applicants are asked to identify the lead person in one column and other support persons in the second column.

End of Changes to the OWP

Project Abstract: The Project Abstract form is no longer managed by ANA.

Respondents: Tribal Government, Native Non-profit Organizations, Tribal Colleges & Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	500	1	3	1,500
OPR	275	4	1	1,100

Estimated Total Annual Burden Hours: 2,850.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project. Fax: 202–395–7285. Email: *OIRA_SUBMISSION@OMB.EOP.GOV*. Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–4973 Filed 2–29–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0766]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey of ''Health Care Providers' Responses to Medical Device Labeling''

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 April 2, 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–NEW and title ''Survey of 'Health Care Providers' Responses to Medical Device Labeling' ''). 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.

Survey of ''Health Care Providers' Responses to Medical Device Labeling''—21 CFR Part 801 (OMB Control Number 0910–NEW)

The purpose of this study is to determine the most effective device labeling format and inform an FDA's regulatory approach on standardized device labeling. Building upon the research methodology and success of the approach FDA used to evaluate drug labeling, we propose to ask health care providers (HCPs) to evaluate the quality of labeling (*e.g.* instructions for use, directions) for a medical device and to report the degree to which they could follow those instructions, how useful the information is, and how well organized the information is. This work will allow FDA to assess whether HCPs find the format and content of device labeling clear, understandable, useful, and user-friendly. Findings will provide evidence to inform FDA's regulatory approach to standardizing medical device labeling across the United States.

In the **Federal Register** of November 1, 2011 (76 FR 67459), FDA published a 60-day notice requesting public comment on the proposed collection of information.

Two comments were received, however only one was related to the Paperwork Reduction Act of 1995. In response to the comments submitted by Advamed, FDA responses are as follows:

(Comment 1) Comment 1 questioned whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility.

(Response) The survey is designed to elicit responses on the formatting, content, and design of the template and not on the specific medical device chosen. This is stated at the beginning of the survey. FDA relies upon knowledgeable researchers to develop appropriate survey tools, and the research methodology to test content, format, and design of labeling is based on their expertise. Drugs instructions are written for all users, including health care providers and patients. The device labeling is written for all users, including health care providers and patients. We agree that industry could provide recommended contents and formats of labeling and encourage industry to do so. This survey is designed for the health care provider and their feedback.

(Comment 2) Comment 2 questioned the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(Response) The survey is designed to elicit responses on the formatting, content, and design of the template and not on the specific medical device chosen. The terms used in the templates such as ''warnings'', ''contraindications'', and ''brand name'' are commonly used terms in labeling for all devices. We are addressing what should be in a shortened version of labeling that will allow the user to operate it safely. The survey was designed by researchers with extensive knowledge in the area of testing labeling. It is anticipated that different health care practitioners will provide different answers based on their experiences; this is why we chose to ask various types of health care practitioners. The objective of the survey is to improve device labeling; it would not be possible to do a survey with a fictitious device that has no intended use as per the suggestion. All devices need to have intended use.

(Comment 3) Comment 3 questioned ways to enhance the quality, utility, and clarity of the information to be collected.

(Response) We did not choose biomedical engineers as part of this survey because we wanted the people who interact with the pump in the presence of patients. The suggestion to add a question about whether a health care professional ever uses or reads device labeling and how to improve access to current device labeling was done in a previous study with focus groups. We developed the template survey based on the responses we

received in those focus group sessions. We agree that responses will vary depending on the professional group and anticipate this. We developed this survey with professional researchers who develop surveys, and this was also tested internally. We trust that the questions and how they are asked are what we need in order to inform any further actions on medical device labeling content and format development. In regard to conducting objective usability tests with a range of medical device types, we encourage others to perform these types of tests and share the results with FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Respondents	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Interviews					
Physicians	6	1	6	1	6
Advanced practice nurses (NPs) and registered nurses	9	1	9	1	9
Medical technicians	9	1	9	1	9
Subtotal	24	1	24	1	24
Survey					
Physicians	120	1	120	0.5	60
Advanced practice nurses (NPs) and registered nurses	240	1	240	0.5	120
Medical technicians	240	1	240	0.5	120
Total	624	1	624	0.5	324

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 27, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–4969 Filed 2–29–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice Correction; A Multi-Center International Hospital-Based Case-Control Study of Lymphoma in Asia (AsiaLymph) (NCI)

The **Federal Register** notice published on February 24, 2012 (77 FR 11136) announcing the submission to OMB of the project titled, ''A multi-center international hospital-based case-control study of lymphoma in Asia (AsiaLymph) (NCI)'' was submitted with an error. The ''*Type of Information Collection Request*'' was incorrectly listed as an Emergency. This submission should be considered a new submission.

Dated: February 24, 2012.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2012–4884 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-Organ Diseases Study Section.

Date: March 20, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cognition, Perception and Speech.

Date: March 20, 2012.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Behavioral and Social HIV/AIDS RFA Applications.

Date: March 21, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Learning and Memory.

Date: March 21, 2012.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4883 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

Date: March 23, 2012.

Time: 8 a.m. to 2 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: , Jeffrey H Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892–7924, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4888 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Loan Repayment.

Date: March 30, 2012.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mario Rinaudo, M.D., Scientific Review Officer, Office of Review, National Inst of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. (DEM 1), Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4881 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: March 19, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Anne Krey, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4903 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ZHD1 DSR–Z 52 1.

Date: March 16, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 22, 2012 .

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4904 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: March 6, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4920 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Cancer Imaging.

Date: March 6, 2012.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 707, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Suite 703, Room 7073, Bethesda, MD 20892, 301–435–1822, *choe@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel; Behavioral Research in Cancer Control (R03).

Date: March 8, 2012.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ellen K Schwartz, EDD, MBA, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329, 301–594–1215, *schwarel@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel; Quantitative Imaging for Evaluation of Responses to Cancer Therapies.

Date: March 8, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 707, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301/496–7987, *lovingeg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR Phase IIB Bridge Awards.

Date: March 20, 2012.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Savvas C Makrides, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., RM 8050a, Bethesda,

MD 20892, 301–496–7421, *makridessc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Pre-Clinical Pharmacology and Toxicology Studies.

Date: March 20, 2012.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 210, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lalita D. Palekar, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Provocative Questions R01.

Date: March 26–27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892–8329, 301–496–7576, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Provocative Questions R21.

Date: March 28–29, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Joyce C. Pegues, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Anti-Cancer Agents.

Date: March 29–30, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Savvas C. Makrides, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8050a, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Review.

Date: April 11, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 8041, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Bratin K. Saha, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8041, Bethesda, MD 20892, 301–402–0371, *sahab@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Research Infrastructure Support for HMOs.

Date: April 18, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 8055B, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, MBA, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329, 301–594–1215, *schwarel@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4922 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Theory of Mind Intervention.

Date: March 2, 2012.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Carla T. Walls, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute, of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4924 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute, March 13, 2012, 8:30 a.m. to March 13, 2012, 4 p.m., National Institutes of Health, Building 31, 31 Center Drive, C Wing, 6th floor, Conference Rm. 6, Bethesda, MD, 20892 which was published in the **Federal Register** on February 7, 2012, 77FR6130.

This notice is being amended to change the times of the meeting from 8:30 a.m.–4 p.m. to 8 a.m.–3:30 p.m. The meeting is closed to the public.

Dated: February 27, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4882 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of 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 Environmental Health Sciences Special Emphasis Panel; Examination of Research Integrity.

Date: March 29, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Sally Eckert-Tilotta, Ph.D., Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Career Development Early Award.

Date: March 29, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Nat. Inst. of Environmental Health Sciences, Keystone, 530 Davis Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/ Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4937 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to discuss personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Name of Committee: NIH Advisory Board for Clinical Research.

Date: March 26, 2012.

Time: 10 a.m. to 1:15 p.m.

Agenda: To review the FY13 Clinical Center Budget.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Time: 1:15 p.m. to 2 p.m.

Agenda: To discuss personnel matters.

Place: National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6–2551, Bethesda, MD 20892, (301) 496–2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: February 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4936 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Bioabsorbable Stents for Pediatric Pulmonary Artery Stenosis and Aortic Coarctation.

Date: March 16, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tony L Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4935 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: April 2–3, 2012.

Time: 9 a.m. to 1 p.m.

Agenda: The purpose of the meeting will be for the Committee to provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *www4.od.nih.gov/orwh/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 22, 2012

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4934 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Mental Health Services in Non-Specialty Settings Conflicts.

Date: March 8, 2012.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

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.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, 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: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4933 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of 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 a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: March 13–14, 2012.

Time: March 13, 2012, 6 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Time: March 14, 2012, 8:30 a.m. to 12:40 p.m.

Agenda: To review and evaluate the Intramural Laboratories with site visits of the Unit on Neuroplasticity the Section on Development Genetic Epidemiology and the Section on Behavioral Pediatrics and to meet with PIs Training Fellows and Staff Scientists.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Time: March 14, 2012, 1 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance and competence of individual investigators.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dawn M. Johnson, Ph.D., Executive Secretary, Division of Intramural Research Programs, National Institute of Mental Health, 10 Center Drive, Building 10, Room 4N222, Bethesda, MD 20892, 301–402–5234, *dawnjohnson@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(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: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4932 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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 Allergy and Infectious Diseases Special Emphasis Panel, NIAID Program Project Application (P01).

Date: March 16, 2012.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Uday K. Shankar, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–3193, *uday.shankar@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, International Centers of Excellence for Malaria Research (ICEMR). Competitive Revision (U19)

Date: March 19–20, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, RM 3126, MSC–7616, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Resource Related Research Projects for AIDS, Allergy, Immunology and Transplantation (R24).

Date: March 19, 2012.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Drive, MDS–7616, Bethesda, MD 20892, 301–451–2639, *poeky@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4887 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel, CIDR Contract.

Date: March 6, 2012.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Human Genome Reseach Institute, 5635 Fishers Lane, Room 4076, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, H3 AFRICA.

Date: March 29–30, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Hotel—Bethesda, 8120 Wisconsin Avenue, Grand Ballroom A, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4886 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed 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 Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: March 14–15, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4923 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Nonhuman Primate Islet/Kidney Transplantation Tolerance (U01, U19).

Date: March 22–23, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Immunology Review Branch, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–3243 *haririmf@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4921 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentablematerial, 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: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group, Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

Date: March 26, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Charles H Washabaugh, Ph.D., Scientific Review Officer, Scientific Review Branch,National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Heath, 6701 Democracy Blvd., Room 824, MSC 4872, Bethesda, MD 20817, (301) 496–9568, *washabac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: February 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4909 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; AOIC Parasitology and TB applications.

Date: March 12, 2012.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell, Computational and Molecular Biology.

Date: March 14, 2012.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: General Services Administration Crystal City, Crystal City Plaza 4 (CP4), 2200 Crystal Drive, L–121, Arlington, VA 22202.

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Chemistry, Biochemistry, Biophysics, and Bioengineering.

Date: March 15–20, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Conatct Person: Allen Barlow Richon, Ph.D., Scientific Review Officer, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special: Pilot Clinical Studies in Nephrology and Urology.

Date: March 19–20, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mushtaq A Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Oncological Sciences.

Date: March 19–22, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: March 20–21, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: HIV/AIDS Innovative Research Applications.

Date: March 20–21, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomarkers: Bridging Pediatric and Adult Therapeutics.

Date: March 20, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (Virtual Meeting).

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301)435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Adult Psychopathology and Disorders of Aging.

Date: March 20, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dana Jeffrey Plude, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Studies of variation, evolution, genomics with statistical and molecular Methods.

Date: March 20, 2012.

Time: 3:45 p.m. to 6:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David J Remondini, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301–435–1038, *remondid@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4907 Filed 2–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0121]

Homeland Security Academic Advisory Council; Establishment and Meeting

AGENCY: Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Committee Establishment and Meeting.

SUMMARY: The Secretary of Homeland Security has determined that the establishment of the Homeland Security Academic Advisory Council (HSAAC) is necessary and in the public interest in connection with the performance of duties of the Office of Academic Engagement. This determination follows consultation with the Committee Management Secretariat, General Services Administration. The committee will hold its inaugural meeting on March 20, 2012.

ADDRESSES: If you desire to submit comments on this action, they must be submitted within 30 days after publication of Notice. Comments must be identified by DHS–2011–0121 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AcademicEngagement@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–447–3713.
- *Mail:* Academic Engagement, MGMT/Office of Academic Engagement/Mailstop 0440, Department of Homeland Security, 245 Murray Lane SW., Washington, DC 20528–0440.
- *Instructions:* All submissions received must include the words ''Department of Homeland Security'' and DHS–2011–0121, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Academic Engagement/Mailstop 0440, Department of Homeland Security, 245 Murray Lane SW., Washington, DC 20528–0440, tel: 202–447–4686 and fax: 202–447–3713.

Name of Committee: Homeland Security Academic Advisory Council (HSAAC).

SUPPLEMENTARY INFORMATION: For the reasons set forth below, the Secretary of Homeland Security has determined that the establishment of the HSAAC is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

HSAAC is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.). The HSAAC will provide advice and recommendations to the Secretary and senior leadership on matters relating to student and recent graduate recruitment; international students;

academic research; campus and community resiliency, security and preparedness; and faculty exchanges.

Balanced Membership Plan: HSAAC is composed of up to 22 members who are appointed by and serve at the pleasure of the Secretary of Homeland Security. The members shall represent institutions of higher education, community colleges, school systems, and/or partnership groups as follows:

a. Up to 13 members representing the following academic institutions or organizations: State colleges and universities, community colleges, government universities, international education, Historically Black Colleges and Universities, Tribal Colleges and Universities, Hispanic Serving Institutions, Minority Serving Institutions, or the DHS Centers of Excellence. These members are appointed to represent their respective academic institution or organization and are not Special Government Employees (SGEs) as defined in Title 18, United States Code, section 202(a). To the extent possible, each of the interests listed shall be represented on the committee.

b. Other such individuals as the Secretary determines to be appropriate. The appropriate membership designation for each member in this category will be determined at the time of appointment by Department ethics officials. Individuals appointed for their expertise would be appointed as SGEs. As a candidate for appointment as an SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). DHS may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 5523a).

Candidates representing academic institutions or organizations will be at the highest leadership level of their institution—i.e., president, chancellor, or executive director.

For the initial appointments to the HSAAC, approximately one-third of the members shall serve 2-year terms of office, one third shall serve 3-year terms of office, and one-third shall serve 4-year terms of office. Thereafter, members shall serve terms of office of up to three years, with approximately one-third of members' terms of office expiring each year.

The HSAAC expects to meet quarterly, but it may meet more or less frequently, depending on the need. Members may receive per diem and reimbursement of travel expenses for their service to the Federal Government.

Duration: Continuing.

Date of Meeting: The Homeland Security Academic Advisory Council (HSAAC) will meet on March 20, 2012, from 10 a.m. to 4 p.m. in Washington, DC. The meeting will be open to the public. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Ronald Reagan International Trade Center, 1300 Pennsylvania Avenue NW., Floor B, Room B1.5–10, Washington, DC 20004. All visitors to the Ronald Reagan International Trade Center must bring a Government-issued photo ID. Please use the main entrance on 14th Street NW.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, send an email to *AcademicEngagement@hq.dhs.gov* or contact Lindsay Burton at 202–447–4686 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Summary'' section below. Comments must be submitted in writing no later than Monday, March 12, 2012, and must be identified by DHS–2011–0121 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AcademicEngagement@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–447–3713.
- *Mail:* Academic Engagement, MGMT/Office of Academic Engagement/Mailstop 0440, Department of Homeland Security, 245 Murray Lane SW., Washington, DC 20528–0440.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the Homeland Security Academic Advisory Council, go to *http://www.regulations.gov.*

A public comment period will be held during the meeting on March 20, 2012, from 3:30 p.m. to 4 p.m. and speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the Office of Academic Engagement as indicated below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Office of Academic Engagement/Mailstop 0440, Department of Homeland Security, 245 Murray Lane SW., Washington, DC 20528–0440, email: *AcademicEngagement@hq.dhs.gov,* tel: 202–447–4686 and fax: 202–447–3713.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The HSAAC will provide advice and recommendations to the Secretary and senior leadership on matters relating to student and recent graduate recruitment; international students; academic research; campus and community resiliency, security and preparedness; and faculty exchanges.

Agenda: At this inaugural committee meeting, members will receive an overview of the DHS and the Federal Advisory Committee Act. They will also receive ethics training. The committee will be briefed on its mission and purpose and receive initial taskings. Issues the HSAAC will review and discuss include campus resilience and international students.

Responsible DHS Official: Lauren Kielsmeier, *AcademicEngagement@hq.dhs.gov,* 202–447–4686.

Lauren Kielsmeier,

Executive Director for Academic Engagement.

[FR Doc. 2012–4897 Filed 2–29–12; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0035; OMB No. 1660–0008]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Elevation Certificate/Floodproofing Certificate

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by

respondents to respond) and cost, and the actual data collection instruments FEMA will use. The program office made a correction to the respondents estimated cost mathematical calculation. The estimated cost to respondents has increased from $1,251,250 to $2,301,250. FEMA received one comment in response to the previous 60-day **Federal Register** Notice published on November 21, 2011.

DATES: Comments must be submitted on or before April 2, 2012.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Elevation Certificate/Floodproofing Certificate.

Type of information collection: Revision of a currently approved collection.

OMB Number: 1660–0008.

Form Titles and Numbers: FEMA Form 81–31, Elevation Certificate, FEMA Form 81–65, Floodproofing Certificate.

Abstract: The Elevation Certificate and Floodproofing Certificate are used in conjunction with the application for flood insurance. The certificates are required to properly rate post Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after the publication of the initial FIRM or December 31, 1974, for flood insurance in Special Flood Hazard Areas. In addition, the Elevation Certificate is needed for pre-FIRM structures, which are buildings constructed before the initial FIRM or December 31, 1974, that are being rated under post-FIRM flood insurance rules. The certificates provide community officials and others standardized documents to readily record needed building elevation information. National Flood Insurance Policy policyholders/applicants provide the appropriate certificate to insurance agents. The certificate is then used in conjunction with the insurance application so that the building can be properly rated for flood insurance.

Affected Public: Individuals and households, Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 6,575.

Frequency of Response: On Occasion.

Estimated Average Hour Burden per Respondent: FEMA Form 81–31, Elevation Certificate, 3.75 hours; FEMA Form 81–65, Floodproofing Certificate, 3.25 hours.

Estimated Total Annual Burden Hours: 24,649 hours.

Estimated Cost: The estimated cost to respondents for purchasing professional services required to complete the certificates is $2,301,250.

Dated: February 23, 2012.

Anthony M. Bennett,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–4902 Filed 2–29–12; 8:45 am]

BILLING CODE 9111–42–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3336–EM; Docket ID FEMA–2012–0002]

Delaware; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Delaware (FEMA–3336–EM), dated August 28, 2011, and related determinations.

DATES: *Effective Date:* August 31, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 31, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–4900 Filed 2–29–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4045–DR; Docket ID FEMA–2012–0002]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4045–DR), dated November 17, 2011, and related determinations.

DATES: *Effective Date:* February 7, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Daniel T. Alexander, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Donald L. Keldsen as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049,

Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–4893 Filed 2–29–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4052–DR; Docket ID FEMA–2012–0002]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–4052–DR), dated February 1, 2012, and related determinations.

DATES: *Effective Date:* February 7, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 1, 2012.

Perry County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–4899 Filed 2–29–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4024–DR; Docket ID FEMA–2012–0002]

Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4024–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* February 7, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Daniel T. Alexander, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Donald L. Keldsen as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–4896 Filed 2–29–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4042–DR; Docket ID FEMA–2012–0002]

Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4042–DR), dated November 4, 2011, and related determinations.

DATES: *Effective Date:* February 7, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Daniel T. Alexander, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Donald L. Keldsen as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–4895 Filed 2–29–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0011]

Pre-Disaster Emergency Declaration Requests, FD 010–4

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on *Pre-Disaster Emergency Declaration Requests.*

DATES: Comments must be received by April 2, 2012.

ADDRESSES: Comments must be identified by docket ID FEMA–2012–0011 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Ryan Buras, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–212–1677.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the ''Privacy Notice'' link in the footer of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed policy is available in docket ID FEMA–2012–0011. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street SW., Washington, DC 20472.

II. Background

This policy applies to any gubernatorial requests to the President for an emergency declaration in advance or anticipation of the impact of an incident that threatens such destruction as could result in a major disaster, and is effective upon the date of issuance. This policy applies to pre-disaster emergency declaration requests from all States, Territories, and the District of Columbia.

The proposed policy does not have the force or effect of law.

FEMA seeks comment on the proposed policy, which is available online at *http://www.regulations.gov* in docket ID FEMA–2012–0011. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov.* The final policy will not have the force or effect of law.

Authority: 42 U.S.C. 5191–5193; 44 CFR part 206.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2012–4901 Filed 2–29–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Renewal of Information Collection: Claim for Relocation Payments—Residential, DI–381 and Claim for Relocation Payments—Nonresidential, DI–382

AGENCY: Office of the Secretary, Office of Acquisition and Property Management.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Acquisition and Property Management announces the proposed extension of a public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by April 30, 2012.

ADDRESSES: Send your written comments Mary Heying, Department of the Interior, Office of Acquisition and Property Management, 1849 C St. NW., MS 2607 MIB, Washington, DC 20240. Send any faxed comments to (202) 254–5591. Send emailed comments to *mary_heying@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this proposed information collection or its Relocation Forms should be directed to Mary Heying, Department of the Interior, Office of Acquisition and Property Management, 1849 C Street NW., MS 2607 MIB, Washington, DC 20240, or send your request by email to *mary_heying@ios.doi.gov,* or by fax to (202) 254–5591.

SUPPLEMENTARY INFORMATION:

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies an information collection activity that the Office Property Acquisition and Management will submit to OMB for extension or re-approval. Form DI–381, Claim For Relocation Payments—Residential, and DI–382, Claim For Relocation Payments—Nonresidential, permit the applicant to present allowable moving expenses and certify to occupancy status, after having been displaced because of Federal acquisition of their real property.

Comments are invited on: (1) The need for the collection of information for the performance of the function of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collections; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. Individuals providing comments should reference Relocation Forms, OMB Control # 1084–0010. A summary of the public comments will accompany the Office of the Secretary's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Claim For Relocation Payments—Residential, Claim For Relocation Payments—Nonresidential.

OMB Control Number: 1084–0010.

Summary: The information required is obtained through application made by displaced person(s) or business(es) to the funding agency for determination as to the specific amount of monies due under the law.

Bureau Form Numbers: DI–381, DI–382.

Type of Review: Information Collection: Renewal.

Frequency of Response: Once per relocation.

Description of Respondents: Individuals and businesses who are displaced because of Federal acquisitions of their real property.

Average Number of Responses Annually: 85.

Total Annual Burden Hours: 70 hours.

Dated: February 22, 2012.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 2012–4960 Filed 2–29–12; 8:45 am]

BILLING CODE 4310–RF–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2012–N042; FXES11130800000–123–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before April 2, 2012.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Permit No. TE–072650–3

Applicant: Jennifer C. Michaud-Laired, Sebastopol, California.

The applicant requests an amendment to a permit to take (survey, capture, handle, and release) the California fresh water shrimp (*Syncaris pacifica*) in conjunction with surveys and demographic studies in Sonoma, Marin, and Napa Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–63347A

Applicant: Heidi L. Hogan, Idyllwild, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–221411

Applicant: Center for Natural Lands Management, Fallbrook, California.

The applicant requests an amendment to a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) and to remove and reduce to possession from lands under Federal jurisdiction the *Ambrosia pumila* (San Diego ragweed), in conjunction with survey and population monitoring activities throughout the range of each species in California on lands owned and managed by the Center for Natural Lands Management, for the purpose of enhancing the species' survival.

Permit No. TE–08832A

Applicant: Utah State University, Logan, Utah.

The applicant requests an amendment to a permit to take (survey, capture, handle, mark, release, electrofish, and sacrifice) the Cui-ui (*Chasmistes cujus*) in conjunction with surveys, population monitoring, and research at Pyramid Lake within the Paiute Tribal Reservation, in Washoe County, Nevada, for the purpose of enhancing the species' survival.

Permit No. TE–64146A

Applicant: Patricia M. Valcarcel, San Rafael, California.

The applicant requests a permit to take (survey, capture, handle, mark, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–64138A

Applicant: Melissa M. Tu, San Diego, California.

The applicant requests an amendment to a permit to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring activities throughout the range of the species within the jurisdictional boundaries of the Carlsbad Fish and Wildlife Service Office, California, for the purpose of enhancing the species' survival.

Permit No. TE–64124A

Applicant: Sean P. Rowe, Weldon, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–799569

Applicant: Renee Y. Owens, El Cajon, California.

The applicant requests an amendment to a permit to take (survey by pursuit)

the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species in California and to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring activities in Los Angeles County, California, for the purpose of enhancing the species' survival.

Permit No. TE–006328

Applicant: Brian M. Drake, Nuevo, California.

The applicant requests an amendment to a permit to take (harass by survey) the Casey's June beetle (*Dinacoma caseyi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–029414

Applicant: Nathan T. Moorhatch, Placentia, California.

The applicant requests an amendment to a permit to take (harass by survey) the Casey's June beetle (*Dinacoma caseyi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–836491

Applicant: Michael D. Wilcox, Riverside, California.

The applicant requests an amendment to a permit to take (harass by survey) the Casey's June beetle (*Dinacoma caseyi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–837760

Applicant: Kendall H. Osborne, Riverside, California.

The applicant requests an amendment to a permit to take (harass by survey) the Casey's June beetle (*Dinacoma caseyi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–64509A

Applicant: James W. Cornett, Palm Springs, California.

The applicant requests a permit to take (harass by survey) the Casey's June beetle (*Dinacoma caseyi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–084254

Applicant: Ellen K. Schafhauser, Weldon, California.

The applicant requests an amendment to a permit to take (harass by survey) the Casey's June beetle (*Dinacoma caseyi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–09385A

Applicant: Susan E. Williams, Ridgecrest, California.

The applicant requests an amendment to a permit to take (survey, capture, handle, mark, and release) the Mohave tui chub (*Gila bicolor mohavensis*) in conjunction with surveys, population monitoring, and restoration activities throughout the range of the species in San Bernardino County, California, for the purpose of enhancing the species' survival.

Permit No. TE–64124A

Applicant: Nicholas A. Rice, Las Vegas, Nevada.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with surveys in Clark County, Nevada, for the purpose of enhancing the species' survival.

Permit No. TE–64547A

Applicant: United States Geological Survey, Bishop Field Station, Bishop, California.

The applicant requests a permit to remove and reduce to possession from lands under Federal jurisdiction the *Oenothera californica* subsp. *eurekensis* (Eureka Valley evening primrose) in conjunction with floristic surveys and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–64546A

Applicant: Power Engineers Incorporated, Meridian, Idaho.

The applicant requests a permit to take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) and the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring activities throughout the range of each species for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Michael Long,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. 2012–4949 Filed 2–29–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0019]

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of an extension of a currently approved information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Office of Natural Resources Revenue (ONRR) is notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under the Chief Financial Officers Act of 1990 (CFO). This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments on or before April 2, 2012.

ADDRESSES: Submit written comments by either Fax (202) 395–5806 or email (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1012–0001).

Please also submit a copy of your comments to ONRR by one of the following methods:

• Electronically go to *http://www.regulations.gov*. In the entry titled ''Enter Keyword or ID,'' enter ONRR–2011–0019, and then click search. Follow the instructions to submit public comments. We will post all comments.

• Mail comments to Hyla Hurst, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 64000A, Denver, Colorado 80225. Please reference ICR 1012–0001 in your comments.

• Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1012–0001 in your comments.

FOR FURTHER INFORMATION CONTACT: Hyla Hurst, telephone (303) 231–3495, or email *hyla.hurst@onrr.gov.* You may also contact Hyla Hurst to obtain copies, at no cost, of (1) The ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION:

Title: Accounts Receivable Confirmations.

OMB Control Number: 1012–0001.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Various laws require the Secretary to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected in accordance with applicable laws. The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Public laws pertaining to mineral leases on Federal and Indian lands are available at *http://www.onrr.gov/Laws_R_D/PublicLawsAMR.htm.*

Minerals produced from Federal and Indian leases vary greatly in the nature of occurrence, production, and processing methods. When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The regulations require the lessee to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals. The information we collect includes data necessary to ensure that lessees accurately value production and appropriately pay royalties.

Companies submit financial information monthly to ONRR on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1012–0004) and on Form MMS–4430, Solid Minerals Production and Royalty Report (OMB Control Number 1012–0010).

Every year, under the CFO, the Department's Office of Inspector General, or its agent (agent), audits the Department's financial statements. The Department's goal is to receive an unqualified opinion. Accounts receivable confirmations are a common practice in the audit business. Due to continuously increasing scrutiny on financial audits, third-party confirmation of the validity of ONRR's financial records is necessary.

As part of the CFO audit, the agent selects royalty payors at random and provides the companies' names and addresses to ONRR. In order to meet the CFO requirements, the letters must be on ONRR letterhead; and the Deputy Director for ONRR, or his or her designee, must sign the letters. The letter requests, by a specified date, third-party confirmation responses that ONRR's accounts receivable records agree with royalty payor records for the following items: Customer identification; royalty/invoice number; payor-assigned document number; date of ONRR receipt; original amount the payor reported; and remaining balance due ONRR. The agent mails the letters to the payors, instructing them to respond directly to the agent to confirm the accuracy and/or validity of selected royalty receivable items and amounts. Verifying the amounts reported and the balances due requires research and analysis by payors.

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge the duties of the office. ONRR protects proprietary information that payors submit, and there are no questions of a sensitive nature included in this information collection.

Frequency: Annually.

Estimated Number and Description of Respondents: 48 randomly selected Federal and Indian oil and gas and solid mineral royalty payors.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 12 hours. We estimate that each response will take 15 minutes for payors to complete.

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour cost'' burden associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on August 26, 2011 (76 FR 53487), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove this collection of information; however, submit your comments to OMB within 30 days in order to assure maximum consideration. OMB should receive your comments by April 2, 2012.

Public Comment Policy: We post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* Before including your address, phone number, email

address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

Information Collection Clearance Officer: Laura Dorey (202) 208–2654.

Dated: February 27, 2012.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2012–5009 Filed 2–29–12; 8:45 am]

BILLING CODE 4310–T2–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1103 (Review)]

Activated Carbon From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on activated carbon from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is April 2, 2012. Comments on the adequacy of responses may be filed with the Commission by May 14, 2012. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* March 1, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 27, 2007, the Department of Commerce issued an antidumping duty order on imports of activated carbon from China (72 FR 20988). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* to be certain activated carbon, coextensive with Commerce's scope of the investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all known producers of certain activated carbon, except California Carbon. The Commission found that appropriate circumstances existed to exclude California Carbon based on the related parties provision pursuant to 19 U.S.C. 1677(4)(B).

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is April 27, 2007.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations wishing to participate in the review as parties, must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 12–5–266, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 2, 2012. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is May 14, 2012. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be provided in response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2011, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties).

If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 27, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4979 Filed 2–29–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 22, 2012, a proposed Partial Consent Decree in *United States et al.* v. *Seachrome Corp. et al,* Civil Action No. 2:02–cv–4565 ABC (RCx) (''*Seachrome''*) was lodged with the United States District Court for the Central District of California.

In *Seachrome,* the United States of America (''United States''), on behalf of the Administrator of the United States Environmental Protection Agency (''EPA''), and the California Department of Toxic Substances Control (''Department''), filed a complaint pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607, seeking reimbursement of response costs incurred or to be incurred for response actions taken in connection with the release or threatened release of hazardous substances at the South El Monte Operable Unit of the San Gabriel Valley Area 1 Superfund Site in South El Monte, Los Angeles County, California (the ''South El Monte O.U.'').

Under the proposed Partial Consent Decree, two potentially responsible parties (''PRPs'') with respect to the South El Monte O.U. will pay a total of $1.7 million plus interest. The PRPs are Linderman Living Trust A and Rush Street Properties, LLC. The settlement amount is based on the parties' ability to pay. In exchange for the ability to pay payments, the plaintiffs covenant not to sue the ability to pay settling defendants under Section 106 or 107 of CERCLA with respect to the South El Monte O.U.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to this case: *United States et al.* v. *Seachrome Corp. et al.,* Civil Action No. 2:02–cv–4565 (RCx), D.J. Ref. 90–11–2–09121/5.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check payable to the ''U.S. Treasury'' or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address, in the following amount (25 cents per page

reproduction cost): $7.50 for the Partial Consent Decree (without attachments).

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–4866 Filed 2–29–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Blue Cross and Blue Shield of Montana, Inc., et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States et al.* v. *Blue Cross and Blue Shield of Montana, Inc. et al.,* Civil Action No. 1:11–CV–00123–RFC, which were filed in the United States District Court for the District of Montana on February 21, 2012, together with the response of the United States to the comments.

Copies of the comments and the response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Montana, 316 N. 26th Street, Billings, MT 59101. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

In the United States District Court for the District of Montana; Billings Division

United States of America and State of Montana, Plaintiffs, v. *Blue Cross and Blue Shield of Montana, Inc., et al., Defendants.*

Case No. 1:11–cv–00123–RFC.

Response of Plaintiff United States to Public Comment on the Proposed Final Judgment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the public comment received regarding the proposed Final Judgment in this case. The single comment received agrees that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Procedural History

On November 8, 2011, the United States and the State of Montana filed a civil antitrust lawsuit challenging an agreement (the ''Agreement'') between defendant Blue Cross and Blue Shield of Montana, Inc. (''Blue Cross'') and defendants Billings Clinic; Bozeman Deaconess Health Services, Inc.; Community Medical Center, Inc.; Northern Montana Health Care, Inc.; and St. Peter's Hospital (collectively, the ''hospital defendants'').

The hospital defendants are five of the six hospitals that own defendant New West Health Services, Inc. (''New West''), a health insurer that competes against Blue Cross to provide commercial health insurance to Montana consumers. In the Agreement, Blue Cross agreed to pay $26.3 million to the hospital defendants in exchange for their collectively agreeing to stop purchasing health insurance for their own employees from New West and instead buy insurance for their employees from Blue Cross exclusively for six years. Blue Cross also agreed to provide the hospital defendants with two seats on Blue Cross's board of directors as long as the hospitals do not compete with Blue Cross in the sale of commercial health insurance.

The Complaint alleged that the Agreement would likely cause New West to exit the markets for commercial health insurance, eliminating an important competitor to Blue Cross and ultimately leading to higher prices and lower-quality service for consumers. Consequently, the Complaint alleged that the Agreement unreasonably restrained trade in the sale of commercial health insurance within Montana in the Billings Metropolitan Statistical Area (''MSA''), Bozeman Micropolitan Statistical Area (''MiSA''), Helena MiSA, and Missoula MSA, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1; and that the Agreement substantially lessened competition in the sale of commercial health insurance in those same areas, and would likely continue to do so, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and the Montana Unfair Trade Practices Act, Mont. Code Ann. § 30–14–205.

Simultaneously with the filing of the Complaint, the United States and the State of Montana filed a proposed Final Judgment and Stipulation signed by the plaintiffs and the defendants consenting to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 15 U.S.C. 16. Pursuant to those requirements, the United States also filed its Competitive Impact Statement (''CIS'') with the Court on November 8, 2011; published the proposed Final Judgment and CIS in the **Federal Register** on November 18, 2011, see 76 FR 71355; and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in The Washington Post on alternating days from November 17 to November 29, 2011, and in the Billings Gazette on November 14, 17, 19, 21, 23, 25, and 28. The sixty-day period for public comment ended on January 28, 2011. One comment was received, as described below and attached hereto.

II. The Investigation and Proposed Resolution

The proposed Final Judgment is the culmination of an investigation by the Antitrust Division of the United States Department of Justice (''Department'') of the Agreement among defendants described above. As part of its investigation, the Department issued eight Civil Investigative Demands and conducted more than 30 interviews of health-insurance competitors, brokers, customers, and other individuals with knowledge of the health-insurance industry in Montana. The Department carefully analyzed the information obtained and thoroughly considered all of the issues presented.

The Department found that the Agreement would effectively eliminate New West as a viable competitor in the sale of commercial health insurance for several reasons. First, news that none of New West's owners would buy health insurance for their own employees from New West created a perception that New West was exiting the commercial health-insurance market, likely causing many existing and potential customers to stop purchasing (or decline to purchase) insurance from New West. Second, the Agreement would have led New West and its hospital owners to significantly reduce their support for and efforts to win commercial health-insurance customers, further hindering its ability to compete. Furthermore, because the hospital defendants agreed to act collectively, the Agreement with Blue Cross ensured that New West would lose the support of all its owners

and likely exit the market. The Agreement further deterred the hospitals from supporting New West by granting them two positions on Blue Cross's board of directors as long as the hospitals do not own or belong to a competing insurer.

By eliminating New West as an effective competitor, the Agreement would have significantly increased concentration in the markets for commercial health insurance in Montana. In the four relevant areas, Blue Cross's share of commercial health insurance ranged from approximately 43% to 75% at the time the Agreement was signed, and New West's share ranged from 7% to 12%.

The Agreement also would have eliminated vigorous head-to-head competition between Blue Cross and New West. For the past several years, New West had been one of only two significant alternatives to Blue Cross for commercial health insurance in the relevant areas. Many consumers viewed Blue Cross and New West as the two most significant insurers in the relevant areas and each other's main competitor. Without New West as an effective competitor, Blue Cross would likely have increased prices and reduced the quality and service of commercial health-insurance plans to employers and individuals in the relevant areas.

After reviewing the investigative materials, the Department determined that the defendants' conduct violated Section 1 of the Sherman Act, 15 U.S.C. 1, and Section 7 of the Clayton Act, 15 U.S.C. 18, as alleged in the Complaint. The proposed Final Judgment will eliminate the anticompetitive effects identified in the Complaint by requiring New West and the hospital defendants to divest New West's commercial health-insurance business, including its administrative-services-only contracts and its fully-insured business, but excluding the contracts that cover the hospital defendants' employees and their dependents.

Other provisions of the proposed Final Judgment will enable the acquirer of the divested assets to compete promptly and effectively in the market for commercial health insurance. Most importantly, Sections IV(G)–(I) ensure that the acquirer has a cost-competitive health-care provider network. Section IV(G) requires the hospital defendants to sign three-year contracts with the acquirer on terms that are substantially similar to their existing contractual terms with New West. To address health-care provider contracts that are not under the hospital defendants' control, Sections IV(H) and IV(I) require New West and the hospital defendants—at the acquirer's option—to (1) use their best efforts to assign the contracts that are not under their control to the acquirer, or (2) lease New West's provider network to the acquirer for up to three years, using their best efforts to maintain the network, including maintaining contracts with substantially similar terms.

New West and the hospital defendants proposed to sell the Divestiture Assets to PacificSource Health Plans, and the United States, after consulting with the State of Montana, has approved PacificSource as the acquirer. New West and PacificSource have entered into a definitive sale agreement and filed the necessary notification and request for approval with the Montana Commissioner of Securities and Insurance.

III. Standard of Judicial Review

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); see also *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').

As the United States Court of Appeals for the District of Columbia Circuit has held, a court considers under the APPA, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft,* 56 F.3d at 1460–62; InBev, 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not

[1] Cf BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; see also *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' ''prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' SBC COMMCTIS, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct its own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459; see also InBev, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Microsoft, 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: ''[the] court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

IV. Summary of Public Comment and the United States' Response

During the sixty-day comment period, the United States received only one comment, submitted by the American Medical Association (''AMA''), which is attached to this Response. In its January 13, 2012 comment, the AMA expressed its support for the United States' and the State of Montana's analysis as well as the remedy articulated in the proposed Final Judgment, stating that the action against the defendants ''represents an important step towards reining in health insurers and hospitals whose actions conspire to restrain competition and maintain monopolized health insurance markets.'' AMA Comment at 1. The United States has carefully reviewed the comment and has determined that the proposed Final Judgment remains in the public interest.

The AMA is the largest association of physicians and medical students in the United States. The AMA's comment states that the AMA ''applauds the DOJ for its vigilance in recognizing the anticompetitive conduct'' of the defendants and for ''fashioning a remedy that holds the promise of nurturing competition in Montana.'' Id. The AMA views the proposed Final Judgment as creating a ''pro-competitive remedy that addresses the entry barriers faced by small Blue Cross rivals such as New West.'' Id. The comment concludes that ''the proposed consent decree will reverse the anticompetitive effects of the challenged Agreement.'' Id.

V. Conclusion

After reviewing the AMA's public comment, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the AMA's comment and this response are published in the **Federal Register**.

Dated: February 10, 2012

Respectfully submitted,

/s/ Scott I. Fitzgerald

Scott I. Fitzgerald (WA Bar #39716),
Claudia H. Dulmage.

Attorneys for the United States, U.S. Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

CERTIFICATE OF SERVICE

I hereby certify that, on February 10, 2012, a copy of the foregoing document was served on the following persons by the following means:

1, 2, 3 CM/ECF
_____ Hand Delivery
_____ U.S. Mail
_____ Overnight Delivery Service
_____ Fax
_____ E-Mail

1. Clerk, U.S. District Court
2. Counsel for Defendant Blue Cross and Blue Shield of Montana:
   David C. Lundsgaard
   Graham & Dunn PC

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[3] See *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) (if 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298 at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

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/s/ Scott I. Fitzgerald

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January 13, 2012

Mr. Joshua H. Soven,
Chief, Litigation I Section,
Antitrust Division,
United States Department of Justice,
450 5th Street, N, Suite 4700,
Washington, DC 20530.

Re: Comments to Proposed Consent Judgment in *U.S.* v. *Blue Cross and Blue Shield of Montana, Inc., et al.* [FR Doc. 2011–29656]

Dear Mr. Soven:

On behalf of the physician and medical student members of the American Medical Association (AMA), I appreciate the opportunity to provide comments in response to the action by the Antitrust Division of the Department of Justice (DOJ) in the matter of Blue Cross and Blue Shield of Montana, Inc. (Blue Cross) and several Montana-area hospitals (the Hospital Defendants) in *U.S.* v. *Blue Cross and Blue Shield of Montana, Inc., et al.,* Civil Action No. 1:11–cv–00123–RFC. This action represents an important step towards reining in health insurers and hospitals whose actions conspire to restrain competition and maintain monopolized health insurance markets.

Accordingly, the DOJ has acted in the public interest with the proposed decree, and the AMA submits the following comments in support. According to the DOJ's complaint, Blue Cross agreed to pay $26.3 million to the Hospital Defendants in exchange for their agreement to collectively stop purchasing health insurance from New West Health Services, an insurer owned by the Hospital Defendants, and instead buy from Blue Cross exclusively for six years (the Agreement). The Agreement, it is alleged, would likely cause New West to exit the relevant Montana markets for commercial health insurance. Because New West is Blue Cross's only viable competitor, the Agreement would have eliminated all competition. Accordingly, as the Complaint alleges, the Agreement would have led to higher prices and lower quality service for consumers.

The AMA applauds the DOJ for its vigilance in recognizing the anticompetitive conduct described above and for fashioning a remedy that holds the promise of nurturing competition in Montana. For years, the AMA has been expressing its concern over the lack of competition in health insurance markets nationally. In its most recent study of health insurance markets, the AMA found that 83% of the 368 metropolitan areas studied qualify as highly concentrated areas, while in 95% of these markets, at least one insurer has a market share of 30% or greater. See, ''Competition in Health Insurance: A Comprehensive Study of U.S. Markets,'' American Medical Association (AMA) (2011 update). Health insurance markets that are monopolized not only hurt consumers directly, they also enable health insurers to exercise monopsony power in physician markets, eventually leading to reductions in service levels and quality of care. The market conditions in Montana are consistent with what the AMA has found nationally.

Blue Cross' dominance in Montana health insurance markets presents a significant barrier to the market success of smaller rivals such as New West, even assuming the absence of exclusionary conduct such as that alleged in this case. In 2010, then Assistant Attorney General Christine Varney reported that the DOJ found that new health insurer entrants cannot compete with incumbents for potential purchasers of their products unless the new entrants can offer similar provider discounts to their enrollees—but they cannot offer these competitive discounts without being able to promise providers a significant number of enrollees to make such an arrangement viable. In turn, these barriers of entry create an anticompetitive environment in which the dominant insurer can achieve lower input prices by demanding lower rates from providers (who face a significant loss of revenue if they refuse such demands), without having to lower their consumer output prices (the cost of their premiums).[1]

In the instant case, the DOJ has fashioned a pro-competitive remedy that addresses the entry barriers faced by small Blue Cross rivals such as New West. First, the proposed final judgment would eliminate the anticompetitive effects of the challenged Agreement by requiring New West and the Hospital Defendants to divest New West's commercial health insurance business. Tentative arrangements call for the acquiring entity to be PacificSource, which is an established health insurer in the Pacific Northwest. To overcome Blue Cross' advantage in obtaining discounts from the Hospital Defendants because of its size, the proposed consent decree creatively requires New West and the Hospital Defendants to help provide PacificSource with a cost-competitive provider network. The Hospital Defendants are required to sign three-year hospital contracts with PacificSource on terms substantially similar to the existing contractual terms with New West. The decree also requires Blue Cross to provide thirty days' written notice to the DOJ before entering into any exclusive contracts with health insurance brokers—contracts that might hinder important health insurer access to brokers. These provisions will help ensure that PacificSource will be able to compete as effectively as New West before the parties entered the Agreement.

In sum, the divestiture of New West mandated in the proposed consent decree will reverse the anticompetitive effects of the challenged Agreement, while the additional provisions may foster an even more robust competition within the market than existed before the Agreement. Given the weak state of health insurer competition in Montana, we applaud the DOJ for creating this remedy in the public interest.

Sincerely,
James L. Madara, MD.

[FR Doc. 2012–4862 Filed 2–29–12; 8:45 am]

BILLING CODE M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Application, Mylan Pharmaceuticals, Inc.

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing

[1] See, Speech by Christine Varney, Assistant Attorney General Antitrust Division, U.S. Department of Justice at American Bar Association/American Health Lawyers Association Antitrust in Healthcare Conference, May 24, 2010.

a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on December 30, 2011, Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 2, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–4992 Filed 2–29–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Mylan Pharmaceuticals Inc.

By Notice dated December 22, 2011, and published in the **Federal Register** on December 29, 2011, 76 FR 81978, Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methylphenidate (1724)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Mylan Pharmaceuticals, Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Mylan Pharmaceuticals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: February 23, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–4994 Filed 2–29–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 1:30 p.m., Thursday, March 8, 2012.

PLACE: U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Consideration of two original jurisdiction cases pursuant to 28 CFR 2.27.

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE., 3rd Floor, Washington, DC 20530, (202) 346–7001.

Dated: February 27, 2012.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2012–5183 Filed 2–28–12; 4:15 pm]

BILLING CODE 4410–31–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY: *Agency Holding the Meetings:* Mississippi River Commission.

DATES: *Time and Date:* 9 a.m., March 26, 2012.

Place: On board MISSISSIPPI V at River Park, Tiptonville, TN.

Status: Open to the public.

Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

DATES: *Time and Date:* 9 a.m., March 27, 2012.

Place: On board MISSISSIPPI V at Mud Island, Memphis, TN.

Status: Open to the public.

Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

DATES: *Time and Date:* 1 p.m., March 28, 2012.

Place: On board MISSISSIPPI V at City Front, Vicksburg, MS.

Status: Open to the public.

Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

DATES: *Time and Date:* 9 a.m., March 30, 2012.

Place: On board MISSISSIPPI V at Thalia Street Wharf, New Orleans, LA.

Status: Open to the public.

Matters To Be Considered: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District, and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

Contact Person for More Information: Mr. Stephen Gambrell, telephone 601–634–5766.

George T. Shepard,

Colonel, EN, Secretary, Mississippi River Commission.

[FR Doc. 2012–5138 Filed 2–28–12; 2 pm]

BILLING CODE 3720–58–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before April 2, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, National Records Management Program (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full

description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–10–85, 1 item, 1 temporary item), Web site records relating to health care, child services, family programs, housing, recreation, and travel.

2. Department of Commerce, Bureau of Industry and Security, (N1–476–11–1, 47 items, 45 temporary items). Records relating to the Treaty Compliance Division. Included are chronological files, working papers, reference files, determination files, notifications, end-user certificates, support documents, inspection documents, instructional manuals, guidance reports, travel records, Web user manual, assistance documents, and outreach files. Proposed for permanent retention are chemical weapons convention program records and protocol program records.

3. Department of Defense, Defense Contract Management Agency (N1–558–10–2, 7 items, 7 temporary items). Records relating to security, law enforcement, and occupational safety and health. Included are files relating to security inspections, personnel security clearances, emergency planning, criminal investigations, and accident investigations.

4. Department of Homeland Security, Federal Emergency Management Agency (N1–311–12–1, 2 items, 1 temporary item). Administrative, logistical, and routine operational records related to emergency preparedness. Proposed for permanent retention are the historical and program records related to emergency preparedness.

5. Department of Homeland Security, Transportation Security Administration (N1–560–11–6, 5 items, 5 temporary items). Records of indirect air carrier certification applications that include denied, incomplete, active, withdrawn, and revoked applications. They also contain forms, correspondence, memoranda, certifications, notices, reports, and facility assessments.

6. Department of Justice, Office of the Inspector General (N1–60–09–27, 2 items, 1 temporary item). Outputs for an electronic information system used to tracks oversight and review division cases. Proposed for permanent retention are the system master files.

7. Department of Justice, Federal Bureau of Investigation (N1–65–11–36, 1 item, 1 temporary item). Master files of an electronic information system used to track operational information of the backstopping program.

8. Department of Justice, Office of Records Management Policy (N1–60–10–35, 1 item, 1 temporary item). Email of administrative and support staff in leadership offices relating to scheduling, office management, and other administrative matters.

9. Department of Justice, U.S. National Central Bureau of INTERPOL (DAA–0060–2011–20, 2 items, 2 temporary items). Source documents and master files of an electronic information system used to track case files.

10. Department of State, Bureau of Resource Management (N1–59–10–12, 7 items, 6 temporary items). Records include budget and funding related instructions and procedures, master file and outputs of an electronic information system that maintains budget data, and reimbursement and allotment files. Proposed for permanent retention is the Department's annual budget submission.

11. Department of Transportation, Federal Transit Administration (N1–408–11–6, 4 items, 3 temporary items). Records relating to general rulemaking including unselected dockets, denials and petitions, notices of meetings, delegations of authority, organization statements, and other general correspondence located in the Office of the Chief Counsel. Proposed for permanent retention are recordkeeping copies of high level mission-related rulemaking documents that attract the general public or industry attention, have significant impact on mass transit, or record major developments in the history of the agency.

12. Department of Transportation, Federal Transit Administration (N1–408–11–7, 2 items, 1 temporary item). Records containing information on interpretation of transit-related laws and regulations. Proposed for permanent retention are final decisions of enforcement records.

13. Federal Trade Commission, Agency-wide (N1–122–09–1, 21 items, 16 temporary items). Comprehensive schedule covering all aspects of agency work. Records relating to administrative and mission support functions; budget and financial administration; routine health, safety, and security; and project and investigative files lacking long-term value. Proposed for permanent retention are significant project files; documentation of the Commission's establishment, regulations, policy and organization including related deliberations and findings; final issuances; and significant inspector general case files.

14. Peace Corps, Office of Management (N1–490–12–1, 2 items, 2 temporary items). Records of the Office of Administrative Services, including agency copy of controlled substance order forms and controlled substance transaction files that document the ordering, purchasing, and shipping of controlled substances to medical officers in the field.

Dated: February 23, 2012.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–4891 Filed 2–29–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

National Industrial Security Program Policy Advisory Committee (NISPPAC)

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR part 101–6, announcement is made for the following committee meeting. This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office no later than Friday, March 16, 2012. The Information Security Oversight Office will provide additional instructions for gaining access to the location of the meeting.

DATES: The meeting will be held on March 21, 2012 10 a.m. to 12 noon.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: David O. Best, Senior Program Analyst, The Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue NW., Washington, DC 20408, telephone number (202) 357–5123, or at *david.best@nara.gov.* Contact The Information Security Oversight Office at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be held to discuss National

Industrial Security Program policy matters.

Dated: February 23, 2012.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2012–4889 Filed 2–29–12; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0263]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on November 28, 2011 (76 FR 72983).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 31, General Domestic Licenses for Byproduct Material.

3. *Current OMB approval number:* 3150–0016.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Reports are submitted as events occur. General license registration requests may be submitted at any time. Changes to the information on the registration may be submitted as they occur.

6. *Who will be required or asked to report:* Persons receiving, possessing, using, or transferring devices containing byproduct material.

7. *An estimate of the number of annual responses:* 35,997 (3,420 NRC licensees + 32,577 Agreement States).

8. *The estimated number of annual respondents:* 23,300 (Approximately 2,400 NRC general licensees and 20,900 Agreement State general licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 10,998.5 hours (1,061 hours for NRC licensees [461 hours reporting + 600 hours recordkeeping] + 9,937.5 hours for Agreement State licensees [4,712.5 hours reporting + 5,225 hours recordkeeping]).

10. *Abstract:* 10 CFR Part 31 establishes general licenses for the possession and use of byproduct material in certain devices. General licensees are required to keep testing records and submit event reports identified in Part 31, which assist NRC in determining with reasonable assurance that devices are operated safely and without radiological hazard to users or the public.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O1F–21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 2, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0016), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at (202) 395–4718.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 27th day of February 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–4968 Filed 2–29–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66451; File No. SR–Phlx–2012–19]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

February 23, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Customer and Professional Routing Fees to recoup costs incurred by the Exchange in routing to away markets.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to recoup costs that the Exchange incurs for routing and executing Customer and Professional orders in equity and index options. The Exchange's Fee Schedule includes Routing Fees for routing Customer and Professional orders to away markets. The Exchange currently assesses the following Routing Fees:

Exchange	Customer	Professional
NYSE AMEX	$0.06	$0.26
BATS	0.50	0.50
BOX	0.06	0.06
CBOE	0.06	0.26
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs	0.24	0.26
C2	0.50	0.51
ISE	0.06	0.24
ISE Select Symbols*	0.18	0.34
NYSE ARCA (Penny Pilot)	0.50	0.50
NYSE ARCA (Standard)	0.06	0.06
NOM	0.49	0.49
NOM (NDX and MNX)	0.56	0.56

*These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

The Exchange proposes to amend its Routing Fees as follows:

Exchange	Customer	Professional
NYSE AMEX	$0.11	$0.31
BATS	0.55	0.55
BOX	0.11	0.11
CBOE	0.11	0.31
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs	0.29	0.31
C2	0.55	0.56
ISE	0.11	0.29
ISE Select Symbols*	0.23	0.39
NYSE ARCA (Penny Pilot)	0.55	0.55
NYSE ARCA (Standard)	0.11	0.11
NOM	0.54	0.54
NOM (NDX and MNX)	0.56	0.56

*These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (''NOS''), a member of the Exchange, as the Exchange's exclusive order router.[3] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange when Customer and Professional orders are routed to an away market. At this time, the Exchange is proposing to recoup certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, the Exchange's exclusive order router; the Exchange's membership fees at away markets; and technical costs associated with routing. The Exchange is proposing to increase all Customer and Professional Routing Fees with the exception of routing orders in MNX[4] and NDX[5] to the NASDAQ Options Market (''NOM''). The Exchange does not believe it is necessary to increase those fees at this time.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Routing Fees are reasonable because the fees would allow the Exchange to recoup costs associated

[3] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[4] MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol ''MNX.''

[5] NDX represents options on the Nasdaq 100 Index traded under the symbol NDX (''NDX'').

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

with routing both Customer and Professional orders to away markets. The Exchange believes that these fees will assist it in recouping costs the Exchange incurs by utilizing NOS, in maintaining membership fees at away markets and technical expenses associated with the routing process. The proposed fees also continue to recoup transaction fees assessed by the respective away market, which vary, and standard clearing charges for each transaction, which fees are incurred by the Exchange when routing to away markets.

The Exchange also believes that the proposed Routing Fees are equitable and not unfairly discriminatory because the fees would be uniformly applied to all Customers and Professionals. The Exchange's proposed fees are calculated to distribute the costs associated with routing among the various away markets. The Exchange determined not to amend the Customer and Professional Routing Fees when routing orders in MNX and NDX to NOM at this time because the Exchange determined that in light of other fees, the current fees for routing to NOM in MNX and NDX are currently within the range of fees that are proposed for other away markets. The Exchange does not believe that it is necessary at this time to assess additional fees to route to NOM in MNX and NDX above the current $.56 per contract fee assessed for Customer and Professional orders today.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2012–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2012–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–19 and should be submitted on or before March 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4910 Filed 2–29–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66462; File No. SR–NYSE–2012–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the Definition of Approved Person To Exclude Foreign Affiliates, Eliminating the Application Process for Approved Persons, and Making Related Technical and Conforming Changes

February 24, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 14, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 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 the definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. 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

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 amend the definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. Following approval of the proposed rule change, the Exchange will advise member organizations of the implementation date of the rule change via Information Memo.

Background

The current rules governing the definition of and application process for an approved person are NYSE Rules 2 and 304. If the definition requirements under NYSE Rule 2 are met, then the person or entity has to apply to the Exchange for approval to register as an approved person. This requirement is intended to bring certain affiliates of Exchange member organizations within the Exchange's jurisdiction and to subject such affiliates' activities to Exchange rules to the extent their activities are related to the activities of the member organization.

NYSE Rule 2(c) defines the term ''approved person'' as ''a person, other than a member, principal executive or employee of a member organization, who controls a member organization or is engaged in a securities or kindred business that is controlled by or under common control with a member or member organization who has been approved by the Exchange as an approved person.'' NYSE Rule 2(d) further defines ''person'' to include not only natural persons, but also corporations, limited liability companies, partnerships, associations and other organized groups of persons. NYSE Rule 2(e) defines the term ''control'' to mean the power to direct or cause the direction of management or policies, whether through ownership of securities, by contract or otherwise, and creates a rebuttable presumption of control if the person has a right to vote 25 percent or more of the voting securities, is entitled to receive 25 percent or more of the net profits, or is a director, general partner, or principal executive of the member organization. NYSE Rule 2(f) defines ''engage in a securities or kindred business'' to mean transacting business as a broker or dealer in securities. Thus, the current definition of approved person includes a foreign affiliate of a member organization that is engaged in a broker-dealer business, but does not include, for example, a registered investment company. NYSE Rules 2A(e) and (f) further provide that the Exchange has jurisdiction after notice and a hearing to discipline approved persons in connection with the member organization's business and has jurisdiction over any and all other functions of approved persons in connection with the member organization's business in order for the Exchange to comply with its statutory obligation as a self-regulatory organization (''SRO'').

NYSE Rules 304 and 311(a) require, with limited exceptions, that persons who meet the NYSE Rule 2(c) definition of an approved person must apply for approval by the Exchange as an approved person. NYSE Rule 304 further provides that no person may become or remain an approved person unless such person meets the standards prescribed in the Exchange's rules, and it prescribes the process that an applicant must follow to become an approved person. Among other things, this process involves submission to the Exchange of a completed Form AP–1 (in the case of a corporation or other legal entity) or Forms AD–G 2 and AD–G 3 (in the case of a natural person, collectively referred to as ''AD–G''), and other pertinent information regarding the candidate for approval. By executing the Form AP–1 or AD–G, as applicable, the approved person affirmatively consents to the Exchange's jurisdiction.

Proposed Rule Change

The Exchange proposes to amend the definition of approved person in NYSE Rule 2 to revise the definition of which entities are deemed to be under ''common control'' with a member organization. The Exchange believes that the current definition, which includes certain foreign affiliates, is overbroad and it is unnecessary to assert jurisdiction over a foreign affiliate of a member organization that does not control a member organization. The Exchange notes that excluding such foreign affiliates from its jurisdiction would be consistent with Rule 19g2–1 under the Securities Exchange Act of 1934, as amended (the ''Act''), which provides that an exchange is not required to enforce compliance with its rules against certain persons [4]; the Exchange has not identified a rule of any other SRO that asserts jurisdiction over a foreign affiliate under common control with a member of that SRO. As such, the Exchange proposes to amend the definition of approved person so that it would include any person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred business that is controlled by a member or member organization, or is a U.S. registered broker-dealer under common control with a member organization.

By changing the definition of approved person to exclude certain foreign affiliates, the Exchange does not intend to eliminate certain controls in Exchange rules related to potential conflicts of interest associated with having a foreign affiliate under common control with a member organization. Accordingly, the Exchange proposes several amendments to its Rules. First, the Exchange proposes to amend paragraphs (3) and (4) of NYSE Rule 21 to provide that a member of the Exchange's Board of Directors or an authorized committee who is associated with a member organization cannot participate in the deliberations concerning the listing of a security if the Director knows that an affiliate of the member organization directly or indirectly owns one percent or more of any class of stock of the issuer or has a contract, option, or privilege to purchase the security to be listed. Second, the Exchange proposes to amend NYSE Rule 22 to provide that a member of certain NYSE boards and committees may not participate in the consideration of any matter if there are certain types of indebtedness between the board or committee member and a member organization's affiliate or other

[4] *See* 17 CFR 240.19g2–1. Under Rule 19g2–1, a national securities exchange is not required to enforce compliance, within the meaning of Section 19(g) of the Act, with the Act and the rules and regulations thereunder, to [*sic*] with respect to persons associated with a member, other than securities persons or persons who control a member. Under Rule 19g2–1(b)(1), a ''securities person'' is defined as a ''person who is a general partner or officer (or person occupying a similar status or performing similar functions) or employee of a member; *provided, however,* that a registered broker or dealer which controls, is controlled by, or is under common control with, the member and the general partners and officers (and persons occupying similar status or performing similar functions) and employees of such a registered broker or dealer shall be securities persons if they effect, directly or indirectly, transactions in securities through the member by use of facilities maintained or supervised by such exchange or association.'' A foreign broker-dealer not registered in the United States that is under common control with an NYSE member organization falls outside of the definition of ''securities person.''

related parties. Third, the Exchange proposes to amend NYSE Rule 98A, which provides that no issuer, or partner or subsidiary thereof, may become an approved person of a Designated Market Maker (''DMM'') unit that is registered in the stock of that issuer, to provide instead that a DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is either an approved person or an affiliate of the DMM unit's member organization. Finally, the Exchange proposes to amend Supplementary Material .30(c) of Rule 402 to provide that when securities are callable in part under the Rule, a member organization may not allocate any called securities to the account of an affiliate until all customer positions have been satisfied.[5]

The Exchange also proposes to amend its rules to remove the requirement that the Exchange affirmatively approve each application to become an approved person. If a person meets the definition of an approved person, as proposed, the Exchange will obtain jurisdiction by consent as described below. The Exchange believes that the current application process requires the submission of a substantial amount of information and documents related to member organization affiliates that is unnecessary to carry out the Exchange's regulatory responsibilities. In particular, because the Exchange is no longer the Designated Examining Authority (''DEA'') for Exchange member organizations,[6] the Exchange does not believe that it needs to engage in a detailed financial review of approved persons of its member organization applicants. The Exchange further notes that other SROs do not require that such persons undergo such an application and approval process.[7] The Exchange, therefore, proposes to remove all references to an approval process and the submission of an application for such approval from NYSE Rules 304, 308, and 311. The Exchange also would eliminate use of the Forms AP–1 and AD–G.

Nevertheless, the Exchange's jurisdiction over approved persons in accordance with the revised definition would remain. Thus, the Exchange proposes to amend NYSE Rule 304 to provide specifically that a member organization would be required to identify all of its approved persons to the Exchange and each such approved person would continue to be required to consent to the Exchange's jurisdiction. Specifically, an approved person would continue to have to agree to (i) inform the Exchange of any statutory disqualification of the approved person under Section 3(a)(39) of the Act, (ii) abide by the Rules of the Exchange relating to approved persons, and (iii) permit examination by the Exchange, or any person designated by it, of its books and records to verify the accuracy of the information required to be supplied under Exchange Rules.[8]

The focus on identification of approved persons by each member organization and consent to jurisdiction by each approved person, instead of review and approval of applications by the Exchange, would make the entire process more efficient while maintaining appropriate regulatory standards. The proposed rule change would remove unnecessary paperwork in the process while holding each member organization accountable for identifying to the Exchange its affiliates and approved persons. The remaining jurisdictional requirements for approved persons would enable the Exchange to continue to pursue matters involving or affecting its member organizations.[9]

The Exchange also proposes to make technical and conforming changes to other rules. Specifically, the Exchange proposes to amend Rule 476A, which addresses minor rule violations, to correct a citation to Rule 304. The Exchange further proposes to make technical amendments to replace the term ''allied member'' with ''principal executive'' in Rules 21, 22, 91, 96, 112, 308, 410A, 422, 460, and 1301 and NYSE Rule Interpretation for Rule 304, delete ''allied member'' from Rule 304A, and delete NYSE Rule Interpretation for Rule 304A entirely; the Exchange replaced the term ''allied member'' with the term ''principal executive'' in an earlier rule filing and the proposed amendments are consistent with the previous rule filing.[10]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[11] of the Act, in general, and furthers the objectives of Section 6(b)(5)[12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the NYSE believes that the proposed approved person definition and consent to jurisdiction process would remove unnecessary complexities and excessive informational requirements and create a more efficient and less burdensome process for membership applicants and member organizations while maintaining appropriate regulatory standards. As such, the proposed rule change would contribute to removing impediments to and perfecting the mechanism of a free and open market and a national market system.

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

[5] The Exchange does not believe any amendment to NYSE Rules 22, 91, 96, 112, 422, 410A, 460, or 1301 is necessary as a result of the proposed rule change; the Exchange believes such Rules would continue to be consistent with the requirements of the Exchange Act and the manner in which such they address potential conflicts of interest is appropriate under the circumstances.

[6] Prospective member organization applicants must be either a member of FINRA or, if the applicant does not transact business with public customers or conduct business on the Floor of the Exchange, a member of another registered securities exchange, before being approved as an Exchange member organization. *See* NYSE Rule 2(b)(i). Generally, FINRA or the other exchange already is, or will be, designated as the DEA under SEC Rule 17d–1 and the Exchange will not be designated as such. Currently, the Exchange is not the DEA for any of its member organizations, but if it were designated as the DEA, the Exchange has retained FINRA to perform services related to meeting the Exchange's DEA responsibilities for a member organization.

[7] For example, the rules of FINRA and The NASDAQ Stock Market, Inc. do not impose application and approval requirements on member affiliates. *See also* note 9, *infra.*

[8] The Exchange proposes to eliminate the text in current Rule 304(e)(1), which requires an approved person to supply information concerning its relationship with the member organization. This provision relates to information required to be submitted on Form AP–1 or AD–G, and as such it is not necessary to retain it in proposed Rule 304.

[9] The Exchange notes that FINRA is in the process of harmonizing legacy NASD and NYSE Rules, and has published a proposal to harmonize membership rules. *See* FINRA Regulatory Notice 10–01. While FINRA has proposed that a member firm be required to provide certain information about affiliates, FINRA has not proposed to adopt the approved person definition or application process, or assert jurisdiction over such persons. When FINRA completes that harmonization process for the membership rules, the Exchange will consider whether further amendments to its approved person rules are advisable. Until such time, the Exchange believes that the narrowing of the approved person definition and the elimination of the approved person application process will remove unnecessary complexities and excessive informational requirements and thereby reduce burdens on membership applicants and member organizations while still maintaining high regulatory standards consistent with the Act.

[10] *See* Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR–NYSE–2008–80).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–06 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–2012–06. 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 20549–1090, 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 available publicly. All submissions should refer to File Number SR–NYSE–2012–06 and should be submitted on or before March 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4911 Filed 2–29–12; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66464; File Nos. SR–NYSE–2011–55; SR–NYSEAmex–2011–84]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Notice of Filing of Partial Amendment No. 2 to Proposed Rule Changes, as Modified by Amendment No. 1, Adopting New Rule 107C To Establish a Retail Liquidity Program on a Pilot Basis To Attract Additional Retail Order Flow to the Exchanges

February 24, 2012.

I. Introduction

On October 19, 2011, New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC (''NYSE Amex'' and together with NYSE, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Retail Liquidity Program (''Program'') on a pilot basis for a period of one year from the date of implementation, if approved. The proposed rule changes were published for comment in the **Federal Register** on November 9, 2011.[3] The Commission received 28 comments on the NYSE proposal[4] and 4 comments on the NYSE Amex proposal.[5]

On December 19, 2011, the Commission designated a longer period for Commission action on the proposed rule change, until February 7, 2012.[6] In connection with the proposals, the Exchanges requested exemptive relief from Rule 612(c) of Regulation NMS,[7] which prohibits a national securities exchange from accepting or ranking certain orders based on an increment smaller than the minimum pricing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65671 (November 2, 2011), 76 FR 69774 (SR–NYSEAmex–2011–84); 65672 (November 2, 2011), 76 FR 69788 (SR–NYSE–2011–55).

[4] *See* Letters to the Commission from Sal Arnuk, Joe Saluzzi and Paul Zajac, Themis Trading LLC, dated October 17, 2011 (''Themis Letter''); Garret Cook, dated November 4, 2011 (''Cook Letter''); James Johannes, dated November 27, 2011 (''Johannes Letter''); Ken Voorhies, dated November 28, 2011 (''Voorhies Letter''); William Wuepper, dated November 28, 2011 (''Wuepper Letter''); A. Joseph, dated November 28, 2011 (''Joseph Letter''); Leonard Amoruso, General Counsel, Knight Capital, Inc., dated November 28, 2011 (''Knight Letter''); Kevin Basic, dated November 28, 2011 (''Basic Letter''); J. Fournier, dated November 28, 2011 (Fournier Letter''); Ullrich Fischer, CTO, PairCo, dated November 28, 2011 (''PairCo Letter''); James Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated November 28, 2011 (''Angel Letter''); Jordan Wollin, dated November 29, 2011 (''Wollin Letter''); Aaron Schafter, President, Great Mountain Capital Management LLC, dated November 29, 2011 (''Great Mountain Capital Letter''); Wayne Koch, Trader, Bright Trading, dated November 29, 2011 (''Koch Letter''); Kurt Schact, CFA, Managing Director, and James Allen, CFA, Head, Capital Markets Policy, CFA Institute, dated November 30, 2011 (''CFA Letter''); David Green, Bright Trading, dated November 30, 2011 (''Green Letter''); Robert Bright, Chief Executive Officer, and Dennis Dick, CFA, Market Structure Consultant, Bright Trading LLC, dated November 30, 2011 (''Bright Trading Letter''); Bodil Jelsness, dated November 30, 2011 (''Jelsness Letter''); Christopher Nagy, Managing Director, Order Routing and Market Data Strategy, TD Ameritrade, dated November 30, 2011 (''TD Ameritrade Letter''); Laura Kenney, dated November 30, 2011 (''Kenney Letter''); Suhas Daftuar, Hudson River Trading LLC, dated November 30, 2011 (''Hudson River Trading Letter''); Bosier Parsons, Bright Trading LLC, dated November 30, 2011 (''Parsons Letter''); Mike Stewart, Head of Global Equities, UBS, dated November 30, 2011 (''UBS Letter''); Dr. Larry Paden, Bright Trading, dated December 1, 2011 (''Paden Letter''); Thomas Dercks, dated December 1, 2011 (''Dercks Letter''); Eric Swanson, Secretary, BATS Global Markets, Inc., dated December 6, 2011 (''BATS Letter''); Ann Vlcek, Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 7, 2011 (''SIFMA Letter''); and Al Patten, dated December 29, 2011 (''Patten Letter'').

[5] *See* Knight Letter; CFA Letter; TD Ameritrade Letter; and letter to the Commission from Shannon Jennewein, dated November 30, 2011 (''Jennewein Letter'').

[6] *See* Securities Exchange Act Release No. 66003, 76 FR 80445 (December 23, 2011).

[7] 17 CFR 242.612(c).

increment.[8] The Exchanges submitted a consolidated response letter on January 3, 2012.[9] On January 17, 2012, each Exchange filed Amendment No. 1 to its proposal.[10] On February 7, 2012, the Commission instituted proceedings to determine whether to disapprove the proposed rule changes, as modified by Amendment No. 1.[11] The comment period for the Commission's Order Instituting Proceedings is set to expire on March 5, 2012, and the Exchanges' rebuttal period is scheduled to close on March 19, 2012.[12] On February 16, 2012, the Exchanges filed Partial Amendment No. 2 to the proposed rule changes.

The Commission is publishing this notice to solicit comments on the proposed rule changes, as modified by Amendment No. 2, from interested persons.

II. Description of the Partial Amendment No. 2

In Amendment No. 2, the Exchanges propose to make three changes to proposed Rule 107C, which establishes the Retail Liquidity Provider program: (1) Limit the definition of ''Retail Order''; (2) modify the definition of the Retail Liquidity Identifier; and (3) clarify the treatment of odd lots, round lots, and part of a round lot orders.[13]

First, the Exchanges propose to amend proposed Rule 107C(a)(3) to remove from the definition of ''Retail Order'' proprietary orders of Retail Member Organizations[14] that result from liquidating a position acquired from the internalization of orders that otherwise meet the definition of ''Retail Order.'' As amended, the definition of ''Retail Order'' thus would be limited to ''an agency order that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

Second, the Exchanges would add language to the definitions of ''Retail Order'' and ''Retail Price Improvement Order'' (''RPI'') in proposed Rules 107C(a)(3) and 107C(a)(4), respectively, to clarify that both may include odd lot, round lot, and part of round lot orders. The Exchanges explain further in the Amendment that RPIs would be ranked and allocated according to price and time of entry into the Exchange systems consistent with Exchange Rule 55, 61, and 72, and therefore without regard to whether the size entered is an odd lot, round lot, or part of round lot amount. Similarly, the Exchanges explain that Retail Orders would interact with RPIs according to the priority and allocation rules of the Program and without regard to whether they are odd lots, round lots, or parts of round lots. According to the Amendment, Retail Orders may be designated as Type 1, Type 2, or Type 3 under proposed Rule 107C(k) without regard to the size of the order. However, the Exchanges note that, pursuant to the rules of the Consolidated Tape Association, executions less than a round lot will not print to the tape or be considered the last sale.

Third, the Exchanges would amend proposed Rule 107C(j) to add to the definition of Retail Liquidity Identifier that the identifier shall reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but shall not include the price or size of the RPI interest. The previously proposed definition of the Retail Liquidity Identifier did not contain these details. Rather, it said only that an identifier shall be disseminated through proprietary data feeds or as appropriate through the Consolidation Quote System when RPI interest priced at least $0.001 better than the best protected bid or best protected offer[15] for a particular security is available in Exchange systems.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes, as modified by Amendment No. 2, are 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–2011–55 or NYSEAmex–2011–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–55 or NYSEAmex–2011–84. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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

[8] The Exchanges amended the exemptive relief request on January 13, 2012. *See* Letter from Janet M. McGinness, Senior Vice President-Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission.

[9] *See* Letter to the Commission from Janet McGinnis, Senior Vice President, Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated January 3, 2012 (''Exchanges' Response Letter'').

[10] In Amendment No. 1, the Exchanges modified the proposals as follows: (1) To state that Retail Member Organizations may receive free executions for their retail orders and the fees and credits for liquidity providers and Retail Member Organizations would be determined based on experience with the Retail Liquidity Program in the first several months; (2) to correct a typographical error referring to the amount of minimum price improvement on a 500 share order; (3) to indicate the Retail Liquidity Identifier would be initially available on each Exchange's proprietary data feeds, and would be later available on the public market data stream; and (4) to limit the Retail Liquidity Program to securities that trade at prices equal to or greater than $1 per share.

[11] *See* Securities Exchange Act Release No. 34–66346, 77 FR 7628 (February 13, 2012) (''Order Instituting Proceedings'').

[12] *See id.*

[13] In addition, the Exchanges propose to make conforming changes to the Form 19b–4 and Exhibit 1 that they submitted in connection with the proposed rule changes.

[14] As described in the Commission's Order Instituting Proceedings, Retail Member Organizations are Exchange member organizations that conduct a retail business or handle retail orders on behalf of another broker-dealer, apply to the Exchanges to obtain the ''Retail Member Organization'' designation, and attest that the order flow they would provide under the Program would satisfy the ''Retail Order'' definition.

[15] Under proposed Rule 107C(a)(4), the terms protected bid and protected offer would have the same meaning as defined in Rule 600(b)(57) of Regulation NMS. Rule 600(b)(57) of Regulation NMS defines ''protected bid'' and ''protected offer'' as ''a quotation in an NMS stock that: (i) [i]s displayed by an automated trading center; (ii) [i]s disseminated pursuant to an effective national market system plan; and (iii) [i]s an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of the Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of the Nasdaq Stock Market, Inc.'' 17 CFR 242.600(b)(57).

business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at 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–2011–55 or SR–NYSEAmex–2011–84 and should be submitted on or before March 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4913 Filed 2–29–12; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66466; File No. SR–NYSEArca–2011–97]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the Teucrium Agriculture Fund Under NYSE Arca Equities Rule 8.200

February 24, 2012.

I. Introduction

On December 20, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Teucrium Agriculture Fund under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on January 10, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the Teucrium Agriculture Fund (''Fund'') pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.[4] The Fund is a commodity pool that is a series of the Teucrium Commodity Trust (''Trust''), a Delaware statutory trust.[5] The Fund is managed and controlled by Teucrium Trading, LLC (''Sponsor''), which is a Delaware limited liability company that is registered as a commodity pool operator with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association. The Bank of New York Mellon (''Custodian'' or ''Administrator'') is the custodian, transfer agent, and administrator for the Fund. Foreside Fund Services, LLC (''Distributor'') is the distributor for the Fund's Shares.

Teucrium Agriculture Fund

The investment objective of the Fund is to have the daily changes in percentage terms of the Shares' net asset value (''NAV'') reflect the daily changes in percentage terms of a weighted average (''Underlying Fund Average'') of the NAVs per share of four other commodity pools that are series of the Trust and are sponsored by the Sponsor: Teucrium Corn Fund, Teucrium Wheat Fund, Teucrium Soybean Fund, and Teucrium Sugar Fund (collectively, ''Underlying Funds'').[6] The Fund seeks to achieve its investment objective by investing under normal market conditions [7] in the publicly-traded shares of each Underlying Fund so that the Underlying Fund Average will have a weighting of 25% for each Underlying Fund, and the Fund's assets will be rebalanced, generally on a daily basis, to maintain the approximate 25% allocation to each Underlying Fund. The Fund does not intend to invest directly in futures contracts (''Futures Contracts'') or other Commodity Interests (as defined below), although it reserves the right to do so in the future, including if an Underlying Fund ceases operations or if shares of an Underlying Fund cease trading on the Exchange.

While the Fund expects to maintain substantially all of its assets in shares of the Underlying Funds at all times, the Fund may hold some residual amount of assets in obligations of the United States government (''Treasury Securities'') or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts). The Fund will earn interest income from the Treasury Securities and/or cash equivalents that it purchases and on the cash it holds through the Custodian.

The investment objective of each Underlying Fund is to have the daily changes in percentage terms of its shares' NAV reflect the daily changes in percentage terms of a weighted average of the closing settlement prices for certain Futures Contracts for the commodity specified in the Underlying Fund's name.[8] The Teucrium Corn Fund's Benchmark is: (1) The second-to-expire Futures Contract for corn traded on the Chicago Board of Trade (''CBOT''), weighted 35%, (2) the third-to-expire CBOT corn Futures Contract, weighted 30%, and (3) the CBOT corn Futures Contract expiring in the December following the expiration month of the third-to-expire contract, weighted 35%. The Teucrium Wheat Fund's Benchmark is: (1) The second-to-expire CBOT wheat Futures Contract, weighted 35%, (2) the third-to-expire CBOT wheat Futures Contract, weighted

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66098 (January 4, 2012), 77 FR 1526 (''Notice'').

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] *See* Amendment No. 1 to Form S–1 for the Trust, dated December 5, 2011 (File No. 333–173691) relating to the Fund (''Registration Statement'').

[6] Additional information regarding the Underlying Funds is included in the Commission orders approving the listing and trading of the Underlying Funds and in their corresponding registration statements. *See* Securities Exchange Act Release Nos. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22) (order approving listing on the Exchange of Teucrium Corn Fund); 65344 (September 15, 2011), 76 FR 58549 (September 21, 2011) (SR–NYSEArca–2011–48) (order approving listing on the Exchange of the Teucrium Wheat Fund, Teucrium Soybean Fund, and Teucrium Sugar Fund). *See also* Amendment No. 4 to the Registration Statement on Form S–1 for Teucrium Commodity Trust, dated May 26, 2010 (File No. 333–162033) relating to the Teucrium Corn Fund; Amendment No. 3 to Form S–1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333–167591) relating to the Teucrium Wheat Fund; Amendment No. 3 to Form S–1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333–167590) relating to the Teucrium Soybean Fund; and Amendment No. 3 to Form S–1 for Teucrium Commodity Trust, dated June 3, 2011 (File No. 333–167585) relating to the Teucrium Sugar Fund.

[7] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the commodity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[8] This weighted average is referred to herein as the Underlying Fund's ''Benchmark,'' the Futures Contracts that at any given time make up an Underlying Fund's Benchmark are referred to herein as the Underlying Fund's ''Benchmark Component Futures Contracts,'' and the commodity specified in the Underlying Fund's name is referred to herein as its ''Specified Commodity.''

30%, and (3) the CBOT wheat Futures Contract expiring in the December following the expiration month of the third-to-expire contract, weighted 35%. The Teucrium Soybean Fund's Benchmark is: (1) The second-to-expire CBOT soybean Futures Contract, weighted 35%, (2) the third-to-expire CBOT soybean Futures Contract, weighted 30%, and (3) the CBOT soybean Futures Contract expiring in the November following the expiration month of the third-to-expire contract, weighted 35%, except that CBOT soybean Futures Contracts expiring in August and September will not be part of the Teucrium Soybean Fund's Benchmark because of the less liquid market for these Futures Contracts. The Teucrium Sugar Fund's Benchmark is: (1) The second-to-expire Sugar No. 11 Futures Contract traded on ICE Futures U.S. (''ICE Futures''),[9] weighted 35%, (2) the third-to-expire ICE Futures Sugar No. 11 Futures Contract, weighted 30%, and (3) the ICE Futures Sugar No. 11 Futures Contract expiring in the March following the expiration month of the third-to-expire contract, weighted 35%.

Each Underlying Fund seeks to achieve its investment objective by investing under normal market conditions in Benchmark Component Futures Contracts or, in certain circumstances, in other Futures Contracts for its Specified Commodity. In addition, and to a limited extent, an Underlying Fund also may invest in exchange-traded options on Futures Contracts for its Specified Commodity and in swap agreements based on its Specified Commodity that are cleared through a futures exchange or its affiliated provider of clearing services (''Cleared Swaps'') in furtherance of the Underlying Fund's investment objective. Once position limits or accountability levels on Futures Contracts on an Underlying Fund's Specified Commodity are reached, each Underlying Fund's intention is to invest first in Cleared Swaps based on its Specified Commodity to the extent practicable under the position limits or accountability levels applicable to such Cleared Swaps and appropriate in light of the liquidity in the market for such Cleared Swaps, and then in contracts and instruments such as cash-settled options on Futures Contracts and forward contracts, swaps other than Cleared Swaps, and other over-the-counter transactions that are based on the price of its Specified Commodity or Futures Contracts on its Specified Commodity (collectively, ''Other Commodity Interests,'' and, together with Futures Contracts and Cleared Swaps, ''Commodity Interests''). By utilizing certain or all of these investments, the Sponsor will endeavor to cause each Underlying Fund's performance to closely track that of its Benchmark.

The Underlying Funds seek to achieve their investment objectives primarily by investing in Commodity Interests such that daily changes in the Underlying Fund's NAV will be expected to closely track the changes in its Benchmark. Each Underlying Fund's positions in Commodity Interests will be changed or ''rolled'' on a regular basis in order to track the changing nature of its Benchmark. For example, several times a year (on the dates on which Futures Contracts on the Underlying Fund's Specified Commodity expire), a particular Futures Contract will no longer be a Benchmark Component Futures Contract, and the Underlying Fund's investments will have to be changed accordingly. In order that the Underlying Funds' trading does not cause unwanted market movements and to make it more difficult for third parties to profit by trading based on such expected market movements, the Underlying Funds' investments typically will not be rolled entirely on that day, but rather will typically be rolled over a period of several days.

Consistent with achieving each Underlying Fund's investment objective of closely tracking its Benchmark, the Sponsor may for certain reasons cause the Underlying Fund to enter into or hold Futures Contracts other than the Benchmark Component Futures Contracts, Cleared Swaps and/or Other Commodity Interests. For example, certain Cleared Swaps have standardized terms similar to, and are priced by reference to, a corresponding Benchmark Component Futures Contract. Additionally, Other Commodity Interests that do not have standardized terms and are not exchange-traded, referred to as ''over-the-counter'' Commodity Interests, can generally be structured as the parties to the Commodity Interest contract desire. Therefore, an Underlying Fund might enter into multiple Cleared Swaps and/or over-the-counter Commodity Interests related to its Specified Commodity that are intended to exactly replicate the performance of Benchmark Component Futures Contracts of the Underlying Fund, or a single over-the-counter Commodity Interest designed to replicate the performance of its Benchmark as a whole. Assuming that there is no default by a counterparty to an over-the-counter Commodity Interest, the performance of the Commodity Interest will necessarily correlate exactly with the performance of the Underlying Fund's Benchmark or the applicable Benchmark Component Futures Contract.[10] The Underlying Funds might also enter into or hold Commodity Interests other than Benchmark Component Futures Contracts to facilitate effective trading. In addition, an Underlying Fund might enter into or hold Commodity Interests related to its Specified Commodity that would be expected to alleviate overall deviation between the Underlying Fund's performance and that of its Benchmark that may result from certain market and trading inefficiencies or other reasons.

The Underlying Funds invest in Commodity Interests to the fullest extent possible without being leveraged[11] or unable to satisfy their expected current or potential margin or collateral obligations with respect to their investments in Commodity Interests. After fulfilling such margin and collateral requirements, the Underlying Funds will invest the remainder of the proceeds from the sale of baskets in Treasury Securities or cash equivalents, and/or hold such assets in cash. Therefore, the focus of the Sponsor in managing the Underlying Funds is investing in Commodity Interests and in Treasury Securities, cash and/or cash equivalents. The Underlying Funds will earn interest income from the Treasury Securities and/or cash equivalents that it purchases and on the cash it holds through the Custodian.

The Sponsor will endeavor to place the Fund's trades in the Underlying Funds and otherwise manage the Fund's investments so that the Fund's average daily tracking error against the Underlying Fund Average will be less than 10 percent over any period of 30 trading days. More specifically, the Sponsor will endeavor to manage the Fund so that A will be within plus/minus 10 percent of B, where A is the average daily change in the Fund's NAV for any period of 30 successive valuation days, *i.e.,* any trading day as

[9] According to the Registration Statement, although sugar Futures Contracts are primarily traded on the ICE Futures, they may also be traded on the New York Mercantile Exchange (''NYMEX'').

[10] With respect to the Underlying Funds, the creditworthiness of each potential counterparty will be assessed by the Sponsor. The Sponsor will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an over-the-counter contract pursuant to guidelines approved by the Sponsor.

[11] The Sponsor represents that the Fund and Underlying Funds will invest in their applicable Commodity Interests in a manner consistent with their respective investment objectives and not to achieve additional leverage.

of which the Fund calculates its NAV, and B is the average daily change in the Underlying Fund Average over the same period.[12]

The Sponsor will employ a ''neutral'' investment strategy intended so that the Fund will track the changes in the Underlying Fund Average and each Underlying Fund will track the changes in its Benchmark regardless of whether the Underlying Fund Average or Benchmark goes up or down. According to the Registration Statement, the Fund's and Underlying Funds' ''neutral'' investment strategies are designed to permit investors generally to purchase and sell the Fund's Shares for the purpose of investing indirectly in the agricultural commodities market in a cost-effective manner. Such investors may include participants in agricultural industries and other industries seeking to hedge the risk of losses in their commodity-related transactions, as well as investors seeking exposure to the agricultural commodities market. The Sponsor does not intend to operate the Fund or an Underlying Fund in a fashion such that its per share NAV will equal, in dollar terms, the spot price of a unit of a Specified Commodity or the price of any particular Futures Contract.

The Exchange represents that the Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Exchange further represents that, with respect to application of Rule 10A–3 under the Act,[13] the Trust will rely on the exception contained in Rule 10A–3(c)(7),[14] and a minimum of 100,000 Shares for the Fund will be outstanding as of the start of trading on the Exchange.

Additional details regarding the Trust; Fund; Shares; Underlying Funds; Commodity Interests and other aspects of the applicable commodities markets; trading policies of the Fund; creations and redemptions of the Shares; Underlying Fund Average and Underlying Fund Benchmarks; investment risks; fees; NAV calculation; the dissemination and availability of information about the underlying assets of the Fund and the Underlying Funds; trading halts; applicable trading rules; surveillance; and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement,[15] as applicable, and the registration statements relating to the Underlying Funds and the releases approving the listing and trading of the Underlying Funds, as applicable.[16]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Shares of the Fund is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[19] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information regarding the Shares and shares of the Underlying Funds will be disseminated through the facilities of the Consolidated Tape Association. In addition, the Underlying Fund Average and each Benchmark will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4 p.m. Eastern Time (''E.T.''). In addition, an updated Indicative Fund Value (''IFV'') for the Fund, which is calculated by using the prior day's closing NAV per Share of the Fund as a base and updating that value throughout the NYSE Arca Core Trading Session to reflect changes in the value of the Underlying Funds' shares, and updated IFVs for each Underlying Fund will be widely disseminated on a per-share basis by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session.[20] The NAV for the Fund will be calculated by the Administrator once each trading day and will be disseminated daily to all market participants at the same time.[21] The Fund will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names, quantity, price, and market value of the Underlying Funds held by the Fund, and other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. In addition, the Underlying Funds provide Web site disclosure of their respective portfolio holdings daily and include the names, quantity, price and market value of such holdings and the characteristics of such holdings. The closing price and settlement prices of the corn, wheat and soybean Futures Contracts are readily available from CBOT, and of sugar Futures Contracts from ICE Futures, and on other automated quotation systems, published or other public sources, or on-line information services. The Exchange represents that quotation and last sale information for the corn, wheat, soybean and sugar Futures Contracts are widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such contracts is available by

[12] The Sponsor believes that market arbitrage opportunities will cause the Fund's Share price on the NYSE Arca to closely track the Fund's NAV per Share. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between the Fund's NAV and the Underlying Fund Average will be that the changes in the price of the Fund's Shares on the NYSE Arca will closely track, in percentage terms, changes in the Underlying Fund Average.

[13] 17 CFR 240.10A–3.

[14] 17 CFR 240.10A–3(c)(7).

[15] *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[16] *See supra* note 6.

[17] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[20] The normal trading hours for Futures Contracts may begin after 9:30 a.m. and end before 4 p.m. E.T., and there is a gap in time at the beginning and the end of each day during which the Underlying Funds' shares are traded on the Exchange but real-time trading prices for at least some of the Futures Contracts held by the Underlying Funds are not available. As a result, during those gaps there will be no update to the IFVs of the Underlying Funds holding such Futures Contracts, and such IFVs will be static.

[21] The NAV for the Fund will be calculated by taking the current market value of the Fund's total assets and subtracting any liabilities. The Administrator will calculate the NAV of the Fund as of the earlier of the close of the New York Stock Exchange or 4 p.m. E.T. The NAV for a particular trading day will be released after 4:15 p.m. E.T.

subscription from Reuters and Bloomberg. CBOT and ICE Futures also provide delayed futures information on current and past trading sessions and market news free of charge on their Web sites. The specific contract specifications for such contracts are also available at the CBOT and ICE Futures Web sites, as well as other financial informational sources. The spot prices of corn, wheat, soybeans, and sugar are also available on a 24-hour basis from major market data vendors. In addition, the Web site for the Fund and/or the Exchange will contain the prospectus and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IFV or the Underlying Fund Average or the value of the applicable Benchmark Component Futures Contracts or the applicable Benchmark occurs. If the interruption to the dissemination of the IFV, the Underlying Fund Average, the value of the applicable Benchmark Component Futures Contracts, or the applicable Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[22] In addition, the Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Purchasers so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Purchasers. Accordingly, each investor will have access to the current portfolio composition of the Fund and each Underlying Fund through the applicable fund's Web sites. The Exchange may halt trading in the Shares if trading is not occurring in the Futures Contracts or shares of the Underlying Funds, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[23] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Lastly, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders[24] acting as registered Market Makers[25] in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Fund will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, including Trust Issued Receipts, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) To the extent that the Fund invests in Futures Contracts, not more than 10% of the weight of such Futures Contracts in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, with respect to the Underlying Funds' Futures Contracts traded on exchanges, not more than 10% of the weight of such Futures Contracts in the aggregate shall consist of components whose principal trading market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. With respect to the Underlying Funds, which are listed and traded on the Exchange, the Exchange can obtain market surveillance information from CBOT, NYMEX, and ICE Futures, which are ISG members, and from Kansas City Board of Trade (''KCBT'') and Minneapolis Grain Exchange (''MGEX'') in that the Exchange has in place a comprehensive surveillance sharing agreement with KCBT and MGEX.

(5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in creation baskets and redemption baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IFV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) A minimum of 100,000 Shares for the Fund will be outstanding as of the start of trading on the Exchange.

(7) With respect to the application of Rule 10A–3 under the Act, the Trust will rely on the exception contained in Rule 10A–3(c)(7).[26]

This approval order is based on all of the Exchange's representations.[27] The Commission notes that the Fund will primarily invest in shares of the

[22] The Exchange also notes that, for each of the Underlying Funds, the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the applicable Benchmark Component Futures Contracts or Benchmark occurs.

[23] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in the Shares of the Fund will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rules in NYSE Arca Equities Rule 7.12. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[24] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[25] *See* NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

[26] *See supra* notes 13 and 14 and accompanying text.

[27] The Commission notes that it does not regulate the market for futures in which the Fund and the Underlying Funds plan to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

Underlying Funds, which have been approved for listing and trading on the Exchange by the Commission.[28]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[29] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NYSEArca–2011–97) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Secretary.

[FR Doc. 2012–4915 Filed 2–29–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66465; File No. SR–FINRA–2012–009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 4(c) of Schedule A to the FINRA By-Laws To Increase Qualification Examination Fees and Assess a Service Charge for Regulatory Element Continuing Education Sessions Taken Outside the United States

February 24, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend Section 4(c) of Schedule A to the FINRA By-Laws to (1) increase qualification examination fees, and (2) assess a service charge for any Regulatory Element sessions taken in a test center located outside the territorial limits of the United States. 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

As discussed in further detail below, the proposed rule change amends Section 4(c) of Schedule A to the FINRA By-Laws to (1) increase qualification examination fees, and (2) assess a service charge for any Regulatory Element session taken in a test center located outside the territorial limits of the United States.

Qualification Examination Fees

NASD Rules 1021(a) and 1031(a) require that persons engaged, or to be engaged, in the investment banking or securities business of a FINRA member who are to function as principals or representatives register with FINRA in each category of registration appropriate to their functions as specified in NASD Rules 1022 and 1032.[5] Such individuals must pass an appropriate qualification examination before their registration can become effective. These mandatory qualification examinations cover a broad range of subjects regarding financial markets and products, individual responsibilities, securities industry rules, and regulatory structure. FINRA develops, maintains, and delivers all qualification examinations for individuals who are registered or seeking registration with FINRA. FINRA also administers and delivers examinations sponsored (*i.e.,* developed) by the Municipal Securities Rulemaking Board (''MSRB''), the North American Securities Administrators Association, the National Futures Association, the Federal Deposit Insurance Corporation, and other self-regulatory organizations.

FINRA currently administers examinations via computer through the PROCTOR® system[6] at testing centers operated by vendors under contract with FINRA. FINRA charges an examination fee to candidates for FINRA-sponsored and co-sponsored examinations to cover the development, maintenance, and delivery of these examinations. For qualification examinations sponsored by a FINRA client and administered by FINRA, FINRA charges a delivery fee that represents either a portion of or the entire examination fee for the examination.[7]

FINRA regularly conducts a comprehensive review of the examination fee structure, including an analysis of the costs associated with developing, administering, and delivering examinations. Based on the results of its review, FINRA may propose changes to better align the examination fee structure with the costs associated with the programs. In this regard, the most recent review revealed that certain operational costs have increased and, based on current information, will continue to increase over the next few years. In particular, these costs consist of (1) fees that vendors charge FINRA for delivering qualification examinations, and (2) PROCTOR maintenance and enhancement expenses. FINRA believes that the proposed rule change will help

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[28] *See supra* note 6.

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See also* NASD Rules 1041 and 1050 and FINRA Rule 1230(b)(6) regarding the qualification and registration requirements for Order Processing Assistant Representatives, Research Analysts and Operations Professionals, respectively.

[6] PROCTOR is a computer system that is specifically designed for the administration and delivery of computer-based testing and training.

[7] The delivery fee represents a portion of the entire examination fee when a FINRA client has established an additional fee for an examination that it sponsors. For example, the fee to take the Series 51 (Municipal Fund Securities Limited Principal) examination is currently $145. Of this amount, $85 is the FINRA administration and delivery fee, and $60 is the development fee determined by the FINRA client, the MSRB. *See* MSRB Rule A–16.

to better align the examination program fees with these costs.

Therefore, FINRA is proposing to amend Section 4(c) of Schedule A to the FINRA By-Laws to increase the fees for the qualification examinations set forth in Section 4(c), except for the Series 99 Operations Professional examination, which was implemented in late 2011.[8] The proposed fee changes are as follows:

Series 4	Registered Options Principal	From $90 to $100.
Series 6	Investment Company Products/Variable Contracts Representative	From $85 to $95.
Series 7	General Securities Representative	From $265 to $290.
Series 9	General Securities Sales Supervisor—Options Module	From $70 to $75.
Series 10	General Securities Sales Supervisor—General Module	From $110 to $120.
Series 11	Assistant Representative—Order Processing	From $70 to $75.
Series 14	Compliance Official	From $320 to $335.
Series 16	Supervisory Analyst	From $210 to $230.
Series 17	Limited Registered Representative	From $70 to $75.
Series 22	Direct Participation Programs Representative	From $85 to $95.
Series 23	General Securities Principal Sales Supervisor Module	From $85 to $95.
Series 24	General Securities Principal	From $105 to $115.
Series 26	Investment Company Products/Variable Contracts Principal	From $85 to $95.
Series 27	Financial and Operations Principal	From $105 to $115.
Series 28	Introducing Broker-Dealer Financial and Operations Principal	From $85 to $95.
Series 37	Canada Module of S7 (Options Required)	From $160 to $175.
Series 38	Canada Module of S7 (No Options Required)	From $160 to $175.
Series 39	Direct Participation Programs Principal	From $80 to $90.
Series 42	Registered Options Representative	From $65 to $70.
Series 51	Municipal Fund Securities Limited Principal	From $85 to $95.
Series 52	Municipal Securities Representative	From $95 to $120.[9]
Series 53	Municipal Securities Principal	From $95 to $105.
Series 55	Limited Representative—Equity Trader	From $95 to $105.
Series 62	Corporate Securities Limited Representative	From $80 to $90.
Series 72	Government Securities Representative	From $95 to $105.
Series 79	Investment Banking Qualification Examination	From $265 to $290.
Series 82	Limited Representative—Private Securities Offering	From $80 to $90.
Series 86	Research Analyst—Analysis	From $160 to $175.
Series 87	Research Analyst—Regulatory	From $115 to $125.
Series 99	Operations Professional	$125 (No change).

Service Charge for Foreign Test Center Regulatory Element Sessions

FINRA assesses a service charge of $15 for any qualification examination that is taken in a foreign test center (*i.e.,* a test center located outside of the territorial limits of the United States) to help offset the higher fees that vendors charge FINRA for delivering qualification examinations in such locations. Vendors also charge FINRA higher fees for the delivery of Regulatory Element sessions in foreign test centers; however, all individuals are currently assessed the same amount for a Regulatory Element session regardless of where they take the session. Therefore, FINRA is proposing to assess a $15 service charge for any Regulatory Element session taken in a foreign test center to more closely align the fee with the cost of such sessions.

Implementation

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be April 2, 2012. Specifically, the proposed examination fees would become effective for examination requests made in the CRD system on or after April 2, 2012. In addition, the proposed foreign test center Regulatory Element session service charge would become effective for Regulatory Element sessions completed on or after April 2, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[10] 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.

FINRA believes that the proposal constitutes an equitable allocation of fees as the qualification examination fees will be assessed only on those individuals who take qualification examinations and the service charge for foreign test center Regulatory Element sessions will be assessed only on those individuals who take such a session. In addition, all candidates who register for a particular qualification examination will be charged the same amount, and all individuals who take a Regulatory Element session in a foreign test center will be assessed the $15 service charge.

FINRA further believes that the proposed qualification examination changes are reasonable because they will more closely align the overall examination program fees with the overall costs associated with the programs. In this regard, FINRA notes that the last time that it increased fees for any of the qualification examinations set forth in Schedule A to the FINRA By-Laws was January 2009.[11] Since that time, vendor fees and the costs associated with the enhancement and

[8] *See* Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving Proposed Rule Change; File No. SR–FINRA–2011–013); Securities Exchange Act Release No. 65221 (August 30, 2011), 76 FR 55441 (September 7, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2011–042).

[9] The $25 fee increase for the Series 52 examination has two components: (1) $15 of the fee increase is attributable to the MSRB's increase in the length of the examination in January 2011, *see* Securities Exchange Act Release No. 63310 (November 12, 2010), 75 FR 70760 (November 18, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–MSRB–2010–12); and (2) $10 of the fee increase is attributable to the increase in the costs associated with administering and delivering the examination.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] *See* Securities Exchange Act Release No. 59076 (December 10, 2008), 73 FR 76431 (December 16, 2008) (Order Approving Proposed Rule Change; File No. SR–FINRA–2008–053).

maintenance of the PROCTOR system have increased and, based on current information, will continue to increase over the next few years. Specifically, FINRA has recently completed a significant technological upgrade of the PROCTOR system and is working on considerable enhancements to the software used to deliver examinations at testing centers, which is scheduled for operational release in 2013. These increased costs, coupled with the significant decrease in the number of examinations taken during the past three years,[12] has caused a divergence in the fees and costs associated with the examination programs.

To better align the fees and costs associated with the examination programs, FINRA is proposing a modest increase in examination fees. In this regard, FINRA notes that no examination fee will increase by more than $25 and the majority of examination fees will increase by only $10. Furthermore, to help control the overall costs of the qualification examination and Regulatory Element programs and thereby minimize fee increases, FINRA earlier this year instituted a fee for individuals who cancel or reschedule a qualification examination or Regulatory Element session three to 10 business days prior to the appointment date.[13] This cancellation/rescheduling fee has helped to limit the amount of the proposed examination fee increases by allowing FINRA to (1) receive a lower examination delivery rate from one of its vendors, and (2) apply the revenue from the fee to help offset the expenses of the qualification examination programs.

With respect to the proposed service charge for foreign test center Regulatory Element sessions, FINRA believes that the service charge is reasonable because it helps to offset the higher delivery costs associated with such sessions. Specifically, vendors charge FINRA higher fees for delivering Regulatory Element sessions in a foreign test center than they do for delivering such sessions in a U.S. test center.

Accordingly, FINRA believes that the proposed qualification examination fee changes and the service charge for foreign test center Regulatory Element sessions are equitably allocated and reasonable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and paragraph (f)(2) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–21012–009 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–2012–009. 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–FINRA–2012–009, and should be submitted on or before March 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4914 Filed 2–29–12; 8:45 am]

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[12] In 2009, the number of examinations administered and delivered by FINRA decreased by approximately 27 percent. Although examination volumes have increased modestly since that time, they have not returned to 2008 levels.

[13] *See* Securities Exchange Act Release No. 64961 (July 26, 2011), 76 FR 45883 (August 1, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2011–026).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66463; File No. SR–NYSEAMEX–2012–12]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending the NYSE Amex Equities Definition of Approved Person To Exclude Foreign Affiliates, Eliminating the Application Process for Approved Persons, and Making Related Technical and Conforming Changes

February 24, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 14, 2012, NYSE Amex LLC (the

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

''Exchange'' or ''NYSE Amex'') 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 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 the NYSE Amex equities [*sic*] definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE Amex equities [*sic*] definition of approved person to exclude foreign affiliates, eliminate the application process for approved persons, and make related technical and conforming changes. Following approval of the proposed rule change, the Exchange will advise member organizations of the implementation date of the rule change via Information Memo.

Background

The current rules governing the definition of and application process for an approved person are NYSE Amex Equities Rules 2 and 304. If the definition requirements under NYSE Amex Equities Rule 2 are met, then the person or entity has to apply to the Exchange for approval to register as an approved person. This requirement is intended to bring certain affiliates of Exchange member organizations within the Exchange's jurisdiction and to subject such affiliates' activities to Exchange rules to the extent their activities are related to the activities of the member organization.

NYSE Amex Equities Rule 2(c) defines the term ''approved person'' as ''a person, other than a member, principal executive or employee of a member organization, who controls a member organization or is engaged in a securities or kindred business that is controlled by or under common control with a member or member organization who has been approved by the Exchange as an approved person.'' NYSE Amex Equities Rule 2(d) further defines ''person'' to include not only natural persons, but also corporations, limited liability companies, partnerships, associations and other organized groups of persons. NYSE Amex Equities Rule 2(e) defines the term ''control'' to mean the power to direct or cause the direction of management or policies, whether through ownership of securities, by contract or otherwise, and creates a rebuttable presumption of control if the person has a right to vote 25 percent or more of the voting securities, is entitled to receive 25 percent or more of the net profits, or is a director, general partner, or principal executive of the member organization. NYSE Amex Equities Rule 2(f) defines ''engage in a securities or kindred business'' to mean transacting business as a broker or dealer in securities. Thus, the current definition of approved person includes a foreign affiliate of a member organization that is engaged in a broker-dealer business, but does not include, for example, a registered investment company. NYSE Amex Equities Rules 2A(e) and (f) further provide that the Exchange has jurisdiction after notice and a hearing to discipline approved persons in connection with the member organization's business and has jurisdiction over any and all other functions of approved persons in connection with the member organization's business in order for the Exchange to comply with its statutory obligation as a self-regulatory organization (''SRO'').

NYSE Amex Equities Rules 304 and 311(a) require, with limited exceptions, that persons who meet the NYSE Amex Equities Rule 2(c) definition of an approved person must apply for approval by the Exchange as an approved person. NYSE Amex Equities Rule 304 further provides that no person may become or remain an approved person unless such person meets the standards prescribed in the Exchange's rules, and it prescribes the process that an applicant must follow to become an approved person. Among other things, this process involves submission to the Exchange of a completed Form AP–1 (in the case of a corporation or other legal entity) or Forms AD–G 2 and AD–G 3 (in the case of a natural person, collectively referred to as ''AD–G''), and other pertinent information regarding the candidate for approval. By executing the Form AP–1 or AD–G, as applicable, the approved person affirmatively consents to the Exchange's jurisdiction.

Proposed Rule Change

The Exchange proposes to amend the definition of approved person in NYSE Amex Equities Rule 2 to revise the definition of which entities are deemed to be under ''common control'' with a member organization. The Exchange believes that the current definition, which includes certain foreign affiliates, is overbroad and it is unnecessary to assert jurisdiction over a foreign affiliate of a member organization that does not control a member organization. The Exchange notes that excluding such foreign affiliates from its jurisdiction would be consistent with Rule 19g2–1 under the Securities Exchange Act of 1934, as amended (the ''Act''), which provides that an exchange is not required to enforce compliance with its rules against certain persons;[4] the Exchange has not identified a rule of any other SRO that asserts jurisdiction over a foreign affiliate under common control with a member of that SRO. As such, the Exchange proposes to amend the definition of approved person so that it would include any person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred

[4] *See* 17 CFR 240.19g2–1. Under Rule 19g2–1, a national securities exchange is not required to enforce compliance, within the meaning of Section 19(g) of the Act, with the Act and the rules and regulations thereunder, to [*sic*] with respect to persons associated with a member, other than securities persons or persons who control a member. Under Rule 19g2–1(b)(1), a ''securities person'' is defined as a ''person who is a general partner or officer (or person occupying a similar status or performing similar functions) or employee of a member; *provided, however,* that a registered broker or dealer which controls, is controlled by, or is under common control with, the member and the general partners and officers (and persons occupying similar status or performing similar functions) and employees of such a registered broker or dealer shall be securities persons if they effect, directly or indirectly, transactions in securities through the member by use of facilities maintained or supervised by such exchange or association.'' A foreign broker-dealer not registered in the United States that is under common control with an NYSE Amex member organization falls outside of the definition of ''securities person.''

business that is controlled by a member or member organization, or is a U.S. registered broker-dealer under common control with a member organization.

By changing the definition of approved person to exclude certain foreign affiliates, the Exchange does not intend to eliminate certain controls in Exchange rules related to potential conflicts of interest associated with having a foreign affiliate under common control with a member organization. Accordingly, the Exchange proposes several amendments to its Rules. First, the Exchange proposes to amend NYSE Amex Equities Rule 22 to provide that a member of certain NYSE boards and committees may not participate in the consideration of any matter if there are certain types of indebtedness between the board or committee member and a member organization's affiliate or other related parties. Second, the Exchange proposes to amend NYSE Amex Equities Rule 98A, which provides that no issuer, or partner or subsidiary thereof, may become an approved person of a Designated Market Maker (''DMM'') unit that is registered in the stock of that issuer, to provide instead that a DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is either an approved person or an affiliate of the DMM unit's member organization. Finally, the Exchange proposes to amend Supplementary Material .30(c) of Rule 402 to provide that when securities are callable in part under the Rule, a member organization may not allocate any called securities to the account of an affiliate until all customer positions have been satisfied.[5]

The Exchange also proposes to amend its rules to remove the requirement that the Exchange affirmatively approve each application to become an approved person. If a person meets the definition of an approved person, as proposed, the Exchange will obtain jurisdiction by consent as described below. The Exchange believes that the current application process requires the submission of a substantial amount of information and documents related to member organization affiliates that is unnecessary to carry out the Exchange's regulatory responsibilities. In particular, because the Exchange is no longer the Designated Examining Authority (''DEA'') for Exchange member organizations,[6] the Exchange does not believe that it needs to engage in a detailed financial review of approved persons of its member organization applicants. The Exchange further notes that other SROs do not require that such persons undergo such an application and approval process.[7] The Exchange, therefore, proposes to remove all references to an approval process and the submission of an application for such approval from NYSE Amex Equities Rules 304, 308, and 311. The Exchange also would eliminate use of the Forms AP–1 and AD–G.

Nevertheless, the Exchange's jurisdiction over approved persons in accordance with the revised definition would remain. Thus, the Exchange proposes to amend NYSE Amex Equities Rule 304 to provide specifically that a member organization would be required to identify all of its approved persons to the Exchange and each such approved person would continue to be required to consent to the Exchange's jurisdiction. Specifically, an approved person would continue to have to agree to (i) inform the Exchange of any statutory disqualification of the approved person under Section 3(a)(39) of the Act, (ii) abide by the Rules of the Exchange relating to approved persons, and (iii) permit examination by the Exchange, or any person designated by it, of its books and records to verify the accuracy of the information required to be supplied under Exchange Rules.[8]

The focus on identification of approved persons by each member organization and consent to jurisdiction by each approved person, instead of review and approval of applications by the Exchange, would make the entire process more efficient while maintaining appropriate regulatory standards. The proposed rule change would remove unnecessary paperwork in the process while holding each member organization accountable for identifying to the Exchange its affiliates and approved persons. The remaining jurisdictional requirements for approved persons would enable the Exchange to continue to pursue matters involving or affecting its member organizations.[9]

The Exchange also proposes to make technical and conforming changes to other rules that reference the approved person application process. The Exchange further proposes to make technical amendments to correct an error in the spelling of ''principal executive,'' which is spelled ''principle executive'' in NYSE Amex Rule 476A and NYSE Amex Equities Rules 308, 410A, 422, and 460. In addition, because the Exchange does not have an approval process or qualification examination requirements for principal executives, the Exchange proposes to delete references to ''principle executive'' from NYSE Amex Equities Rules 304 and 304A. The Exchange notes that these proposed changes are consistent with similar amendments to NYSE Rules 304 and 304A.[10]

The focus on identification of approved persons by each member organization and consent to jurisdiction by each approved person, instead of review and approval of applications by the Exchange, would make the entire process more efficient while maintaining appropriate regulatory standards. The proposed rule change would remove unnecessary paperwork in the process while holding each member organization accountable for identifying to the Exchange its affiliates and approved persons. The remaining jurisdictional requirements for approved persons would enable the Exchange to

[5] The Exchange does not believe any amendment to NYSE Amex Equities Rules 22, 91, 96, 112, 422, 410A, or 460 is necessary as a result of the proposed rule change; the Exchange believes such Rules would continue to be consistent with the requirements of the Exchange Act and the manner in which such they address potential conflicts of interest is appropriate under the circumstances.

[6] Prospective member organization applicants must be either a member of FINRA or, if the applicant does not transact business with public customers or conduct business on the Floor of the Exchange, a member of another registered securities exchange, before being approved as an Exchange member organization. *See* NYSE Amex Equities Rule 2(b)(i). Generally, FINRA or the other exchange already is, or will be, designated as the DEA under SEC Rule 17d–1 and the Exchange will not be designated as such. Currently, the Exchange is not the DEA for any of its member organizations, but if it were designated as the DEA, the Exchange has retained FINRA to perform services related to meeting the Exchange's DEA responsibilities for a member organization.

[7] For example, the rules of FINRA and The NASDAQ Stock Market, Inc. do not impose application and approval requirements on member affiliates. *See also* note 9, *infra.*

[8] The Exchange proposes to eliminate the text in current Rule 304(e)(1), which requires an approved person to supply information concerning its relationship with the member organization. This provision relates to information required to be submitted on Form AP–1 or AD–G, and as such it is not necessary to retain it in proposed Rule 304.

[9] The Exchange notes that FINRA is in the process of harmonizing legacy NASD and NYSE Rules, and has published a proposal to harmonize membership rules. *See* FINRA Regulatory Notice 10–01. While FINRA has proposed that a member firm be required to provide certain information about affiliates, FINRA has not proposed to adopt the approved person definition or application process, or assert jurisdiction over such persons. When FINRA completes that harmonization process for the membership rules, the Exchange will consider whether further amendments to its approved person rules are advisable. Until such time, the Exchange believes that the narrowing of the approved person definition and the elimination of the approved person application process will remove unnecessary complexities and excessive informational requirements and thereby reduce burdens on membership applicants and member organizations while still maintaining high regulatory standards consistent with the Act.

[10] *See* SR–NYSE–2012–06.

continue to pursue matters involving or affecting its member organizations.[11]

The Exchange also proposes to make technical and conforming changes to other rules that reference the approved person application process. The Exchange further proposes to make technical amendments to correct an error in the spelling of ''principal executive,'' which is spelled ''principle executive'' in NYSE Amex Rule 476A and NYSE Amex Equities Rules 308, 410A, 422, and 460. In addition, the Exchange proposes to delete ''principle executive'' from NYSE Amex Equities Rules 304 and 304A for consistency with similar amendments to NYSE Rules 304 and 304A.[12]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[13] of the Act, in general, and furthers the objectives of Section 6(b)(5)[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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the Exchange believes that the proposed approved person definition and consent to jurisdiction process would remove unnecessary complexities and excessive informational requirements and create a more efficient and less burdensome process for membership applicants and member organizations while maintaining appropriate regulatory standards. As such, the proposed rule change would contribute to removing impediments to and perfecting the mechanism of a free and open market and a national market system.

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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2012–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2012–12. 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 20549–1090, 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 available publicly. All submissions should refer to File Number SR–NYSEAmex–2012–12 and should be submitted on or before March 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4912 Filed 2–29–12; 8:45 am]

BILLING CODE 8011–01–P

[11] The Exchange notes that FINRA is in the process of harmonizing legacy NASD and NYSE Rules, and has published a proposal to harmonize membership rules. *See* FINRA Regulatory Notice 10–01. While FINRA has proposed that a member firm be required to provide certain information about affiliates, FINRA has not proposed to adopt the approved person definition or application process, or assert jurisdiction over such persons. When FINRA completes that harmonization process for the membership rules, the Exchange will consider whether further amendments to its approved person rules are advisable. Until such time, the Exchange believes that the narrowing of the approved person definition and the elimination of the approved person application process will remove unnecessary complexities and excessive informational requirements and thereby reduce burdens on membership applicants and member organizations while still maintaining high regulatory standards consistent with the Act.

[12] *See* SR–NYSE–2011–02.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Wind-Up Order of the United States District Court of the Western District of Kentucky, Louisville Division, dated July 11, 2011, the United States Small Business Administration hereby revokes the license of Prosperitas Investment Partners, L.P. a Kentucky limited partnership, to function as a small business investment company under the Small Business Investment Company License No. 04/74–0283 issued to Prosperitas Investment Partner, L.P., on June 29, 2000 and said license is hereby declared null and void as of July 11, 2011.

United States Small Business Administration.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–4925 Filed 2–29–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 01/71–0390 issued to Venture Capital Fund of New England IV, L.P., and said license is hereby declared null and void.

United States Small Business Administration.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–4927 Filed 2–29–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 05/75–0240 issued to Chicago Venture Partners, L.P., and said license is hereby declared null and void.

United States Small Business Administration.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2012–4926 Filed 2–29–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7542]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, March 27, 2012, in Room 5–0624 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to discuss outcomes of FAL 37 and to discuss preparations for the thirty-eighth Session of the International Maritime Organization's (IMO) Facilitation Committee to be held at the IMO Headquarters, United Kingdom, in early 2013.

The primary matters to be considered include:

—Decisions of other IMO bodies.
—Consideration and adoption of proposed amendments to the Convention.
—General review of the Convention, including harmonization with other international instruments:
  A. Comprehensive review of the Annex to the Convention, including: Intersessional Correspondence Group (ISCG) work.
—E-business possibilities for the facilitation of maritime traffic.
  A. Electronic means for the clearance of ships, cargo and passengers.
  B. Electronic access to, or electronic versions of, certificates and documents required to be carried on ships, including ISCG work, including:
    1. Pros and cons of relying on electronic versions of certificates.
    2. Security features of electronic versions of certificates.
    3. Security features of web sites used to view certificates.
—Formalities connected with the arrival, stay and departure of persons, including:
  A. Shipboard personnel.
  B. Stowaways.
  C. Illegal migrants.
  D. Persons rescued at sea.
—Ensuring security in and facilitating international trade, including:
  A. Shore leave and access to ships.
  B. Trade recovery, including the following ISCG work:
    1. Analysis and collection of relevant practices, standards and activities including World Customs Organization and International Organization for Standardization standards.
    2. Based on analysis, develop voluntary guidelines for Maritime Trade Recovery.
—Ship/port interface.
  A. Facilitation of shipments of dangerous cargoes.
—Technical co-operation and assistance.
—Relations with other organizations.
—Application of the Committee's Guidelines.
—Work programme.
  A. Role, mission, strategic direction and work of the Committee, including potential future work items.
—Election of Chairman and Vice-Chairman for 2012.
—Any other business.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. David A. Du Pont, by email at *David.A.DuPont@uscg.mil,* by phone at (202) 372–1397, by fax at (202) 372–1928, or in writing at Commandant (CG–523), U.S. Coast Guard, 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126 not later than March 20, 2012, 7 days prior to the meeting. Requests made after March 20, 2012 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: February 22, 2012.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2012–5008 Filed 2–29–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–RITA–2012–0001]

Privacy Act of 1974; System of Records Notice

AGENCY: Research and Innovative Technology Administration's (RITA), Department of Transportation (DOT).

ACTION: Notice to establish a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Transportation proposes to add a new system of records titled Vehicle and Driver Research, Test, and Evaluation Records. This system

maintains records collected in support of, or during the conduct of, research, development, test, and evaluation activities conducted by the Research and Innovative Technology Administration. This new system will be added to the Department's inventory of record systems.

DATES: Written comments must be submitted on or before April 2, 2012. This new system will be effective April 2, 2012.

ADDRESSES: You may submit comments, identified by docket number ''DOT–RITA–2012–0001'' by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Department of Transportation Docket Management, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change and may be read at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov*. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For system related questions please contact Mike Schagrin (202–366–2180), Program Manager, ITS Safety, RITA, 1200 New Jersey Ave. SE., Washington, DC 20590. For privacy issues, please contact: Claire W. Barrett (202–366–8135), Departmental Chief Privacy Officer, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

An integral part of the Department of Transportation (DOT) Research and Innovative Technology Administration's (RITA) mission is to bring advanced technologies into the transportation system. Some RITA research activities involve the collection of personally identifiable information. This system of records notice covers records collected in support of, or during the conduct of, RITA research activities, where those records are retrieved by personal identifier.

As a general rule, the information collected will be used by RITA solely for research. The information collected will never be used in operations and no operational decision will be based in any part on the information collected about individuals.

Pursuant to the Privacy Act of 1974, the Department of Transportation proposes to add a new system of records titled Vehicle and Driver Research, Test, and Evaluation Records. This system maintains records collected in support of, or during the conduct, of RITA-funded research, development, test, and evaluation activities. This new system will be added to the Department's inventory of record systems.

II. The Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other particular assigned to an individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DOT extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOT by complying with DOT Privacy Act regulations, 49 CFR part 10.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals regarding the uses of their records, and to assist the individual to more easily find such files within the agency. Below is a description of the Vehicle and Driver Research, Test, and Evaluation Records system of records.

In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

System Number:
DOT/RITA 001

SYSTEM NAME:

Vehicle and Driver Research, Test, and Evaluation Records.

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Re Records are maintained at the RITA Headquarters in Washington, DC, at the Volpe National Transportation Systems Center in Cambridge, Mass., and at public or private institutions conducting research funded by RITA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice include voluntary participants in RITA-funded research (all RITA-funded human subjects research is conducted in accordance with 45 CFR 46 and is reviewed by a certified Institutional Review Board).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records will vary according to the specific project and not all record types will be applicable to any given project. The information may include an individual's:

- Participant Background Information.
  - Individual Identifiers.
    - Full Name (First, Middle, Last);
    - Demographic information, including age and gender;
    - Individual subject research identifier created by DOT.
    - Driver's license number, issuing state, and qualifiers.
  - Vehicle Identifiers.
    - Personal vehicle vehicle identification number (VIN) and registration information.
    - Vehicle Identification Number (VIN) of government issued vehicles.
    - Identifiers for equipment installed by DOT in personal or government issued vehicle;
  - Contact Information.
    - Mailing/Residential Address.
    - Phone number(s).
    - Email address(es).
    - Institutional or organizational affiliation.
    - Work/Business related contact information.
    - Occupation and work schedule.
  - Eligibility Information.
    - Driver history and habits.
    - Medical history relevant to the scope of the research project;
    - Outcomes of criminal background check.
- Project Information.
  - Vehicle Sensor Information.
    - Video or still images, including infrared;
    - Audio recordings;
    - Dynamic information about a vehicle, including location, heading, proximity to and interaction with other vehicles and infrastructure;

▪ Dynamic information about a driver's interaction with the vehicle, including steering wheel, turn signal, and accelerator and brake pedal positions; and

○ Data collected from drivers by means of surveys, focus groups, or interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; Intelligent Transportation System Program, Public Law 109–59, 5303–10, 119 Stat. 1144, 1806–13 (2005).

PURPOSE(S):

The purposes of the Vehicle and Driver Research, Test, and Evaluation Records are to:

- Determine the eligibility of individuals to participate in RITA sponsored research activities.
- Evaluate the technical performance of innovative technologies incorporated into vehicles;
- Measure the effects of technologies included in research activities on drivers and driver behaviors and driver acceptance of the same;
- Quantify the potential for the technology to improve vehicle safety based on user behavior; and
- Identify driver behaviors independent of advanced technologies incorporated into the vehicle.

The data to be collected can be divided into two categories: Participant background data and vehicle sensor data. Participant background data is necessary during the enrollment phase of a study to select eligible participants and ensure that the overall mix of participants is consistent with the study design. This data is also necessary to contact participants during the study, collect any equipment distributed, and evaluate participant acceptance of the advanced technologies at the conclusion of a study.

Vehicle sensor data, including audio and video recordings, is necessary to evaluate the performance of the innovative technologies and their impacts on drivers. Sensor data may also be used to evaluate driver behaviors that are not related to the performance of the advanced technologies, such as estimating the prevalence of distracted driving.

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, all or a portion of the or information contained in this system, including audio and video recordings, but not including other personally identifiable information, may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To an agency, organization, or individual conducting research on behalf of the Department on vehicles or vehicle operators. To the extent practical DOT will limit the release of PII to that necessary for the conduct of specific research activity.

2. To a Federal, State, local, tribal, territorial, foreign, or international agency, if necessary to obtain information relevant to a DOT decision regarding the suitability of an individual to participate in a RITA sponsored research activity.

3. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement or other assignment for DOT, when necessary to accomplish and agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DOT officers and employees.

4. See ''Prefatory Statement of General Routine Uses'' (available at *http://www.dot.gov/privacy/privacy*).

Other possible routine uses of the information, applicable to all DOT Privacy Act systems of records, are published in the **Federal Register** at 75 FR 82132, December 29, 2010, under ''Prefatory Statement of General Routine Uses'' (available at *http://www.dot.gov/privacy/privacyactnotices*).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic systems and in paper files. Certain records are maintained only in paper files (for example, financial, documents, photographs, and audio, recordings).

RETRIEVABILITY:

In most cases, RITA is focused on evaluating the performance of a given experimental technology or effect on the vehicle operator. For this reason, RITA records are not as a matter of course retrieved by name or other identifier assigned to the individual. However, RITA may need to access records by name or other identifier in order to make corrections to an individual's record, resolve an anomaly related to a specific individual's record, and/or link disparate pieces of information related to an individual. For example, if an individual informed a researcher that he or she had inadvertently provided incorrect information regarding his or her driving history, the researcher would retrieve that individual's record using the research identifier in order to correct the erroneous data. In addition, RITA may need to access a specific individual's record during the course of a research study in order to contact that individual, or to retrieve property at the end of the study.

SAFEGUARDS:

All records are protected by employing a multi-layer security approach to prevent unauthorized access to sensitive data through appropriate administrative, physical, and technical safeguards. Protective strategies such as implementing physical access controls at DOT facilities; ensuring confidentiality of communications using tools such as encryption, authentication of sending parties, and compartmentalizing databases; and employing auditing software and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties. Records maintained in hard copy are stored in a locked file cabinet or safe.

RETENTION AND DISPOSAL:

DOT is preparing a new records disposition schedule (Standard Form 115) for submission to the National Archives and Records Administration (NARA), which will include the following proposed retention periods:

Participant Background Information: Destroy/delete one year following completion of the research project, unless needed longer for legal or audit purposes.

Project Information: Destroy/delete five years following completion of the research project, unless the object of continuing research, or needed longer for legal or audit purposes.

All records maintained in this system of records will be treated as permanent records until the schedule is approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Mike Schagrin (202–366–2180), Program Manager, ITS Safety, Department of Transportation, Washington DC 20590.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether their information is contained in this system should address written inquiries to the U.S. Department of Transportation, Privacy Act Officer, Office of the Chief Information Officer, 1200 New Jersey Avenue SE., Washington, DC 20590. Inquiries should include name, address and telephone number and describe the records you seek.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records include: (1) Records collected directly from the individual; (2) records obtained from other government agencies; (3) records collected from the individual using technologies like cameras or audio recorders; and (4) records collected from the vehicle operated by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Issued in Washington, DC on February 24, 2012.

Claire W. Barrett,

Departmental Chief Privacy Officer, Department of Transportation.

[FR Doc. 2012–4964 Filed 2–29–12; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2012–0028]

Submission of U.S. Carrier and Airport Tarmac Delay Contingency Plans to Department of Transportation for Approval

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

ACTION: Notice.

SUMMARY: The FAA Modernization and Reform Act of 2012 requires covered U.S. carriers and U.S. airports to submit to the Secretary of Transportation for review and approval tarmac delay contingency plans on or before May 14, 2012. The U.S. Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) will be establishing an electronic submission system to enable covered airlines and airports to submit the required plans through the World Wide Web. The Enforcement Office plans to issue another notice within 45 days that will provide information on how covered carriers and airports can submit these required plans. Submissions of the plans should not be made prior to that date to ensure proper review and recording.

FOR FURTHER INFORMATION OR TO CONTACT: Livaughn Chapman, Jr., or Laura Jennings, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W–96–429, Washington, DC 20590–0001; Phone: (202) 366–9342; Fax: (202) 366–7152; Email: *Livaughn.Chapman@dot.gov,* or *Laura.Jennings@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2012, President Obama signed the FAA Modernization and Reform Act of 2012 (the ''Act'') into law. Among other things, the Act requires U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats, and operators of large hub, medium hub, small hub, or non-hub U.S. airports, to submit contingency plans for lengthy tarmac delays to the Secretary of Transportation for review and approval no later than May 14, 2012.

The requirements of the Act do not conflict with the Department's existing tarmac delay rule (14 CFR part 259). The Act also permits the Department to establish, as necessary, minimum standards for contingency plans. As such, the specific requirements of Part 259 remain in effect for U.S. carriers.

U.S. carrier contingency plans must contain a provision that a passenger shall have the option to deplane an aircraft and return to the airport terminal when there is an excessive tarmac delay (3 hours for domestic flights and 4 hours for international flights) at each large hub, medium hub, small hub, or non-hub U.S. airport at which they operate scheduled or public charter air service, with the following exceptions: (1) Where an air traffic controller with authority over the aircraft advises the pilot in command that permitting a passenger to deplane would significantly disrupt airport operations; or (2) where the pilot in command determines that permitting a passenger to deplane would jeopardize passenger safety or security. The deplaning option must be offered to a passenger even if the flight in covered air transportation is diverted to a commercial airport other than the originally scheduled airport. Under the Act, U.S. carrier contingency plans must also contain a description of how the carrier will: (1) Provide adequate food, potable water, restroom facilities, comfortable cabin temperatures (a requirement not currently contained in DOT rules), and access to medical treatment for passengers onboard an aircraft when the departure of a flight is delayed or disembarkation of passengers is delayed; and (2) share facilities and make gates available at the airport in an emergency (another requirement not currently in DOT rules). Existing DOT rules require carriers to provide assurance that the plan has been coordinated with airport authorities (including terminal facility operators where applicable), U.S. Customs and Border Protection and the Transportation Security Administration at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport that the carriers serve, as well as their regular U.S. diversion airports.

Under the statute airport contingency plans must contain a description of how the airport operator, to the maximum extent practicable, will: (1) Provide for the deplanement of passengers following excessive tarmac delays; (2) provide for the sharing of facilities and make gates available at the airport in an emergency; and (3) provide a sterile area following excessive tarmac delays for passengers who have not yet cleared U.S. Customs and Border Protection. DOT tarmac delay rules currently do not apply directly to airports.

The Enforcement Office intends to establish an electronic submission system, similar to the Department's current disability complaint reporting system, where covered airlines and airports will submit their required plans. The Enforcement Office is working to establish the necessary mechanisms to implement that system and plans to issue another notice within 45 days with detailed information on the submission process.

In defining the hub size of an airport, the Department uses the airport-specific thresholds published by the Department's Bureau of Transportation Statistics (BTS). A list of airport information for calendar year 2010 (the latest available data) is available on the FAA's Web site at *http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy10_primary_enplanements.pdf.* In addition, a preliminary list of covered U.S. carriers provided by BTS can be found on the Department's Aviation Consumer Protection Division Web site at *http://airconsumer.ost.dot.gov/SA_FlightDelays.htm.* Any U.S. carrier or airport on the referenced air carrier or airport lists that believes that it is not

covered by the statute and should not be on either list should notify one of the Department contacts listed above immediately. If any person, including any U.S. carrier or airport, believes that a carrier or airport is covered by the statute but does not appear on the appropriate list, that person should notify one of the Department contacts noted above immediately with that information.

The Enforcement Office's review of the contingency plans will concentrate on the statutory and existing regulatory requirements for such plans. However, carriers and airports are directed to the model contingency planning document, titled ''Development of Contingency Plans for Lengthy Airline On-Board Ground Delays,'' that was developed by the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays for contingency planning guidance. See Docket No. DOT–OST–2007–0108–0124. This document can also be found at *http://airconsumer.dot.gov/publications/TarmacTFModelContingencyPlanningDocument.pdf.* We also understand that the Airport Cooperative Research Program (ACRP) has developed some preliminary guidance materials in this area as well. Those materials can be found at *http://onlinepubs.trb.org/onlinepubs/acrp/docs/ACRP10-10.Update.10Dec2011.pdf.*

Issued this 24th day of February 2012, at Washington, DC.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation.

[FR Doc. 2012–4963 Filed 2–29–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0036]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 11, 2011, the City of Chandler, AZ, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222. FRA assigned the petition Docket Number FRA–2011–0036.

The City of Chandler is seeking a waiver from the provisions of 49 CFR Section 222.9 (specifically, the definition of a non-traversable curb) so that three existing public crossings (Ray Road (DOT #741579U), Pecos Road (DOT #741674P), and Germann Road (DOT #741676D)) can be deemed acceptable supplemental safety measures (SSM). The crossings, equipped with flashing lights, gates, and medians, comply with all requirements necessary to be ''gates with medians or channelization devices'' SSMs with non-traversable curbs; except that the posted highway speed limit is 45 mph instead of 40 mph as required in the definition.

The City of Chandler is also seeking a waiver from the provisions of 49 CFR Section 222.35(b)(1) so that the active grade crossing warning devices at Commonwealth Avenue (DOT #741672B) and Frye Road (DOT #741673H) are not required to be equipped with constant warning time devices for the siding track at the crossings.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by April 16, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on February 17, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–4967 Filed 2–29–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 27, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before April 2, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–NEW.

Type of Review: Existing collection in use without an OMB control number.

Title: Electronic Tax Administration Advisory Committee Membership Application.

Form: 13768.

Abstract: The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) authorized the creation of the Electronic Tax Administration Advisory Committee (ETAAC). ETAAC has a primary duty of providing input to the Internal Revenue Service (IRS) on its strategic plan for electronic tax administration. Accordingly, ETAAC's responsibilities involve researching, analyzing and making recommendations on a wide range of electronic tax administration issues.

Affected Public: Individual or Household.

Estimated Total Burden Hours: 500.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–4942 Filed 2–29–12; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') called for the submission of Large Position Reports by those entities whose reportable positions in the 1¼% Treasury Notes of January 2019 equaled or exceeded $2 billion as of close of business February 21, 2012.

DATES: Large Position Reports must be received before noon Eastern Time on March 2, 2012.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Government Securities Dealer Statistics Unit, 4th Floor, 33 Liberty Street, New York, New York 10045; or faxed to 212–720–5030.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena; Kurt Eidemiller; or Kevin Hawkins; Bureau of the Public Debt, Department of the Treasury, at 202–504–3632.

SUPPLEMENTARY INFORMATION: In a press release issued on February 27, 2012, and in this **Federal Register** notice, the Treasury called for Large Position Reports from entities whose reportable positions in the 1¼% Treasury Notes of January 2019 equaled or exceeded $2 billion as of the close of business Tuesday, February 21, 2012. Entities whose reportable positions in this note equaled or exceeded the $2 billion threshold must submit a report to the Federal Reserve Bank of New York. This call for Large Position Reports is pursuant to the Department's large position reporting rules under the Government Securities Act regulations (17 CFR part 420). Entities with positions in this note below $2 billion are not required to file reports. Large Position Reports must be received by the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York before noon Eastern Time on Friday, March 2, 2012, and must include the required positions and administrative information. The reports may be faxed to (212) 720–5030 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 1–¼% Treasury Notes of January 2019, Series G–2019, have a CUSIP number of 912828 SD 3, a STRIPS principal component CUSIP number of 912820 ZV 2, and a maturity date of January 31, 2019.

The press release and a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17 CFR Part 420, are available at the Bureau of the Public Debt's Web site at *www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm.*

Questions about Treasury's large position reporting rules should be directed to Treasury's Government Securities Regulations Staff at Public Debt on (202) 504–3632. Questions regarding the method of submission of Large Position Reports should be directed to the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York at (212) 720–7993.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1535–0089.

Mary J. Miller,

Assistant Secretary for Financial Markets.

[FR Doc. 2012–5078 Filed 2–28–12; 11:15 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning penalty on income tax return preparers who understate taxpayer's liability on a federal income tax return or a claim for refund.

DATES: Written comments should be received on or before April 30, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or Claim for Refund.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 (Final).

Abstract: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 30 min.

Estimated Total Annual Burden Hours: 50,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 22, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–4906 Filed 2–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under VA's Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the Per Diem Only component of VA's Homeless Providers Grant and Per Diem Program. This Notice of Funding Availability (NOFA) includes funding priorities for those applicants who will serve specific homeless veteran populations that are identified in this NOFA, or implement a new ''transition in place'' housing model to facilitate housing stabilization. This Notice contains information concerning the program, funding priorities, application process, and amount of funding available.

DATES: Applications must be received in accordance with this NOFA no later than 4 p.m. Eastern Time on Wednesday, May 30, 2012.

FOR FURTHER INFORMATION CONTACT: Chelsea Watson, VA's Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 10770 North 46th Street, Suite C–200, Tampa, Florida, 33617; (toll-free) (877) 332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of per diem funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible entities. VA will award only one application for funding per nonprofit organization per state. For example: If a nonprofit organization has several entities in a state that are a part of their overall organization, whether or not those entities are separately incorporated, only one of these entities would be eligible for a grant award. Please refer to 38 CFR part 61 for detailed program information.

A. Purpose

VA is pleased to issue this NOFA for VA's Homeless Providers Grant and Per Diem Program as a part of the effort to end homelessness among our Nation's veterans. VA expects to fund approximately 450 beds over a 3-year period under this NOFA for Funding Priority 1 (see section E., below, for explanation of funding priorities). The maximum award of $1.2 million will support an average of 25 beds per night, per project, at the current maximum per diem rate of $38.90; taking into consideration that the maximum per diem rate may increase in future years. VA expects to fund approximately 150 beds under Funding Priorities 2–4 for as long as the grantee meets the program requirements under 38 CFR part 61.

B. Definitions, Regulations, and Authority

Funding applied for under this NOFA is authorized by 38 U.S.C. 2011, 2012, 2013, 2061, and 2064. For definitions of terms that appear in this NOFA, and regulations governing VA's Homeless Providers Grant and Per Diem Program, see 38 CFR part 61.

C. Submission of Application

No later than 4 p.m. Eastern Time on Wednesday, May 30, 2012, applicant must either:

1. Submit complete application to *www.Grants.gov* by 4 p.m. Eastern Time on Wednesday, May 30, 2012; or

2. Submit an original, completed, and collated grant application (plus three completed collated copies) to the VA Homeless Providers Grant and Per Diem Program Office, 10770 North 46th Street, Suite C–200, Tampa, Florida, 33617.

Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will not consider any application that is received after the deadline. Applicants should consider submitting early to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages (in the case of Grants.gov), or other delivery-related problems.

For a copy of the application package: Download directly from VA's Homeless Providers Grant and Per Diem Program Web site at *http://www.va.gov/HOMELESS/GPD.asp;* or obtain a copy from *http://www.grants.gov.* Questions should be referred to the Grant and Per Diem Program at (toll-free) (877) 332–0334. For additional information on VA's Homeless Providers Grant and Per Diem Program, see 38 CFR part 61.

Applications must arrive as a complete package. Materials arriving separately *will not* be included in the application package for consideration and may result in the application being rejected or not funded. Applicants should ensure that the items listed in the ''application requirements'' section K of this NOFA are addressed in their application.

D. Allocation

Under funding priority 1 approximately $20 million is available for per diem only awards under this NOFA for a period beginning on the date that the grant is awarded and ending on or about September 30, 2015. The maximum amount of the per diem award under Funding Priority 1 for any awardee may not exceed $1.2 million for the entire grant period. Funding for the entire grant period will be obligated at the time of the award and available for draw down by the grantee over the grant period. Monthly reimbursements will be issued for bed days of care provided based upon the project's approved per diem rate. VA will not award more than $48,000.00 per bed over the entire grant period based on the average number of beds to be provided as stated in the grant application. VA payment is limited to the applicant's cost of care per eligible veteran minus other sources of payments to the applicant for furnishing services to homeless veterans up to the per day rate established by the Grant and Per Diem Program Office, which is currently $38.90 per occupied bed day of care provided. Grantees will be required to

support their request for per diem payment with adequate fiscal documentation as to program income and expenses.

Under funding priorities 2 through 4 approximately $2 million dollars per year is available for funding in the form of per diem payments issued to the grantee subject to availability of funds and the grantee's compliance with 38 CFR 61.1–61.82.

E. Award Period

For the purposes of this NOFA under Funding Priority 1, the award period will end on or about September 30, 2015, a period of at least 3 years depending on the exact date of the award. By way of example, a grant awarded on August 1, 2012, and ending on September 30, 2015, would constitute an award lasting 3 years and 2 months. The final award period will be established in the award letter. For the purpose of this NOFA under Funding Priorities 2 through 4, the award period will be from the date of award and will continue subject to availability of funds and the grantee's compliance with 38 CFR 61.1–61.82.

F. Implementation Timeline

All projects within all funding priorities are expected to pass inspection and become operational within 90 days from the date of award. Failure to meet the 90-day milestone may result in the per diem award being terminated.

G. Funding Priorities

All applicants must submit a cover letter with their application indicating under which funding priority the application is to be considered. Applicants may not request more than one funding priority per application. Failure to identify a funding priority in a cover letter or requesting more than one funding priority will result in the application being placed in Funding Priority 4. Funding priorities for this NOFA are as follows:

1. *Funding Priority 1*—In an effort to promote increased housing stabilization VA is encouraging eligible entities to use the following ''Transition in Place'' housing model to aid in VA's efforts to end homelessness among veterans.

The ''Transition in Place'' housing model offers residents housing in which support services transition out of the residence over time, rather than the resident. This leaves the resident in place at the residence and not forced to find other housing in 24 months or less. This model does not support discharge planning that would have the veteran transition in place to HUD–VASH as the HUD–VASH program targets a veteran population in need of specialized case management. The concept of ''Transition in Place'' under this NOFA is for eligible entities to identify or convert existing suitable apartment-style housing where homeless veteran participants would receive time-limited supportive services optimally for a period of 6–12 months, but not to exceed 24 months. Upon completion, the veteran must be able to ''transition in place'' by assuming the lease or other long-term agreement which enables the unit in which he or she resides to be considered the veteran's permanent housing.

Grantees are expected to replace units as they are converted to permanent housing in order to maintain the average number of bed days as stated in the application during the entire grant period. Once the veteran assumes the lease or other long-term agreement, VA will no longer provide funding for the unit under this NOFA. For example, each time a veteran assumes the lease or other long-term agreement for the apartment, the grantee must identify a new unit in which to place another veteran. By program design, transition to permanent housing should occur as rapidly as possible, and grantees should continually be acquiring and coordinating with VA on the inspection of new units so as to maintain a steady number of veterans served.

Applicants applying under Funding Priority 1 must own or lease apartments intended as permanent housing for an individual or single family. Apartments must meet the inspection standards outlined at 38 CFR 61.80, and have the following characteristics:

i. Private access without unauthorized passage through another dwelling unit or private property;

ii. Sanitary facilities within the unit;

iii. Basic furnishings; and

iv. Suitable space and equipment within the unit to store, prepare, and serve food in a sanitary manner (including, at a minimum, a refrigerator, freezer, sink, and stove). Note: Microwave ovens, hot plates, or similar items are not suitable substitutes for an operational stove.

VA offers current grantees the ability to convert existing per diem only projects to this model. Current capital grantees should contact the GPD Program Office to determine eligibility due to recapture and disposition requirements that may apply to their capital grants.

Of those eligible entities that are legally fundable in Funding Priority 1, the highest-ranked applications for which funding is available will be conditionally selected for eligibility to receive a per diem only award in accordance with their ranked order until funding is expended (approximately $20 million). The Department places special emphasis on addressing the needs of underserved populations, including homeless women veterans with or without the care of dependent children.

2. *Funding Priority 2*—VA is offering the opportunity to rural applicants whose project sites have a Rural-Urban Commuting Area Code (RUCA) of 10.0 to 10.6, to apply for funding under this NOFA to create transitional housing and services for homeless veterans not to exceed 20 beds per project. To determine if your project's RUCA code qualifies for this priority, potential applicants should go to *www.va.gov/homeless/gpd.asp.*

If your project has more than one location, all must have a RUCA code of 10.0 to 10.6.

The project site address(es) and zip code(s) must be clearly stated in the application in order to determine eligibility under this funding priority. If eligibility cannot be determined, the application will be placed in Funding Priority 4.

Of those eligible entities in the second funding priority that are legally fundable, the highest scoring applicants will be funded first until approximately 50 beds are awarded.

3. *Funding Priority 3*—VA is offering the opportunity to Indian Tribal Governments or non-profit agencies that will provide transitional housing and services on Indian Tribal Property to apply for funding under this NOFA to create transitional housing and services for homeless veterans not to exceed 20 beds per project. Eligible entities that are Indian Tribal Governments or non-profit agencies willing to provide transitional housing and services on Indian Tribal Property will be considered in the third funding priority. Of those eligible entities in the third funding priority that are legally fundable, the highest-scoring applicants will be funded first until approximately 50 beds are awarded. **Note:** Non-profit agencies that apply under this priority will be required to provide a letter of assurance from the Indian Tribal Government that, if funded, the provision of service will occur on Indian Tribal Property.

4. *Funding Priority 4*—VA is encouraging interested state and local governments, faith-based and community-based organizations, as well as eligible entities located in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, to apply

for funding under this NOFA to create transitional housing and services not to exceed 20 beds per project. Applicants should be aware of the needs of justice-involved homeless veterans (i.e., veterans who are not incarcerated but are involved in the criminal justice system). Eligible entities will be considered in the fourth funding priority as applicable. Of those eligible entities that are legally fundable, the highest-ranked application for which funding is available will be conditionally selected for eligibility to receive a per diem only award in accordance with their ranked order until approximately 50 beds are awarded.

H. Inspections and Monitoring Requirements

VA places a great deal of emphasis on the responsibility and accountability of grantees. VA has procedures in place to monitor services provided to homeless veterans and outcomes associated with the services provided in grant and per diem-funded programs. VA is also implementing new procedures to further this effort. Applicants should be aware of the following:

1. All grantees are required to ensure that facilities used under this NOFA meet the Life Safety Code of the National Fire and Protection Association. Please note, typically the Life Safety Code is more stringent than local or state codes. No additional funds will be made available for capital improvements under this per diem only NOFA. Applicants also should note that *all facilities,* unless they are specifically exempted under the Life Safety Code, are required to have an operational sprinkler system. VA will conduct an inspection that grantee sites must pass *prior* to grantees being able to submit a request for per diem payment to ensure this requirement is met. Applicants should take into consideration the logistics associated with conducting inspections and providing regular case management involved with numerous site locations and/or sites that are significantly dispersed from each other.

2. Each per diem-funded program will have a liaison appointed from a nearby VA medical facility to provide oversight and monitor services provided to homeless veterans in the per diem-funded program. Monitoring will include at least an annual review of each per diem program's progress toward meeting internal goals and objectives in helping veterans attain housing stability, adequate income support, and self-sufficiency as identified in each per diem program's original application. Monitoring will also include a review of the agency's income and expenses as they relate to this project to ensure per diem payment is accurate.

3. Each per diem-funded program will participate in VA's national program monitoring and evaluation system. It is the intent of VA to develop specific performance targets with respect to housing for homeless veterans. VA's monitoring procedures will be used to determine successful accomplishment of these housing outcomes for each per diem-funded program.

4. Grantees will be expected to enter data into a Homeless Management Information System (HMIS) web-based software application and bed totals in the Homeless Inventory Count. This data will consist of information on the veterans served and types of supportive services provided by grantees. Grantees must treat the data for activities funded by the Grant and Per Diem Program separate from that of activities funded by other programs. Grantees will be required to export client-level data for activities funded by the Grant and Per Diem Program to VA on a regular basis.

I. Payments

Under this NOFA, VA will make per diem payments in a method consistent with VA policy. Per diem will be paid only for eligible veterans (i.e., Veterans whom VA refers to the grantee, or for whom VA authorizes the provision of services) and will be available for the periods of awards specified in Section E of this NOFA. All payment specifics will be given to the grantee at the time of award. At no time may grantees draw more than the maximum approved per diem rate as authorized by VA's Grant and Per Diem Program Office. All costs charged to the per diem grant must be allowable under the applicable OMB Circulars for Grants Management (codified at 2 CFR parts 225 and 230).

J. Application Selection

VA will review all per diem only grant applications in response to this NOFA. Applicants will then be ranked based on score and any ranking criteria set forth in this NOFA only if the applicant scores at least 500 cumulative points from paragraphs (b) (c) (d) (e) and (i) of 38 CFR 61.13. The highest-ranked application for which funding is available, within the highest funding priority, will be selected for eligibility to receive per diem payment in accordance with their ranked order until VA expends all the funds.

K. Application Requirements

Applicants must address the following within the application:

Targeting—Section 6, Question C1, pg. 10: Describe your agency's admission criteria for veterans that would be appropriate for this project.

Targeting—Section 6, question C3, pg. 11: VA is placing emphasis on serving those homeless veterans who do not currently have a stable housing situation (i.e., not currently in another Grant and Per Diem Program or VA-sponsored housing program). In this section, please identify where your organization will target its outreach efforts to identify appropriate veterans for this program.

Project Plan—Section 7, area 1 (1a), pg. 15: What is the percentage of veterans that will successfully transition to permanent housing?

Project Plan—Section 7, area 1 (2a), pg. 17: What is the percentage of veterans served that will be employed or receiving benefits at the conclusion of the transitional housing?

Project Plan—Section 7, area 2, pg. 21: Address how your agency will facilitate the provision of nutritional meals for the veterans. Be sure to describe how veterans with little or no income will be assisted.

Project Plan—Section 7, area 6, pg. 25: VA places great emphasis on placing veterans in the most appropriate housing situation as rapidly as possible. In this section, provide a timetable and the specific services to include follow-up that supports housing stabilization. Include evidence of coordination of transition services with which your agency expects to have for veterans.

Project Plan—Section 7, area 7, pg. 26: For Funding Priority 1 applicants only, describe in this section how your agency will manage the conversion of the dwelling unit and the services provided to the participant from transitional phase to permanent housing and what follow-up services will be provided to the veteran once converted to permanent housing. Additionally, describe the instrument that will be used (lease, program agreement, memorandum of understanding, etc) to ensure the veteran's permanent occupancy once unit has converted. Moreover, include how this will enhance housing outcomes leading to more timely access to permanent housing.

Ability—Section 8, question A, pg. 28: In addition to the one page resume and/or job description for key personnel, provide a staffing plan that outlines how your organization will carry out this proposal (i.e., a full-time housing specialist).

Site Description—Section 10, question C, pg. 34: For Funding Priority 1 applicants only, describe the availability of current housing stock in

your community that would be appropriate for this program and would meet the standards required by Life Safety Code and 38 CFR 61.1—61.82.

Application for Federal Assistance (SF 424)—Applicants for Funding Priority 1—in block 15a, Federal; identify the total amount of per diem funding your agency is requesting for operation under the entire grant award period of this NOFA (this number may not exceed $48,000 per bed over the entire grant period or $1.2 million total).

Applicants should be careful to complete the proper application package. Submission of an incorrect or incomplete application package will result in the application being rejected at threshold. Application packages must include all required forms and certifications. Selections will be made based on criteria described in the application, Final Rule, and NOFA. Applicants who are conditionally selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: February 16, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2012–4880 Filed 2–29–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Intent To Grant an Exclusive License

AGENCY: Department of Veterans Affairs, Office of Research and Development.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs, Office of Research and Development, intends to grant to Somahlution, Inc., 3401 Fiechtner Drive, Fargo, North Dakota 58103, USA, an exclusive license to practice the following: U.S. Patent No. 7,981,596 (Tissue preservation with a salt solution isotonic with interstitial fluid) issued July 19, 2011.

DATES: Comments must be received March 16, 2012.

ADDRESSES: Written comments may be submitted through *www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. 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). Call (202) 461–4902 for an appointment (This is not a toll-free number). 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: Amy E., Centanni, Director of Technology Transfer, Office of Research and Development (10P9TT), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 443–5640 (This is not a toll-free number). Copies of the published patent applications may be obtained from the U.S. Patent and Trademark Office at *www.uspto.gov*.

SUPPLEMENTARY INFORMATION: It is in the public interest to so license these inventions, as Somahlution, Inc., submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 15 days from the date of this published Notice, the Department of Veterans Affairs Office of Research and Development receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: February 23, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2012–4885 Filed 2–29–12; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 52

Approval of Air Quality Implementation Plans; California; San Joaquin Valley; Attainment Plan for 1997 8-Hour Ozone Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0589; FRL–9624–5]

Approval of Air Quality Implementation Plans; California; San Joaquin Valley; Attainment Plan for 1997 8-Hour Ozone Standards

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving state implementation plan (SIP) revisions submitted by California to provide for attainment of the 1997 8-hour ozone national ambient air quality standards in the San Joaquin Valley (SJV). These SIP revisions are the 2007 Ozone Plan (revised 2008 and 2011) and SJV-related portions of the 2007 State Strategy (revised 2009 and 2011). EPA is approving the base year emissions inventory, reasonably available control measures demonstration, provisions for transportation control strategies and measures, provisions for advanced technology/clean fuels for boilers, reasonable further progress (RFP) and attainment demonstrations, transportation conformity motor vehicle emissions budgets for all RFP milestone years and the attainment year, contingency measures for failure to make RFP or attain, and Clean Air Act section 182(e)(5) new technologies provisions and associated commitment to adopt contingency measures. EPA is also approving commitments to measures and reductions by the SJV Air Pollution Control District and the California Air Resources Board.

DATES: The rule is effective April 30, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0589 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some may be publicly available only at the hard copy location (*e.g.,* copyrighted material) and some may not be publicly available at either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Copies of the SIP materials are also available for inspection at the following locations:

- California Air Resources Board, 1001 I Street, Sacramento, California 95812.
- San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, California 93726.

The SIP materials are also electronically available at: *http://www.valleyair.org/Air_Quality_Plans/Ozone_Plans.htm* and *www.arb.ca.gov/planning/sip/sip.htm.*

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region 9, (415) 972–3957, *wicher.frances@epa.gov.*

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

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I. Summary of EPA's Proposed and Final Actions on the 2007 State Implementation Plan for Attainment of the 1997 8-Hour Ozone Standards in the San Joaquin Valley

On September 16, 2011, EPA proposed to approve California's state implementation plan (SIP) for attaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) in the San Joaquin Valley (SJV). *See* 76 FR 57846. California developed this SIP to provide for expeditious attainment of the 1997 8-hour ozone standards in the SJV and to meet other applicable ozone planning requirements in Clean Air Act (CAA) sections 172(c) and 182 and EPA's 8-hour ozone implementation rule.[1]

California has made five SIP submittals to address the CAA's planning requirements for attaining the 1997 8-hour ozone standard in the San Joaquin Valley. We refer to these submittals collectively as the ''[SJV] 2007 8-hour Ozone SIP.'' The two principal ones are the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD) 2007 Ozone Plan (also Plan) and the California Air Resources Board's (CARB) State Strategy for California's 2007 State Implementation Plan (2007 State Strategy).[2]

Together, the 2007 Ozone Plan and the 2007 State Strategy present a comprehensive and innovative strategy for attaining the 1997 8-hour ozone standards in the SJV.

In our September 2011 notice, EPA proposed to approve as meeting the applicable requirements of the CAA the SJV 2007 8-hour Ozone SIP's base year emissions inventory, reasonably available control measures demonstration, provisions for transportation control strategies and measures, provisions for advanced technology/clean fuels for boilers, reasonable further progress (RFP) and attainment demonstrations, transportation conformity motor vehicle emissions budgets (MVEB) for all RFP milestone years and the attainment year, contingency measures for failure to make RFP or attain, and CAA section 182(e)(5) provisions for new technologies and the associated commitment to adopt contingency measures.[3] EPA also proposed to approve commitments to measures and reductions by the District and CARB.[4] 76 FR 57846, 57867.

[1] *See* 40 CFR part 51, subpart X and 69 FR 23951 (April 30, 2004) and 70 FR 71612 (November 29, 2005).

[2] These five SIP submittals are:

1. SJVUAPCD, *2007 Ozone Plan,* adopted on April 30, 2007 by the SJVUAPCD and on June 14, 2007 by CARB, submitted on November 16, 2007.
2. CARB, *Proposed State Strategy for California's 2007 State Implementation Plan,* amended and adopted on September 27, 2007 by CARB, submitted on November 16, 2007.
3. CARB, *Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revisions to the SIP Reflecting Implementation of the 2007 State Strategy* (pages 11–27 only), adopted on April 24, 2009, submitted on August 12, 2009. (''2009 State Strategy Status Report'')
4. SJVUAPCD, *Amendments to the 2007 Ozone Plan* (amending the rulemaking schedule for Measure S–GOV–5 Organic Waste Operations) adopted on December 18, 2008 by the SJVUAPCD, submitted on April 24, 2009.
5. CARB, *8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins,''* adopted on July 21, 2011, submitted July 29, 2011. ''2011 Ozone SIP Revisions.''

[3] *See* letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated November 18, 2011.

[4] We also proposed in the alternative to disapprove the SIP with respect to certain provisions in CAA section 182(d)(1)(A) for transportation control strategies and measures sufficient to offset any growth in emissions from growth in vehicle miles traveled or the number of vehicle trips. In *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011) (AIR), the U.S. Court of Appeals for the Ninth Circuit held that, with respect to the first element, section

A more detailed discussion of each of California's SIP submittals for the SJV area, the CAA and EPA requirements applicable to them, and our evaluation and proposed actions can be found in our September 2011 proposed rule (76 FR 57846) and the technical support document (TSD) for this final action.[5]

EPA is today approving all elements of the SJV 2007 8-hour Ozone SIP based on our conclusion that they comply with applicable CAA requirements and provide for expeditious attainment of the 1997 8-hour ozone standards in the San Joaquin Valley.

II. Response to Public Comments Received on the Proposals

EPA provided the public an opportunity to comment on its proposed approval of the SJV 2007 8-hour ozone SIP for 30 days following the proposed rule's September 16, 2011 publication in the **Federal Register**. We received two comment letters on the proposed rule. The first letter came from CARB who requested that we limit the approval of the SIP's MVEB until such time as the State submits and EPA finds adequate new budgets. We address CARB's request in Section IV below. The second letter was submitted jointly by the Center on Race, Poverty and the Environment; Earthjustice; and the Natural Resources Defense Council on behalf of themselves, the Association of Irritated Residents (AIR) and other San Joaquin Valley-based environmental and community organizations (collectively ''AIR''). *See* letter Brent Newell, General Counsel, Center on Race, Poverty & the Environment, October 17, 2011. We respond to AIR's main comments below. The entire Response to Comments document received can be found section III of the TSD. A copy of the comment letters can be found in the docket for this rule.

A. Enforceable Commitments

Comment: AIR characterizes CARB's and the District's commitments to achieve aggregate emissions reductions in specific years as ''global commitments'' and argues that they could be interpreted as ''goals'' unenforceable by citizens under Ninth Circuit precedent rather than enforceable ''strategies'' to achieve those goals, citing *Bayview Hunters Point Community Advocates* v. *Metropolitan Transp. Comm'n,* 366 F.3d 692, 701 (9th Cir. 2004) and *El Comite Para El Bienstar de Earlimart* v. *Warmerdam,* 539 F.3d 1062, 1067 (9th Cir. 2008).

AIR argues that the plans' global commitments are not enforceable for two reasons. First, AIR claims that enforcement is not practical because it is not possible for citizens or EPA to determine whether the CARB and the District have met the global commitments. AIR argues further that because no measures are submitted to EPA for inclusion into the SIP citizens have no idea which measures CARB has used to satisfy the total tonnage commitments. AIR also argues that there are no provisions for CARB and the District to report to EPA and the public what actions they have taken to comply with the tonnage commitments and thus EPA and citizens are left to determine, based on information exclusively held and maintained by CARB and the District, whether the commitments have in fact been met.

Second, AIR claims that because ''enforcing the global commitment ultimately turns on how the ARB and the District calculate emissions reductions achieved through the measures,'' CARB's and the District's emissions reduction commitments are not enforceable unless the methodology for calculating the reductions is also enforceable. Otherwise, AIR argues, the manner in which CARB and the District determine compliance with the tonnage target is left to their discretion, and citizens and EPA would be placed in the situation held by the plaintiffs in *Warmerdam.* In conclusion, AIR asserts that the CAA ''does not condone a discretionary commitment and EPA should not approve the ARB's latest attempt to achieve a reduction target based on discretionary actions.''

Response: Under CAA section 110(a)(2)(A), SIPs must include enforceable emissions limitations and other control measures, means or techniques as necessary to meet the requirements of the Act, as well as timetables for compliance. Similarly, section 172(c)(6) provides that nonattainment area SIPs must include enforceable emission limitations and such other control measures, means or techniques ''as may be necessary or appropriate to provide for attainment'' of the NAAQS by the applicable attainment date.

Control measures, including commitments in SIPs, are enforced directly by EPA under CAA section 113 and also through CAA section 304(a) which provides for citizen suits to be brought against any person who is alleged ''to be in violation of * * * an emission standard or limitation * * *.'' ''Emission standard or limitation'' is defined in subsection (f) of section 304. As observed in *Conservation Law Foundation, Inc.* v. *James Busey et al.,* 79 F.3d 1250, 1258 (1st Cir. 1996):

> Courts interpreting citizen suit jurisdiction have largely focused on whether the particular standard or requirement plaintiffs sought to enforce was sufficiently specific. Thus, interpreting citizen suit jurisdiction is limited to claims ''for violations of specific provisions of the act or specific provisions of an applicable implementation plan,'' the Second Circuit held that suits can be brought to enforce specific measures, strategies, or commitments designed to ensure compliance with the NAAQS, but not to enforce the NAAQS directly. *See, e.g., Wilder, 854 F.2d at 613–14.* Courts have repeatedly applied this test as the linchpin of citizen suit jurisdiction. *See, e.g., Coalition Against Columbus Ctr.* v. *City of New York,* 967 F.2d 764, 769–71 (2d Cir. 1992); *Cate* v. *Transcontinental Gas Pipe Line Corp.,* 904 F. Supp. 526, 530–32 (W.D. Va. 1995); *Citizens for a Better Env't* v. *Deukmejian,* 731 F. Supp. 1448, 1454–59 (N.D. Cal.), modified, 746 F. Supp. 976 (1990).

Thus courts have found that the citizen suit provision cannot be used to enforce the aspirational goal of attaining the NAAQS, but can be used to enforce specific strategies to achieve that goal, including enforceable commitments to develop future emissions controls.

We describe CARB's and the District's commitments in the 2007 State Strategy (revised in 2009 and 2011) and the 2007 Ozone Plan in detail in our proposed rule. *See* 76 FR 57846, 57851–57856 and 57857–57860. The 2007 State Strategy includes commitments to propose defined new measures and an enforceable commitment for emissions reductions sufficient, in combination

182(d)(1)(A) of the CAA requires States to adopt transportation control measures and strategies whenever vehicle emissions are projected to be higher than they would have been had vehicle miles traveled not increased, even when aggregate vehicle emissions are actually decreasing. EPA has filed a petition for rehearing on this issue. Docket Nos. 09–71383 and 09–71404 (consolidated), Docket Entry 41–1, *Petition for Panel Rehearing.*

At the time of our September proposal, the Ninth Circuit had not yet issued its mandate in the AIR case, and EPA had not adopted the court's interpretation for the reasons set forth in the Agency's petition for rehearing, pending a final decision by the court. We stated in our proposed rule that if the court denied the Agency's petition for rehearing and issued its mandate before EPA issued a final rule on the SJV 2007 8-hour Ozone SIP, then we anticipated that we would not be able to finalize approval of the SJV 2007 8-hour Ozone SIP with respect to the first element (*i.e.,* offsetting emissions growth) of section 182(d)(1)(A). *See* 76 FR 57846, 57863. Therefore, we proposed in the alternative to disapprove the SJV 2007 8-hour Ozone SIP with respect to the first element of section 182(d)(1)(A) based on the plan's failure to include sufficient transportation control strategies and TCM to offset the emissions from growth in VMT. *Id.* The court has still not issued its mandate; therefore, we are approving the SJV 2007 8-hour Ozone SIP as meeting the requirements of CAA section 182(d)(1)(A).

[5] ''Technical Support Document and Response to Comments Final Rule on the San Joaquin Valley 2007 8-hour State Implementation Plan,'' Air Division, U.S. EPA Region 9, September 30, 2011. The TSD can be found in the docket for this rulemaking.

with existing measures, the District's commitments, and the new technology provisions to attain the 1997 8-hour ozone NAAQS in the SJV by June 15, 2024. *See* CARB Resolution 07–28, Attachment B at pp. 3 and 6 and 2009 State Strategy Status Report, p. 21. For the SJV, CARB's emissions reductions commitments as submitted in 2007 and 2009 are to specific reductions of NO_X and VOC in 2014, 2017, 2020, and 2023 as well as additional reductions from CAA section 182(e)(5) measures in 2023. These commitments are shown in Table 8 of the proposed rule (76 FR 57846, 57854) and Table D–6 of the TSD.

SJVUAPCD's commitments as submitted in 2007 are also to specific reductions of NO_X and VOC in 2008, 2011, 2012, 2014, 2017, 2020 and 2023 and are shown Table 6–1 of the 2007 Ozone Plan (as revised in 2008). These commitments are also shown (for all years except for 2008) on Table 3 of the proposed rule (76 FR 57846, 578524) and Table D–2 of the TSD. The language used in the Board's resolution adopting the 2007 8-hour Ozone Plan at page 5 to describe its commitment is mandatory and unequivocal in nature:

> 10. The District Governing Board *commits to adopt and implement* the rules and measures in the 2007 Ozone Plan by the dates specified in Chapter 6 *to achieve the emissions reductions shown in Chapter 6,* and to submit these rules and measures to the ARB within one month of adoption for transmittal to EPA as a revision to the State Implementation Plan. If the total emissions reductions from the adopted rules are less than those committed to in the Plan, the District Governing Board *commits to adopt, submit, and implement* substitute rules and measures that will achieve equivalent reductions in emissions of ozone precursors in the same adoption and implementation timeframes or in the timeframes needed to meet CAA milestones.

SJVUAPCD Board Resolution No. 07–04–11a, p. 6. (Emphasis added).

Thus, CARB's and the District's commitments here are to adopt and implement measures that will achieve specific amounts of NO_X and VOC emissions reductions by specific years. These are not mere aspirational goals to ultimately achieve the standards. Rather, the State and District have committed to adopt enforceable measures that will achieve these specific amounts of emissions reductions by specified milestone years and ultimately by the attainment year (2023). *See* 70 FR 71612, 71633 (November 29, 2005) and 40 CFR 51.910(a)(1) and 51.908(d) (requiring implementation of all control measures needed for expeditious attainment no later than the beginning of the year prior to the attainment date). All of these control measures are subject to State and local rulemaking procedures and public participation requirements, through which EPA and the public may track the State/District's progress in achieving the requisite emissions reductions. EPA and citizens may enforce these commitments under CAA sections 113 and 304(a), respectively, should the State/District fail to adopt measures that achieve the requisite amounts of emissions reductions by each specified year. We conclude that these enforceable commitments to adopt and implement additional control measures to achieve aggregate emissions reductions on a fixed schedule are appropriate means, techniques, or schedules for compliance under sections 110(a)(2)(A) and 172(c)(6) of the Act.

AIR cites *Bayview* as support for their contention that the SIP's commitments are unenforceable aspirational goals. *Bayview* does not, however, provide any such support. That case involved a provision of the 1982 Bay Area 1-hour ozone SIP, known as TCM 2, which states in pertinent part:

> Support post-1983 improvements identified in transit operator's 5-year plans, after consultation with the operators adopt ridership increase target for 1983–1987.
>
> EMISSION REDUCTION ESTIMATES: These emission reduction estimates are predicated on a 15% ridership increase. The actual target would be determined after consultation with the transit operators. Following a table listing these estimates, TCM 2 provided that ''[r]idership increases would come from productivity improvements * * *.''

Ultimately, the 15 percent ridership estimate was adopted by the Metropolitan Transportation Commission (MTC), the implementing agency, as the actual target. Plaintiffs subsequently attempted to enforce the 15 percent ridership increase. The court found that the 15 percent ridership increase was an unenforceable estimate or goal. In reaching that conclusion, the court considered multiple factors, including the plain language of TCM 2 (*e.g.,* ''[a]greeing to establish a ridership 'target' is simply not the same as promising to attain that target,'' *Bayview* at 698); the logic of TCM 2, *i.e.,* the drafters of TCM 2 were careful not to characterize any given increase as an obligation because the TCM was contingent on a number of factors beyond MTC's control, *id.* at 699; and the fact that TCM 2 was an extension of TCM 1 that had as an enforceable strategy the improvement of transit services, specifically through productivity improvements in transit operators' five-year plans, *id.* at 701. As a result of all of these factors, the Ninth Circuit found that TCM 2 clearly designated the productivity improvements as the only enforceable strategy. *Id.* at 703.

The commitments in the 2007 State Strategy (revised in 2009 and 2011) and 2007 Ozone Plan are in stark contrast to the ridership target that was deemed unenforceable in *Bayview.* The language in CARB's and the District's commitments, as stated multiple times in multiple documents, is specific; the intent of the commitments is clear; and the strategy of adopting measures to achieve the required reductions is completely within CARB's and the District's control. Furthermore, as stated previously, CARB and the District identify specific emissions reductions that they will achieve, how they could be achieved and the time by which these reductions will be achieved. *See* 76 FR 57846, 57854 (Table 8) (listing CARB's commitments) 57852 (Table 3) (listing the District's commitments).

CARB's and the District's commitments here are analogous to the terms of the contingency measures for the transportation sector in the 1982 Bay Area 1-hour ozone SIP in *Citizens for a Better Environment* v. *Deukmejian,* 731 F.Supp. 1448 (N.D. Cal. 1990) (known as *CBE I.*) The provision states: ''If a determination is made that RFP is not being met for the transportation sector, MTC will adopt additional TCMs within 6 months of the determination. These TCMs will be designed to bring the region back within the RFP line.'' The court found that ''[o]n its face, this language is both specific and mandatory.'' *Id.* at 1458. In *CBE I,* CARB and MTC argued that TCM 2 could not constitute an enforceable strategy because the provision fails to specify exactly what TCMs must be adopted. The court rejected this argument, finding that ''[w]e discern no principled basis, consistent with the Clean Air Act, for disregarding this unequivocal commitment simply because the particulars of the contingency measures are not provided. Thus we hold that the basic commitment to adopt and implement additional measures, should the identified conditions occur, constitutes a specific strategy, fully enforceable in a citizen's action, although the exact contours of those measures are not spelled out.'' *Id.* at 1457. In concluding that the transportation and stationary source contingency provisions were enforceable, the court stated: ''Thus, while this Court is not empowered to enforce the Plan's overall objectives [footnote omitted; attainment of the NAAQS]—or NAAQS—directly, it can

and indeed, must, enforce specific strategies committed to in the Plan.'' *Id.* at 1454; *see also Citizens for a Better Environment* v. *Metropolitan Tranp. Comm'n,* 746 F. Supp. 976, 980 (N.D.Cal. 1990) [known as CBE II] (rejecting defendants' argument that RFP and the NAAQS are coincident and stating that the court's enforcement of the *contingency plan,* an express strategy for attaining NAAQS, is distinct from simply ordering that NAAQS be achieved).

As in the *CBE* cases, CARB and the District commit to propose or adopt measures, which are not specifically identified, to achieve a specific tonnage of emissions reductions by specific years. Thus, the commitment to a specific tonnage reduction is comparable to a commitment to achieve RFP. Similarly, a commitment to achieve a specific amount of emissions reductions through adoption and implementation of unidentified measures is comparable to the commitments to adopt unspecified TCMs and stationary source measures. The key is that the commitment must be clear in terms of what is required, *e.g.,* a specified amount of emissions reductions or the achievement of a specified amount of progress (*i.e.,* RFP). CARB's and the District's commitments are thus a specific enforceable strategy rather than an unenforceable aspirational goal.

AIR's reliance on *El Comite* (also referred to as *Warmerdam*) to argue that CARB's commitments are not enforceable is also misplaced. In *El Comite,* the plaintiffs in the district court attempted to enforce a provision of the 1994 California 1-hour ozone SIP known as the Pesticide Element. The Pesticide Element relied on an inventory of pesticide VOC emissions to provide the basis to determine whether additional regulatory measures would be needed to meet the SIP's pesticides emissions target. To this end, the Pesticide Element provided that ''ARB will develop a baseline inventory of estimated 1990 pesticidal VOC emissions based on 1991 pesticide use data * * *.'' *El Comite Para El Bienestar de Earlimart* v. *Helliker,* 416 F. Supp. 2d 912, 925 (E.D. Cal. 2006). CARB subsequently employed a different methodology that it deemed more accurate to calculate the baseline inventory. The plaintiffs sought to enforce the commitment to use the original methodology, claiming that the calculation of the baseline inventory constitutes an ''emission standard or limitation.'' The district court disagreed:

> By its own terms, the baseline identifies emission sources and then quantifies the amount of emissions attributed to those sources. As defendants argue, once the sources of air pollution are identified, control strategies can then be formulated to control emissions entering the air from those sources. From all the above, I must conclude that the baseline is not an emission ''standard'' or ''limitation'' within the meaning of *42 U.S.C. 7604(f)(1)–(4).*

Id. at 928. In its opinion, the court distinguished *Bayview* and *CBE I,* pointing out that in those cases ''the measures at issue were designed to reduce emissions.'' *Id.*

On appeal, the plaintiffs shifted their argument to claim that the baseline inventory and the calculation methodology were necessary elements of the overall enforceable commitment to reduce emissions in nonattainment areas. The Ninth Circuit agreed with the district court's conclusion that the baseline inventory was not an emission standard or limitation and rejected plaintiffs' arguments attempting ''to transform the baseline inventory into an enforceable emission standard or limitation by bootstrapping it to the commitment to decide to adopt regulations, if necessary.'' *Id.* at 1073.

While AIR cites the Ninth Circuit's *El Comite* opinion, its utility in analyzing the CARB and District commitments here is limited to that court's agreement with the district court's conclusion that neither the baseline nor the methodology qualifies as an independently enforceable aspect of the SIP. Rather, it is the district court's opinion, in distinguishing the commitments in *CBE* and *Bayview,* that provides insight into the situation at issue in our action. As the court recognized, a baseline inventory or the methodology used to calculate it, is not a measure to reduce emissions. It instead ''identifies emission sources and then quantifies the amount of emissions attributed to those sources.'' In contrast, as stated previously, in the 2007 State Strategy (revised 2009 and 2011) and SJV 2007 Ozone Plan, CARB and the District commits to adopt and implement measures sufficient to achieve specified amounts of emissions reductions by specified dates. As described above, a number of courts have found commitments substantially similar to CARB's here to be enforceable under CAA section 304(a).

B. Baseline Measures, Baseline Inventories, and Attainment Demonstration

Comment: AIR asserts that EPA's approval of the inventory in the Plan would violate CAA sections 172(c)(3) and 182(a)(1) because the baseline inventory includes emissions reduction credit for both ''waiver measures'' and ''non-waiver measures'' adopted before 2007 (together referred to as ''baseline measures'') that have not been approved into the SIP. AIR argues that EPA has not evaluated each of these baseline measures to determine if they are creditable or quantified the emissions reductions attributed to each of these measures. Additionally, AIR asserts that EPA should disapprove the attainment demonstration because EPA has approved neither mobile source baseline measures nor pesticide measures as part of the SIP. AIR asserts that ''[t]he total tonnage attributed to these unsubmitted and non-SIP approved measures in the attainment demonstration is not clear, because EPA does not differentiate between reductions from SIP-approved measures, waiver measures, and those that have not received EPA approval.'' Thus, AIR argues, ''a significant amount of emission reductions claimed in the attainment demonstration are not SIP creditable, a finding that EPA must make before approving the attainment demonstration.'' AIR references CAA sections 110(a)(2)(A) and 172(c)(6) in support of these assertions and argues that ''EPA has failed to find that the reductions from the unsubmitted rules have occurred, are enforceable, or are otherwise consistent with the Act, EPA's implementing regulations, and the General Preamble.''

Response: We disagree with these assertions. We explained in our Proposal TSD (section II.A.3.) our reasons for concluding both that the 2002 base year inventory in the SIP is comprehensive, accurate, and current as required by CAA section 182(a)(1) and that the projected baseline inventories provide adequate bases and support for the RFP and attainment demonstrations in the SJV 2007 8-hour Ozone SIP.[6]

Specifically, with respect to mobile source emissions, we believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers (''waiver measures'') is appropriate in the attainment and RFP demonstrations and for other SIP purposes notwithstanding the fact that such rules are not approved as part of the California SIP. In the Proposal TSD, we explained why we believe such credit is appropriate. *See* Proposal TSD at section II.D.3.a.i. Historically, EPA has granted credit for

[6] For ozone nonattainment areas, a State that satisfies the specific inventory requirements of CAA section 182(a)(1) also satisfies the general inventory requirements of CAA section 172(c)(3). *See* General Preamble at 13503 (April 16, 1992).

the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) expanded the flexibility granted to California in order ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare'' (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, EPA treated the waiver measures similarly to the Federal motor vehicle control requirements, which EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision.

EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures in attainment and RFP demonstrations and for other SIP purposes by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. EPA verifies the emissions reductions from motor-vehicle-related waiver measures through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emissions reductions from EPA's motor vehicle standards are reflected in an analogous model known as MOVES.[7]) The SJV 2007 8-hour Ozone SIP was developed using a version of the EMFAC model referred to as EMFAC2007, which EPA has approved for use in SIP development in California. *See* 73 FR 3464 (January 18, 2008). Thus, the emissions reductions that are from the California on-road ''waiver measures'' and that are estimated through use of EMFAC are as verifiable as are the emissions reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model. All other states use the MOVES model (and prior to release of MOVES, the MOBILE model) in their baseline inventories without submitting the federal motor vehicle regulations for incorporation into their SIPs.

Similarly, emissions reductions that are from California's waiver measures for non-road engines and vehicles (*e.g.,* agricultural, construction, lawn and garden and off-road recreation equipment) are estimated through use of CARB's OFFROAD emissions factor model.[8] (Emissions reductions from EPA's non-road engine and vehicle standards are reflected in an analogous model known as NONROAD). Since 1990, EPA has treated California non-road standards for which EPA has issued waivers in the same manner as California motor vehicle standards, *i.e.,* allowing credit for standards subject to the waiver process without requiring submittal of the standards as part of the SIP. In so doing, EPA has treated the California non-road standards similarly to the Federal non-road standards, which are relied upon, but not included in, various SIPs. *See* generally TSD at section II.D.3.a.i.

CARB's EMFAC and OFFROAD models employ complex routines that predict vehicle fleet turnover by vehicle model years and include control algorithms that account for all adopted regulatory actions which, when combined with the fleet turnover algorithms, provide future baseline projections. *See* 2007 State Strategy, Appendix F at 7–8. For stationary sources, the California Emission Forecasting System (CEFS) projects future emissions from stationary and area sources (in addition to aircraft and ships) using a forecasting algorithm that applies growth factors and control profiles to the base year inventory.[9] *See id.* at 7. The CEFS model integrates the projected inventories for both stationary and mobile sources into a single database to provide a comprehensive statewide forecast inventory, from which nonattainment area inventories are extracted for use in establishing future baseline planning inventories. *See id.* In 2011, CARB updated the baseline emissions projections for several source categories to account for, among other things, more recent economic forecasts and improved methodologies for estimating emissions from the heavy duty truck and construction source categories. *See* 2011 Ozone SIP Revisions, Appendix B. These methodologies for projecting future emissions based on growth factors and existing Federal, State, and local controls were consistent with EPA guidance on developing projected baseline inventories. *See* TSD at section II.A; *see also* ''Procedures for Preparing Emissions Projections,'' EPA Office of Air Quality Planning and Standards, EPA–450/4–91–019, July 1991; ''Emission Projections,'' STAPPA/ALAPCO/EPA Emission Inventory Improvement Project, Volume X, December 1999 (available at *http://www.epa.gov/ttnchie1/eiip/techreport/volume10/x01.pdf*).

In sum, the 2002 base year and future projected baseline inventories in the SJV 2007 8-hour Ozone SIP were prepared using a complex set of CARB methodologies to estimate and project emissions from stationary sources, in addition to the most recent emissions factors and models and updated activity levels for emissions associated with mobile sources, including: (1) The latest EPA-approved California motor vehicle emissions factor model (EMFAC2007) and the most recent motor vehicle activity data from each of the MPOs in the San Joaquin Valley; (2) improved methodologies for estimating emissions from specific source categories; and (3) CARB's non-road mobile source model (the OFFROAD model). *See* TSD, section II.A. (referencing, *inter alia,* 2007 State Strategy at Appendix F) and 2011 Ozone SIP Revisions. EPA has approved numerous California SIPs that rely on base year and projected baseline inventories including emissions estimates derived from the EMFAC, OFFROAD, and CEFS models. *See, e.g.,* 65 FR 6091 (February 8, 2000) (proposed rule to approve 1-hour ozone plan for South Coast) and 65 FR 18903 (April 10, 2000) (final rule); 70 FR 43663 (July 28, 2005) (proposed rule to approve PM–10 plan for South Coast and Coachella Valley) and 70 FR 69081 (November 14, 2005) (final rule); 74 FR 66916 (December 17, 2009) (direct final rule to approve ozone plan for Monterey Bay); 76 FR 41338 (July 13, 2011) (proposed rule to approve in part and disapprove in part the $PM_{2.5}$ plan for the San Joaquin Valley) and 76 FR 69896 (November 9, 2011) (final rule); and 76 FR 41562), (July 14, 2011) (proposed rule to approve in part and disapprove in part the $PM_{2.5}$ plan for the South Coast Air Basin) and 76 FR 69928 (November 9, 2011) (final rule). The commenter has provided no information to support a claim that these methodologies for developing base year inventories and projecting future emissions in the SJV are inadequate to support the RFP and attainment

[7] MOVES replaced the MOBILE model as EPA's on-road mobile source emission estimation model for use in SIPs and conformity in 2010.

[8] Information about CARB's emissions inventories for on-road and non-road mobile sources, and the EMFAC and OFFROAD models used to project changes in future inventories, is available at *http://www.arb.ca.gov/msei/msei.htm.*

[9] Information on base year emissions from stationary point sources is obtained primarily from the districts, while CARB and the districts share responsibility for developing and updating information on emissions from various area source categories. See 2007 State Strategy, Appendix F at 21.

demonstrations in the SJV 2007 8-hour Ozone SIP.

For all of these reasons and as discussed in our proposed rule (76 FR 57846, 57850), we conclude that the 2002 base year inventory in the 2007 8-hour Ozone SIP is a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants'' in the SJV area, consistent with the requirements for emissions inventories in CAA section 182(a)(1), 40 CFR 51.915, and 40 CFR part 51, subpart A. In addition, we conclude that the projected future year baseline inventories were prepared consistent with EPA's guidance on development of emissions inventories and attainment demonstrations and, therefore, provide an adequate basis for the RFP and attainment demonstrations in the SIP under CAA sections 172(c)(2), 182(a), and 182(c)(2). *See* TSD at section II.A.3.

Finally, we disagree with AIR's assertion that EPA has not identified the total amount of emissions reductions attributed to baseline measures in the projected inventories. The total amounts of emissions reductions attributed to baseline measures in the 2007 8-hour Ozone SIP, as revised in 2011, are 54.2 tpd of VOC and 338.6 tpd of NO_X. *See* 76 FR 57846, 57858, table 9 at line E; *see also* TSD, Table F–4 at line D.

Comment: AIR asserts that EPA has not approved any CARB mobile source baseline measures as part of the SIP or reviewed those measures to consider whether they achieve the reductions claimed by CARB, and that EPA cannot approve the SJV 2007 8-hour Ozone SIP when such a ''huge component of the control strategy'' has not been SIP-approved. AIR also asserts that CARB has not submitted copies of its mobile source baseline measures to EPA as part of this plan. AIR also asserts that waiver measures may not be used in attainment demonstrations because EPA makes no finding during the waiver process that the rules achieve the reductions claimed or that the measures are SIP creditable. AIR also notes that these issues are the subject of litigation in the 9th Circuit U.S. Court of Appeals in *Sierra Club* v. *EPA,* Consolidated Case Nos. 10–71457 and 10–71458.

Response: We continue to believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers (''waiver measures'') is appropriate notwithstanding the fact that such rules are not approved as part of the California SIP. In our September 16, 2011 proposed rule and the technical support document (TSD) for that proposal, we explained why we believe such credit is appropriate. *See* 76 FR 57872, at 57879–57880 and the Proposal TSD, pp. 86–90. Historically, EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) expanded the flexibility granted to California in order ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare,'' (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, EPA treated the waiver measures similarly to the Federal motor vehicle control requirements, which EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision. As we explained in the Proposal TSD (p. 87), credit for Federal measures, including those that establish on-road and nonroad standards, notwithstanding their absence in the SIP, is justified by reference to CAA section 110(a)(2)(A), which establishes the following content requirements for SIPs: ''* * * enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), * * * as may be *necessary or appropriate* to meet the applicable requirements of this chapter.'' (emphasis added). Federal measures are permanent, independently enforceable (by EPA and citizens), and quantifiable without regard to whether they are approved into a SIP, and thus EPA has never found such measures to be ''necessary or appropriate'' for inclusion in SIPs to meet the applicable requirements of the Act. Section 209 of the CAA establishes a process under which EPA allows California's waiver measures to substitute for Federal measures, and like the Federal measures for which they substitute, EPA has historically found, and continues to find, based on considerations of permanence, enforceability, and quantifiability, that such measures are not ''necessary or appropriate'' for California to include in its SIP to meet the applicable requirements of the Act.

First, with respect to permanence, we note that, to maintain a waiver, CARB's on-road waiver measures can be relaxed only to a level of aggregate equivalence to the Federal Motor Vehicle Control Program (FMVCP). *See* section 209(b)(1). In this respect, the FMVCP acts as a partial backstop to California's on-road waiver measures (*i.e.,* absent a waiver, the FMVCP would apply in California). Likewise, Federal nonroad vehicle and engine standards act as a partial backstop for corresponding California nonroad waiver measures. The constraints of the waiver process thus serve to limit the extent to which CARB can relax the waiver measures for which there are corresponding EPA standards, and thereby serve an anti-backsliding function similar in substance to those established for SIP revisions in CAA sections 110(l) and 193. Meanwhile, the growing convergence between California and EPA mobile source standards diminishes the difference in the emissions reductions reasonably attributed to the two programs and strengthens the role of the Federal program in serving as an effective backstop to the State program. In other words, with the harmonization of EPA mobile source standards with the corresponding State standards, the Federal program is becoming essentially a full backstop to most parts of the California program.

Second, as to enforceability, we note that the waiver process itself bestows enforceability onto California to enforce the on-road or nonroad standards for which EPA has issued the waiver. CARB has as long a history of enforcement of vehicle/engine emissions standards as EPA, and CARB's enforcement program is equally as rigorous as the corresponding EPA program. The history and rigor of CARB's enforcement program lends assurance to California SIP revisions that rely on the emissions reductions from CARB's rules in the same manner as EPA's mobile source enforcement program lends assurance to other state's SIPs in their reliance on emissions reductions from the FMVCP. While it is true that citizens and EPA are not authorized to enforce California waiver measures under the Clean Air Act (*i.e.,* because they are not in the SIP), citizens and EPA are authorized to enforce EPA standards in the event that vehicles operate in California without either California or EPA certification.

As to quantifiability, EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. EPA verifies the emissions reductions from motor-vehicle-related waiver measures

through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emissions reductions from EPA's motor vehicle standards are reflected in an analogous model known as MOVES.) The EMFAC model is based on the motor vehicle emissions standards for which California has received waivers from EPA but accounts for vehicle deterioration and many other factors. The motor vehicle emissions estimates themselves combine EMFAC results with vehicle activity estimates, among other considerations. *See* the 1982 Bay Area Air Quality Plan, and the related EPA rulemakings approving the plan (*see* 48 FR 5074 (February 3, 1983) for the proposed rule and 48 FR 57130 (December 28, 1983) for the final rule) as an example of how the waiver measures have been treated historically by EPA in California SIP actions.[10] The South Coast 8-hour ozone plan was developed using a version of the EMFAC model referred to as EMFAC2007, which EPA has approved for use in SIP development in California. *See* 73 FR 3464 (January 18, 2008). Thus, the emissions reductions that are from the California on-road ''waiver measures'' and that are estimated through use of EMFAC are as verifiable as are the emissions reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model.

Moreover, EPA's waiver review and approval process is analogous to the SIP approval process. First, CARB adopts its emissions standards following notice and comment procedures at the state level, and then submits the rules to EPA as part of its waiver request. When EPA receives new waiver requests from CARB, EPA publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. Once again, in substance, the process is similar to that for SIP approval and supports the argument that one hurdle (the waiver process) is all Congress intended for California standards, not two (waiver process plus SIP approval process). Second, just as SIP revisions are not effective until approved by EPA, changes to CARB's rules (for which a waiver has been granted) are not effective until EPA grants a new waiver, unless the changes are ''within the scope'' of a prior waiver and no new waiver is needed. Third, both types of final actions by EPA—*i.e.,* final actions on California requests for waivers and final actions on state submittals of SIPs and SIP revisions may be challenged under section 307(b)(1) of the CAA in the appropriate United States Court of Appeals.

AIR correctly notes that EPA's treatment of California waiver measures in SIP actions is the subject of current litigation in *Sierra Club* v. *EPA,* Consolidated Case Nos. 10–71457 and 10–71458 (9th Circuit).

Comment: AIR argues that our reliance on the general savings clause in CAA section 193 for the proposal to grant emissions reduction credit to California's waiver measures without first having California submit and EPA approve them into the SIP is inappropriate for two reasons. First, AIR argues that CAA section 193 only saves those ''formal rules, notices, or guidance documents'' promulgated before the effective date of the 1990 amendment that are not inconsistent with the CAA. It asserts that the plain language of the CAA requires that California submit the control measures, rules and regulations used to meet CAA requirements as part of the SIP and that nothing in CAA title II or section 209 provide a basis for EPA's position. Second, AIR argues that there is no automatic presumption that Congress is aware of an agency's interpretations and we have not provided any evidence that Congress was aware of our interpretation regarding the SIP treatment of California's mobile source control measures. AIR also argues that our positions that Congress must expressly disapprove of EPA's long-standing interpretation and Congressional silence equates to a ratification of EPA's interpretation are incorrect.

Response: In the Proposal TSD (pp. 89–90), we indicated that we believe that section 193 of the CAA, the general savings clause added by Congress in 1990, effectively ratified our long-standing practice of granting credit for the California waiver rules because Congress did not insert any language into the statute rendering EPA's treatment of California's motor vehicle standards inconsistent with the Act. Rather, Congress extended the California waiver provisions to most types of nonroad vehicles and engines, once again reflecting Congressional intent to provide California with the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare. Requiring the waiver measures to undergo SIP review in addition to the statutory waiver process is not consistent with providing California with the broadest possible discretion as to on-road and nonroad vehicle and engine standards, but rather, would add to the regulatory burden California faces in establishing and modifying such standards, and thus would not be consistent with Congressional intent. In short, we believe that Congress intended California's mobile source rules to undergo only one EPA review process (*i.e.,* the waiver process), not two.

In summary, we disagree that our interpretation of CAA section 193 is fundamentally flawed. EPA has historically given SIP credit for waiver measures in our approval of attainment demonstrations and other planning requirements such as reasonable further progress and contingency measures submitted by California. We continue to believe that section 193 ratifies our long-standing practice of allowing credit for California's waiver measures notwithstanding the fact they are not approved into the SIP, and correctly reflects Congressional intent to provide California with the broadest possible discretion in the development and promulgation of on-road and nonroad vehicle and engine standards.[11]

[10] EPA's historical practice in allowing California credit for waiver measures notwithstanding the absence of the underlying rules in the SIP is further documented by reference to EPA's review and approval of a May 1979 revision to the California SIP entitled, ''Chapter 4, California Air Quality Control Strategies.'' In our proposed approval of the 1979 revision (44 FR 60758, October 22, 1979), we describe the SIP revision as outlining California's overall control strategy, which the State had divided into vehicular sources and non-vehicular (stationary source) controls. As to the former, the SIP revision discusses vehicular control measures as including technical control measures and transportation control measures. The former refers to the types of measures we refer to herein as waiver measures, as well as fuel content limitations, and a vehicle inspection and maintenance program. The 1979 SIP revision included several appendices, including appendix 4–E, which refers to ''ARB vehicle emission controls included in title 13, California Administrative Code, chapter 3 * * *,'' including the types of vehicle emission standards we refer to herein as waiver measures; however, California did not submit the related portions of the California Administrative Code (CAC) to EPA as part of the 1979 SIP revision submittal. With respect to the CAC, the 1979 SIP revision states: ''The following appendices are portions of the California Administrative Code. Persons interested in these appendices should refer directly to the code.'' Thus, the State was clearly signaling its intention to rely on the California motor vehicle control program but not to submit the underlying rules to EPA as part of the SIP. In 1980, we finalized our approval as proposed. *See* 45 FR 63843 (September 28, 1980).

[11] In this regard, we disagree that we are treating the waiver measures inconsistently with other California control measures, such as consumer products and fuels rules, for the simple reason that, unlike the waiver measures, there is no history of past practice or legislative history supporting treatment of other California measures, such as consumer products rules and fuels rules, in any manner differently than is required as a general rule

C. Reasonably Available Control Measures

Comment: AIR takes issue with EPA's policy interpretation of the RACM requirement in CAA section 172(c)(1) that a SIP meets the RACM requirement if it includes all reasonably available measures that individually or in combination with other such measures can advance attainment of the relevant standard by at least one year. The commenter claims this interpretation is ''not based on the language of the statute and is irrational and perverse in the context of the SIP approval here.'' Specifically, AIR argues that because the 2007 8-hour Ozone SIP includes a ''black box,'' under EPA's reasoning no controls would need to be adopted as RACM because even the controls that the District and State have identified as RACM would not advance attainment by a year.

In addition, AIR claims that the 2007 8-hour Ozone SIP neither provides for attainment nor identifies the controls needed to attain, and that it is not rational to suggest that additional, feasible controls need not be adopted. AIR asserts that if a control is economically and technically feasible, then it is reasonably available and must be adopted. Finally, AIR argues that such controls *could* advance attainment and that ''[a]s technology is developed, it very well could allow for earlier attainment, especially if the Plan minimizes the magnitude of emissions reductions put into the 'black box.' ''

Response: Section 172(c)(1) of the Act requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' For over 30 years, EPA has consistently interpreted this provision to require that States adopt only those ''reasonably available'' measures necessary for expeditious attainment and to meet RFP requirements. *See* 40 CFR 51.912(d) and 51.1010; 44 FR 20372 (April 4, 1979) (Part D of title I of the CAA ''does not require that all sources apply RACM if less than all RACM will suffice for [RFP] and attainment''); General Preamble [12] at 13560 (''where measures that might in fact be available for implementation in the nonattainment area could not be implemented on a schedule that would advance the date for attainment in the area, EPA would not consider it reasonable to require implementation of such measures'') [13]; ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' November 30, 1999 (1999 Seitz Memo) (a State may justify rejection of a measure as not ''reasonably available'' for that area based on technological or economic grounds); and 70 FR 71612 (November 29, 2005) at 71660, 71661 (noting that ''to require areas to adopt and implement as RACM every control technology or measure that obtains a small amount of emissions reductions—even if such measure would not advance the attainment date or is not required to meet RFP requirements—is not justified'' as it ''would be extremely burdensome to planning agencies, would detract from the effort to develop more reasonable and effective controls to meet the NAAQS, and would not be necessary to meet the statutory goal of expediting attainment''); *see also* preamble to $PM_{2.5}$ Implementation Rule, 72 FR 20586 at 20613, 20615 (April 25, 2007) (stating that a RACM demonstration should ''focus on the most effective measures with the greatest possibility for significant air quality improvements''). EPA's interpretation of section 172(c)(1) has been upheld by several courts. *See, e.g., Sierra Club* v. *EPA, et al.,* 294 F. 3d 155__(DC Cir. 2002); *Sierra Club* v. *EPA,* 314 F.3d 735 (5th Cir. 2002).

Second, we disagree with AIR's assertion that our approach to RACM is ''irrational'' or ''perverse'' in the context of a plan that includes a ''black box,''—*i.e.,* an attainment demonstration that relies to some extent on the development of new control techniques or improvement of existing control technologies in accordance with CAA section 182(e)(5). Congress first enacted the RACM requirement as part of the CAA Amendments of 1977, which required SIPs for all nonattainment areas to provide for application of all ''reasonably available control measures,'' [14] including RACT for all stationary sources. *See* 44 FR 53761 at 53762 (September 17, 1979) (citing sections 172(b)(2) and (b)(3) of the 1977 CAA).[15] As part of the 1990 Amendments to the CAA, Congress created specific nonattainment area planning requirements for ozone, including section 182(e)(5) of the Act, which allows for approval of a plan for an extreme ozone nonattainment area that relies in part on the development of new control techniques or improvements to existing technologies. Notably, however, Congress did not substantively alter the RACM requirement, although it moved the provision from section 172(b)(2) to section 172(c)(1) of the amended Act. Following the 1990 Amendments, EPA has consistently reaffirmed its pre-existing interpretation of the RACM requirement, *i.e.,* that only those measures that would advance attainment or that are needed to meet reasonable further progress requirements are ''reasonably available'' within the meaning of section 172(c)(1). *See, e.g.,* 57 FR 13498 at 13560 (April 16, 1992); 1999 Seitz Memo; 40 CFR 51.912(d) and 70 FR 71612 at 71660, 71661 (November 29, 2005); *see also Sierra Club* v. *EPA,* 314 F.3d 735 (5th Cir. 2002) (concluding that section 193 of the 1990 CAA expresses Congress' intent to preserve EPA's pre-1990 interpretation of the RACM requirement).

Thus, the CAA explicitly contemplates that, for an extreme ozone nonattainment area, even where all RACM necessary for expeditious attainment and RFP are implemented, additional control measures based on

under CAA section 110(a)(2)(A), *i.e.,* state and local measures that are relied upon for SIP purposes must be approved into the SIP.

[12] The ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published at 57 FR 13498 on April 16, 1992, describes EPA's preliminary view on how we would interpret various SIP planning provisions in title I of the CAA as amended in 1990, including those planning provisions applicable to the 1-hour ozone standard. EPA continues to rely on certain guidance in the General Preamble to implement the 8-hour ozone standard under title I.

[13] EPA also believes it is not reasonable to require the adoption of measures that are absurd, unenforceable, or impracticable. *See* General Preamble at 13560; see also 55 FR 38236 (September 18, 1990) (revoking prior EPA guidance to the extent it suggested or stated that areas with severe pollution problems must implement every conceivable control measure including those that would cause severe socioeconomic disruption.

[14] The term ''reasonably available control measures'' is not specifically defined in the CAA. EPA first interpreted the term in guidance issued in 1979. *See* 44 FR 20,372 (April 4, 1979). That guidance established the principle that RACM is determined based on evaluation of a collection of control measures submitted as part of the reasonable further progress (RFP) plan and attainment demonstration for a particular NAAQS. *See id.* at 20, 375; *see also id.* at 20,373 (noting that ''states often have flexibility to obtain more or less emission reduction from any one measure, as long as a group of measures in the plan is adequate'').

[15] Section 172(b) of the 1977 CAA stated, in relevant part, as follows: ''The plan provisions required by subsection (a) of this section [for nonattainment areas] shall— (2) provide for the implementation of all reasonably available control measures as expeditiously as practicable; [and] (3) require, in the interim, reasonable further progress * * * including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology; * * *''

new or improved control techniques (*i.e.,* control measures yet to be defined) may be necessary to attain the ozone NAAQS. These new or improved control techniques are, by definition, not reasonably available for current implementation in the nonattainment area. AIR's comment suggests that our approval of a plan containing only those RACM necessary for expeditious attainment and RFP under CAA section 172(c)(1), together with new technology provisions under CAA section 182(e)(5) and other plan elements required under subpart 2 of part D, is somehow absurd. For the reasons discussed above, however, we believe Congress intended to allow for approval of both those reasonably available measures that contribute to expeditious attainment and new technology provisions as elements of a reasonable strategy for attaining the ozone NAAQS in the SJV area. We therefore disagree with AIR's claim that the 2007 8-hour Ozone SIP fails to provide for attainment of the 1997 8-hour ozone standard.

As explained in our proposed rule, the 2007 Ozone Plan includes an enforceable commitment by the SJVUAPCD to adopt 19 control measures in the near term, all but one of which the District has since adopted. *See* 2007 Ozone Plan, Table 6–1 and 76 FR 57846, 57851 (Table 2).[16] Also as part of the near term emissions reductions, CARB committed to bring 11 measures to its Board that would contribute emissions reductions to the SJV and now has completed rulemaking on many of them including requirements for in-use off-road equipment and in-use heavy duty diesel trucks that are the first of their kind nationwide. *See* 76 FR 57846, 57853 (Table 5). We anticipate that these measures will accelerate introduction of the most stringent currently available new engine and retrofit technologies for these sources and result in almost full deployment of these technologies by 2023.[17] These new measures are in addition to the many rules and regulations adopted by the District and State prior to the development of the SJV 8-Hour Ozone SIP (baseline measures), which collectively achieve more than 80 percent of NO_X and 47 percent of VOC reductions needed to attain the 8-hour ozone standard. *See* 76 FR 57846, 87859 (Table 10); *see also* Appendices A and B of TSD. Thus, contrary to the implication of AIR's argument, this is not a situation where the area is not adopting and implementing a variety of control measures that have been determined reasonable for other areas. In fact, SJVUAPCD is on the cutting edge of the type and level of controls it has required for sources in the area.[18]

Finally, we do not dispute AIR's statement that ''[a]s technology is developed, it very well could allow for earlier attainment'' and reduce the magnitude of emissions reductions put into the ''black box''—*i.e.,* attributed to the plan provisions for new and improved technologies. At this time, however, we are not aware of currently available technologies or control measures that would achieve emissions reductions sufficient to advance attainment of the ozone NAAQS in the SJV, and AIR has not identified any such measures.

Comment: AIR disputes EPA's statement that the process and criteria the District used to select certain measures and reject others are consistent with EPA's RACM guidance, asserting that the District's approach to evaluating economic feasibility is not consistent with EPA guidance because the District rejects control options based on the ''affordability'' of controls for a particular industry. Citing, for example, the District's ''Revised Proposed Staff Report and Recommendations on Agricultural Burning,'' at p. 1–4 (May 20, 2010), AIR states that the District rejects controls ''not based solely on the cost-effectiveness of controls but based on an overly simplistic ratio of costs to profits for the industry,'' referred to as the '' '10 percent of profits' test, to determine whether controls are economically feasible.'' AIR also asserts that this 10-percent-of-profits test ''has no connection to whether an industry is actually capable of bearing the costs of control, let alone whether the control should be considered cost-effective on a dollars per ton of emission reduction basis.''

In support of these assertions, AIR quotes from EPA's Supplement to the General Preamble (57 FR 18070, 18074 (April 28, 1992)) and states that EPA ''presumes that it is reasonable for similar sources to bear similar costs of emission reductions'' because ''[e]conomic feasibility rests very little on the ability of a particular source to 'afford' to reduce emissions to the level of similar sources.'' AIR further quotes from this same document to assert that ''capital costs, annualized costs, and cost effectiveness * * * should be determined for all technologically feasible emissions reduction options'' and notes that cost effectiveness is the cost per amount of emissions reduction (in tons) per year.

Response: We agree generally that an economic feasibility analysis based on the use of a ''10 percent of profits'' test is not a sufficient basis for rejecting a control option from consideration as RACM under CAA section 172(c)(1). As AIR correctly notes, under EPA's long-standing guidance on evaluating economic feasibility for RACM/RACT under CAA section 172(c)(1), EPA presumes that the cost of using a control measure is reasonable if those same costs are borne by other comparable facilities. *See, e.g.,* 57 FR 18070, 18074 (April 28, 1992) and 59 FR 41998, 42009 (August 16, 1994). EPA guidance provides that economic feasibility is largely determined by evidence that other sources in a source category have in fact applied the control technology in question and may also be based on cost effectiveness (*i.e.,* calculation of the cost per amount of emissions reduction in $/ton). *Id.* However, we note that our policy merely establishes a presumption and RACT is determined based on a source category or single source analysis; therefore, states can present additional or other evidence of what constitutes RACT for a source category or a single source.

For that reason, we disagree, with AIR's suggestion that cost effectiveness must be the sole criterion for evaluating economic feasibility. EPA's Supplement to the General Preamble (57 FR 18070, April 28, 1992), which AIR quotes from, provides that a state ''*may* give substantial weight to cost effectiveness in evaluating the economic feasibility of an emissions reduction technology'' but does not indicate that cost effectiveness is the only acceptable criterion.[19] *See*

[16] The one measure that the SJVUAPCD has not adopted is a measure regulating aviation fuel storage (Control Measure S–PET–3), which the District determined was infeasible. See SJVUAPCD, ''Final Draft Staff Report, Revised Proposed Amendments to Rules 2020, 4621, 4622, and 4624,'' December 20, 2007, p. 2.

[17] The California Bureau of Automotive Repair, which implements California's SmogCheck program, and the California Department of Pesticides also have adopted measures as part of the 2007 State Strategy. *See* 2009 State Strategy Status Report, p. 4.

[18] Neither the District nor CARB rejected any potential RACM based on a finding that it would not advance attainment (alone or in combination with other potential measures), and AIR has not identified any such measures.

[19] In the Supplement to the General Preamble, EPA stated that ''[c]ost effectiveness provides a value for each emission reduction option that is comparable with other options and other facilities'' but also stated that companies may provide other source-specific information about costs for consideration in an economic feasibility analysis:

If a company contends that it cannot afford the technology that appears to be RACT for that source or group of sources, the claim should be supported with such information as impact on:

1. Fixed and variable production cost ($/unit),
2. Product supply and demand elasticity,

57 FR 18070, 18074 (emphasis added). To the contrary, in numerous guidance documents EPA has identified cost effectiveness as one of several factors that states may consider in evaluating the economic feasibility of an available control option. *See, e.g.,* 57 FR at 18074 (''[t]he capital costs, annualized costs, *and* cost effectiveness of an emissions reduction technology should be considered in determining its economic feasibility'') (emphasis added); 57 FR 55620 at 55625 (November 25, 1992) (''NO_X Supplement to General Preamble'') (''comparability'' of a NO_X RACT control level ''shall be determined on the basis of several factors including, for example, cost, cost-effectiveness, and emission reductions''); 59 FR 41998 at 42013 (August 16, 1994) (''PM–10 Addendum to General Preamble'') (''capital costs, annualized costs, and cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility''); and Memorandum from D. Kent Berry, EPA, Air Quality Management Division, to Air Division Directors, EPA Regions I—X, ''Cost-Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT)'' (''[w]hile cost effectiveness * * * is an important consideration, it must be noted that other factors should be integrated into a RACT analysis [such as] emissions reductions and environmental impact * * *'').[20]

We also disagree with AIR's suggestion that the ''affordability'' of controls for a particular industry cannot play any role as part of an economic feasibility analysis. Although EPA has stated that ''[e]conomic feasibility rests very little on the ability of a *particular source* to 'afford' to reduce emissions to the level of similar sources'' (57 FR at 18074) (emphasis added), this does not mean that affordability on an *industry-wide basis* may not be considered as part of an economic feasibility analysis, among other factors.[21]

As we explained in our SJV 2009 RACT SIP final action,[22] the District generally considers multiple factors in evaluating the economic feasibility of available control options during its rule development processes, including capital costs, annualized costs, cost-effectiveness, and compliance costs as a percentage of profits. Given EPA's long-standing position that states may justify rejection of a control measure as not ''reasonably available'' based on the technical and economic circumstances of the particular sources being regulated, it is appropriate for the District to consider multiple factors in evaluating the costs of potential control options to determine if they are economically feasible for sources located within the SJV. With respect to SJVUAPCD Rule 4103 (Open Burning), which AIR references as an example of the District's use of a ''10 percent of profits'' test to evaluate economic feasibility, EPA previously reviewed the District's analyses and explained our bases for concluding that the rule requires all control measures for open burning that are technically and economically feasible for implementation in the SJV area. *See* ''Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District;'' final rule, pre-publication notice signed September 30, 2011 (Rule 4103).

Comment: AIR asserts that EPA cannot defend the cost-effectiveness criteria used by the District because the criteria have not been justified based on the attainment needs of the area. AIR further asserts that ''EPA's cursory and conclusory analysis of the District's RACM demonstration is not sufficient to comply with the requirements and objectives of the [CAA],'' and that it not possible to make a RACM demonstration for the SJV without explaining what is needed for attainment and using the attainment need to justify the thresholds used to accept or eliminate available control options. AIR cites EPA's 1992 General Preamble at 13541 in support of these assertions.

Response: It is not clear what AIR is referring to by ''cost-effectiveness criteria used by the District.'' We are not aware of a specific dollar per ton threshold that the District routinely uses to reject control options during its rule development processes and AIR does not provide one.

To the extent AIR intended to object to the District's use of a ''10 percent of profits'' test, rather than to any particular ''cost-effectiveness'' criteria, we have responded to that concern above. We note also that since the District's submittal of the 8-hour ozone plan in 2007, EPA has SIP-approved a number of rules that the District adopted despite cost estimates exceeding the ''10 percent of profits'' threshold for one or more industries subject to the rule, including Rule 4311—Flares (June 18, 2009); Rule 4682—Polystyrene Foam, Polyethylene and Polypropylene Manufacturing (September 20, 2007); and Rule 4570—Confined Animal Facilities (October 21, 2010).[23]

We agree with AIR's position that it is not possible to make a RACM demonstration for the 1997 8-hour ozone standard in the SJV without explaining what is needed to attain that standard in the area. This explanation is provided in both the 2007 Ozone Plan and EPA's proposed approval of the Plan. *See* 2007 Ozone Plan, Chapter 3 (''What is Needed To Demonstrate Attainment?'') and 76 FR 57846, 57857 (September 16, 2011). *See also* 2007 State Strategy, p. 33 and EPA's TSD, section II.F. To provide the emissions reductions needed to attain, the State and District developed a four part control strategy which is described in the Plan. *See* 2007 Ozone Plan at Chapter 4 (''Strategy''), Chapter 6 (''District Regulatory Control Measures for Stationary Sources''), Chapter 7 (''Action Plan for Reducing Emissions

3. Product prices (cost absorption vs cost pass-through),

4. Expected costs incurred by competitors,

5. Company profits, and

6. Employment.

57 FR 18070, 18074.

[20] EPA also included guidance on economic feasibility determinations in the preamble to its 2007 $PM_{2.5}$ Implementation Rule. *See* 72 FR 20586, 20619–20620 (April 25, 2007). In June 2007, a petition to the EPA Administrator was filed on behalf of several public health and environmental groups requesting, among other things, reconsideration of elements of this economic feasibility guidance. See Earthjustice, Petition for Reconsideration, ''In the Matter of Final Clean Air Fine Particle Implementation Rule,'' June 25, 2007. On April 25, 2011, EPA granted this petition. *See* Letter, Lisa P. Jackson, EPA, to Paul Cort, Earthjustice, April 25, 2011. EPA did not rely on the economic feasibility guidance in the $PM_{2.5}$ implementation rule preamble in its review of the SJV 2007 8-hour Ozone Plan.

[21] The SJVUAPCD's ''percent of profits'' evaluation considers the economic impact of a rule or rule revision on the industries located within SJV as a whole rather than the economic impact for any particular source. See, for examples, the socioeconomic studies prepared for Rule 4570 found in Appendix D of the District's Final Staff Report, Revised Proposed Amendments to Rule 4570 (Confined Animal Facilities), October 21, and for Rule 4311 found in Appendix D to SJVUAPCD, Final Draft Staff Report, Revised Proposed Amendments to Rule 4311 (''Flares''), June 18, 2009.

[22] See ''Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley; Reasonably Available Control Technology for Ozone;'' Final rule, pre-publication notice signed December 15, 2011, Response to Comment #4 (''SJV 2009 RACT SIP final action''). The 2009 RACT SIP is SJVUAPCD's ''Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plans (SIP), April 16, 2009, which was adopted by the SJVUAPCD on April 16, 2009 and submitted to EPA on June 18, 2009.)

[23] EPA approved Rule 4311 at 76 FR 68106 (November 3, 2011); proposed a limited approval/limited disapproval of Rule 4682 at 76 FR 41745 (July 15, 2011); and approved Rule 4570 on December 13, 2011. See Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District; Final rule. Pre-publication version signed December 13, 2011.

with Incentive Funds''), Chapter 8 (''Innovative Strategies and Programs''), and Chapter 9 (''Local, State, and Federal Controls''). *See also* 2007 State Strategy, Chapter 3 (''ARB's 2007 SIP State Strategy'').

Chapter 6 of the Plan describes the process the District undertook to identify potential stationary source control measures for adoption; that is, to identify potential RACM within its jurisdiction.[24] This measure identification process resulted in the development of a stationary source regulatory implementation schedule which lists not only the specific control measures that the District committed to adopt but also the schedule for their adoption and implementation and their anticipated emissions reductions by year. *See* 2007 Ozone Plan, Table 6–1, p. 6–5. It is this regulatory implementation schedule (and a similar one developed for the subsequent SJV 2008 $PM_{2.5}$ Plan) that has in large part determined the District's rulemaking calendar over the last few years, and the anticipated emissions reductions listed in this implementation schedule have helped to define the needed stringency of the individual rules. Supporting information for the District's adopted rules shows that during the rule-development process, the District considers its control strategies and the emissions reductions needed for attainment that it has identified in its plans. For example, section I.A. (''Reasons for Rule Development and Implementation'') in the Rule 4320 SJV Staff Report [25] discusses both the deadline for adoption and the anticipated reductions from these new and revised rules in the 2007 Ozone Plan and states: ''[t]his rulemaking project is intended to satisfy the attainment goals of the District's 2007 Ozone plan,'' ''[t]he plan calls for a total of 1.1 tons per day of NO_X reductions [from large and medium boilers] * * *, '' and ''[t]he proposed amendments * * * will seek to obtain as much reduction of [NO_X] from boilers, steam generators, and process heaters as expeditiously [as] practicable and technologically and economically feasible.'' [26]

Comment: AIR states that RACM is not limited to major sources, quoting EPA's recommendation in the General Preamble at 13541 that ''a State's control analysis for existing stationary sources go beyond major stationary sources and that the state require control technology for other sources that are reasonable in light of the areas attainment needs.'' AIR claims that an analysis of the effect of applying additional controls to non-major sources has not been conducted and therefore, EPA has no basis for its determination that additional reasonable controls are not available or that such control could not advance attainment. AIR further claims that the District's RACT demonstration only explores controls on sources down to 10 tons per year.

Response: We agree that a RACM analysis should not be limited to major sources.[27] *See* General Preamble at 13541. We disagree, however, with AIR's assertion that the District failed to evaluate controls for non-major sources. The District's control measure evaluation (documented in Appendices H and I of the Plan) was not limited to major stationary sources but covered a wide variety of small stationary sources (*e.g.,* gasoline stations, p. I–75), area sources (*e.g.,* architectural coatings, p. I–100; asphalt roofing, p. I–56; and residential water heaters, p. I–28), indirect sources (*e.g.,* employer trip reduction, p. I–141) and mobile sources (*e.g.,* school buses, p. I–156).

Most of the District's rules currently apply to sources much smaller than major sources. *See,* for example, Rule 4607—Graphic Arts which applies to any graphic arts source that emits more that 1.2 tpy of VOC, Rule 4308—Boilers 0.75—2 MMBtu/hr which applies to all boilers of this size without regard to the source size; Rule 4622—Gasoline Transfer into Motor Vehicles which applies to most retail gasoline station; and Rule 4902—Residential Water Heaters.[28] We also note that of the 18 measures that the District has adopted following its submittal of the 2007 Ozone Plan, all but two (glass melting furnaces and brandy and wine aging) regulate non-major sources. *See* 2007 Ozone Plan, Table 6–1. *See also,* Table 1 below.

As to AIR's claim that ''[t]he District's RACT demonstration only explores controls on sources down to 10 tons per year,'' this statement is not germane to our evaluation of the Plan's RACM demonstration under CAA 172(c)(1). The District submitted the 2009 RACT SIP [29] to meet the technology-based RACT requirements for specific types of sources in CAA section 182(b)(2) and (f). These requirements are separate from the RACM obligation in CAA section 172(c)(1), and EPA therefore evaluated the 2009 RACT SIP for compliance only with these specific control technology requirements. *See* SJV 2009 RACT SIP final action.

Evaluation of Potential To Advance Attainment

As discussed above, under EPA's longstanding policy, a SIP meets the RACM requirement in CAA section 172(c)(1) if it includes all reasonably available measures that individually or in combination with other such measures can advance attainment of the relevant standard by one year or more. Thus to determine whether the SJV Ozone SIP meets this statutory requirement, we evaluated whether implementation of potential RACM (including any missing section 182 RACT controls and those identified by AIR in its comments (*see* TSD, section III.C.) would expedite attainment of the 1997 8-hour ozone standard in the SJV.

Attainment of the 1997 8-hour ozone standard in the SJV depends on significant reductions in NO_X emissions. Air quality modeling shows that no level of VOC reductions will bring about attainment of the 8-hour ozone standard in the SJV absent these NO_X reductions and no reasonable level of VOC reductions will expedite attainment absent significant NO_X reductions. See 2007 Ozone Plan, Chapter 3; see also, section II.C.3. of the TSD.

Because VOC reductions will not advance attainment of the 1997 8-hour ozone standard unless substantial NO_X reductions are also achieved, we have focused our evaluation on the potential RACM that reduce NO_X emissions. Specifically, we evaluated whether additional emissions reductions from the control measures suggested by the

[24] The detailed evaluation of each potential controls is found in Appendix I of the 2007 Ozone Plan.

[25] SJVUAPCD, Final Draft Staff Report, Proposed Amendments to Rule 4306, Proposed Amendments to Rule 4307, and Proposed New Rule 4320, October 16, 2008 (Rule 4320 SJV Staff Report).

[26] Most if not all District staff reports on proposed rule adoptions or amendments include a section discussing the reasons for rule develop and implementation. This section generally list the CAA provisions applicable to the rule (e.g., section 182(b)(2) RACT) and identifies whether the rulemaking project is part of the area's ozone and/or $PM_{2.5}$ control strategy and the reductions from the rule called for in the plan.

[27] A major stationary source in an ozone nonattainment area classified as extreme is any stationary facility or source of air pollutant which directly emits or has the potential to emit 10 tons of VOC or 10 tons of NO_X per year. *See* CAA sections 302(j) and 182(e).

[28] We have identified only seven District prohibitory rules (of the approximately 60 District rules that regulate NO_X and/or VOC) which apply only to units at major sources: Rule 4354—Solid Fuel Boilers (NO_X); Rule 4356—Glass Melting Furnaces (NO_X and VOC); Rule 4311—Flares (SO_X, NO_X, and VOC); Rule 4610—Glass Coating Operations (VOC); Rule 4693—Bakeries (VOC); Rule 4694—Wine Fermentation and Storage Tanks (VOC); and Rule 4695—Brandy and Wine Aging (VOC).

[29] We assume here that AIR intended to refer to the SJV 2009 RACT SIP.

commenter (e..g, requiring RACT-level controls on major source solid fuel-fired boilers and prohibiting the use of pre-baseline emissions reductions credits as discussed in section III.C. below) and certain control measures not yet eligible for SIP credit, would provide sufficient additional reductions in 2023 to attain by June 15, 2024 without reliance on the CAA section 182(e)(5) new technology provision.[30] We used 2023 rather than 2022 because more information is available on projected controlled emissions levels in that year. Fleet turnover from existing mobile source measures will provide an additional 10 tpd in NO_X emissions reductions in the SJV between 2022 and 2023. Therefore, if we conclude that additional RACM measures would not provide sufficient reductions in 2023 to attain, we can also conclude that they would not provide sufficient emissions reductions in 2022.

After analyzing the maximum potential emissions reductions from additional controls on source categories for which we have not yet approved rules meeting RACT and measures recommended by AIR (including eliminating the use of pre-baseline emissions reduction credits in the area's new source review program) and comparing them against the level of reductions needed for attainment in the SJV by June 15, 2024, we find that even with these additional controls, the 2023 NO_X emissions level in the SJV would still be well above the level needed for attainment. See Table C–5 in the TSD. We conclude, therefore, that the SJV 2007 8-hour ozone SIP provides for RACM as required by CAA section 172(c)(1).[31]

D. CAA Section 182(e)(5) New Technology Provision

Comment: AIR states that California's reliance on ''black box'' measures in the SJV 2007 8-hour Ozone SIP fails to meet the requirements and intent of the Clean Air Act by allowing the State and District to defer their responsibility to attain the 8-hour ozone standards. AIR argues that there are three problems with how the State and District are using the CAA 182(e)(5) new technology provision.

First, AIR argues that it is arbitrary for EPA to approve a new technology provision of 80 tons per day of NO_X reductions or 59 percent of the reductions needed for attainment given its lack of definition.

Second, AIR asserts that section 182(e)(5) is intended to address new technologies that will develop over time but that in California, ''new technologies alone will not sufficiently reduce pollution to attain federal air quality standards.'' Citing a description in the Proposal TSD (at page 81) of a potential measure described by CARB as ''prioritizing federal transportation funding to support air quality goals,'' AIR argues that ''[t]his example clearly fails to meet all the criteria required for Black Box use,'' and that while ''tying air quality to transportation planning'' is important for attainment, the black box cannot be used as a basis for not requiring implementation of ''existing'' strategies such as increased public transit that do not require the development of new technologies.

Third, AIR states that the section 182(e)(5) commitments are vague and insufficient and that EPA cannot approve the attainment demonstration ''unless the Section 182(e)(5) measures comply with the CAA.'' Citing both CAA section 182(e)(5) and EPA's January 8, 1997 final rule approving the 1-hour ozone plan for several California nonattainment areas (62 FR 1150, 1179), AIR asserts that the new technology measures must: (1) Contain sufficient definition; (2) contain schedules for development of the new technologies; (3) contain commitments for funding; (4) depend on development of new technologies; and (5) include an enforceable commitment to develop and adopt necessary contingency measures. AIR asserts that the SJV 2007 8-hour Ozone SIP ''only attempts to comply with requirement number (5),'' that the generalized discussion in the SIP provides little assurance of CARB's ability to develop these measures, and that approval of these measures is therefore arbitrary and capricious.

Response: First, we disagree with the commenters' contention that EPA's approval of the SIP is arbitrary because of the amount of emissions reductions attributed to the new technology provision or because they are undefined. As an initial matter, we note that the commenters' assertion about the 59 percent of the emissions reductions needed for attainment of the 1997 8-hour ozone standard in the SJV that are attributed to the new technologies provision is not correct.[32] The correct percentage of the needed NO_X emissions reductions attributed to the new technology provision in the SJV 2007 8-hour Ozone SIP is 12 percent as explained further below.

The CAA does not provide a quantitative limit on the extent to which the attainment demonstration for an extreme ozone nonattainment area may rely on the new technology provisions under CAA section 182(e)(5). As we explained in our proposed rule, CAA section 182(e)(5) authorizes EPA to approve provisions in an extreme area plan which ''anticipate development of new control techniques or improvement of existing control technologies,'' and to approve an attainment demonstration based on such provisions if the State demonstrates that: (1) such provisions are not necessary to achieve incremental reductions required during the first 10 years after the effective date of designation for the 1997 8-hour ozone standards, and (2) the State has submitted enforceable commitments to submit adopted contingency measures meeting certain criteria no later than three years before proposed implementation of the new technology measures. *See* 76 FR 57846, 57854. EPA guidance on section 182(e)(5) states, among other things, that the SIP should show that the long-term measure(s) cannot be fully developed and adopted by the submittal date for the attainment demonstration and that the measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies. *See* General Preamble at 13524.

The majority of the emissions reductions in the SJV 2007 8-hour Ozone SIP are attributed to already adopted and near-term measures. *See* 76 FR 57846, 57850–61. Our summary of SJV's 8-hour ozone attainment demonstration in the proposed rule shows that the area needs to reduce emissions from 2002 levels by a total of 424 tpd of NO_X and 116 tpd of VOC to attain the 1997 8-hour ozone standards by June 15, 2024. *See* 76 FR 57846, 57859 (Table 10) (values rounded to the ones place). Of these needed reductions,

[30] As an extreme ozone nonattainment area, SJV's statutory attainment date is as expeditiously as practicable but no later than June 15, 2024. 40 CFR 51.903(a). The SIP as submitted demonstrates that the most expeditious attainment date is June 15, 2024. See 2007 Ozone Plan, p. 11–1. In order to attain by that date, the area must have all reductions needed for attainment in place by 2023. Thus, to advance attainment by one year, all reductions needed for attainment must be in place by 2022.

[31] This finding under CAA section 172(c)(1) does not affect the District's separate obligation under CAA sections 182(b)(2) and (f) and 40 CFR 51.905(a)(1)(ii) to implement RACT for all major sources and all CTG source categories.

[32] It appears that the commenters overestimated the percentage of emissions reductions attributed to the new technology provision in the SIP by calculating the amount of needed reductions without taking into account the reductions attributed to baseline measures. The 59 percent figure represents the percent contribution of the new technology provision to the new emissions reductions (that is, the non-baseline emissions reductions) in the SIP. *See* TSD, Table F–2.

approximately 88 percent of the NO_X reductions and all of the VOC reductions are attributed to already adopted measures or commitments to adopt and implement existing technologies by 2014. *S*ee 76 FR 57846, 57859 (Table 10) and 57851, 57853 (Tables 2 and 5) (identifying CARB and District measures recently adopted or scheduled for near-term consideration). These measures include all reasonably available control measures and generally represent the most stringent air pollution control requirements for stationary, area, and mobile sources nationwide. This leaves just 12 percent of the needed NO_X reductions and none of the needed VOC reductions to be met through new technologies under CAA section 182(e)(5). *See* 76 FR 57846, 57859 (Table 10).

Given the demonstrated need for emissions reductions from new and improved control techniques needed to attain the 1997 8-hour ozone standard in the SJV, we believe it is reasonable for the State to attribute this amount of emissions reductions to the new technology provision. However, as we stated in our proposed rule, we expect the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5) should decrease in any future SIP update, and EPA will not approve any future SIP revisions with an increase in the 182(e)(5) reductions for 2023 without a convincing showing that the technologies relied upon in the near-term rules are infeasible or ineffective in achieving emissions reductions in the near-term. *See* 76 FR 57846, 57856. Moreover, to the extent new modeling performed in any subsequent SIP revision demonstrates that there is an increase in the year 2023 carrying capacity for VOC and NO_X, this change may not be used to decrease the amount of emissions reductions scheduled to be achieved by any existing technology measures from the SJV 2007 8-hour Ozone SIP unless CARB or the District make the convincing showing described above.

Second, we disagree with AIR that CAA section 182(e)(5) allows only for plan provisions that rely on ''new technologies'' and that the District must adopt additional ''existing strategies'' that do not rely on new technologies. CAA section 182(e)(5) allows for approval of extreme area plan provisions that ''anticipate development of new control techniques or improvement of existing control technologies,'' which EPA interprets to include ''[those that may anticipate future technological developments as well as those that may require complex analyses and decision making and coordination among a number of government agencies.'' *See* 57 FR 13498, 13524. Thus, in addition to plan provisions that rely on ''new technologies,'' section 182(e)(5) contemplates provisions that are as of yet undefined because they require, for example, time for State and local agencies to evaluate complex technical information and to seek public participation in their regulatory processes.

AIR correctly notes that EPA's TSD identified ''prioritiz[ation of] federal transportation funding to support air quality goals'' among a number of potential long-term strategies that CARB had identified for further consideration (*see* Proposal TSD, p. 81, citing 2007 State Strategy, pp. 55–56), but it does not describe any specific control measure that such budgetary decisions could support and that is reasonably available for current implementation in the SJV. Likewise, although AIR asserts generally that ''increased transit'' and other ''existing strategies'' should be required as control measures because these do not require the development of new technologies, they have not identified any particular control measure that the State should be obligated to include in its plan for attaining the 1997 8-hour ozone standards in the SJV. CARB and the District have adopted all of the control measures for NO_X and VOC that are ''reasonably available'' within the meaning of CAA section 172(c)(1) for current implementation in the SJV and have submitted enforceable commitments to adopt additional measures achieving specific amounts of emissions reductions by specific years. *See* 76 FR 57846, 57850–57854. These measures are not sufficient, however, to achieve the significant amounts of NO_X and VOC reductions necessary to attain the 1997 8-hour ozone NAAQS in the SJV by June 15, 2024. Absent new information about additional control measures that are cost-effective and technically feasible for current implementation in the area, we believe it is reasonable to allow the State and District time to develop additional control measures based on new or improved control technologies under CAA section 182(e)(5).

Third, we disagree with AIR that the SIP's section 182(e)(5) provisions are vague and insufficient. As discussed in our proposed rule, CARB has submitted enforceable commitments to achieve specific amounts of NO_X and VOC reductions by 2023 through the development of new or improved control technologies under CAA section 182(e)(5). The total tonnage commitment in the SJV is for 81 tpd NO_X. *See* 76 FR 57846, 57854–57855 and 2009 State Strategy Status Report, p. 21. With respect to the requirement for contingency measures in CAA section 182(e)(5)(B), we explained in our proposed rule that CARB's 2011 Ozone SIP Revisions contain the State's enforceable commitment ''to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions'' (76 FR 57846, 57855, referencing CARB Resolution 11–22, July 21, 2011), and in a letter dated November 18, 2011 to EPA Region 9, CARB confirmed that EPA's understanding of this enforceable commitment is correct. *See* letter James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9, November 18, 2011.

In addition, as explained in our proposed rule (76 FR 57846, 57855), the SJV 2007 8-hour Ozone SIP identifies numerous potential measures currently under consideration as part of the long-term strategy, and CARB has committed to submit a SIP revision by 2020 that will identify the additional strategies and implementing agencies needed to achieve the needed reductions by the beginning of the 2023 ozone season. *See* 2011 Ozone SIP Revisions, p. A–8; *see also* the August 29, 2011 Goldstene letter which describes California's climate change programs, clean car technologies, programs to accelerate hybrids and plug-in technologies, greenhouse gas emissions reduction targets for passenger vehicles, and the District's efforts to shift goods movement to lower-emission alternatives and to reduce emissions caused by electricity and natural gas consumption in residential, industrial, and institutional settings). We note also that CARB has stated its intent to convene annual strategy meetings with the South Coast and SJV Districts and EPA to discuss progress in the development of its new technology measures, and to secure resources for continuing research and development of new technologies. *See* August 29, 2011 Goldstene letter; *see also* 2009 State Strategy Status Report, pp. 25–27.

Finally, AIR references CAA section 182(e)(5) and EPA's final rule approving an ozone SIP previously submitted by California (62 FR 1150, 1179) [33] in

[33] We note that although this final action included EPA's approval of new technology provisions under CAA section 182(e)(5) as part of California's SIP for the 1-hour ozone NAAQS in the South Coast area, this prior rulemaking action is not germane to today's action on the SJV 2007 Ozone

support of its assertion that the long-term strategy must satisfy five ''requirements,'' of which, commenters contend, the SJV 2007 8-hour Ozone SIP addresses only one. We disagree with this characterization of both the requirements of CAA section 182(e)(5) and the provisions in the SIP.

As explained above and in our proposed rule, EPA interprets the Act to allow EPA to approve the State's conceptual new technology provisions and credit them toward the attainment demonstration if the state makes the required commitment to submit contingency measures, which then must be submitted to EPA no later than 3 years before proposed implementation and EPA concludes that the measures are not needed to achieve the first 10 years of required rate of progress reductions. *See* 76 FR 57846, 57854. The five ''requirements'' for approval of new technology provisions that commenters reference are not statutory or regulatory requirements but recommended criteria. *See* General Preamble at 13524.[34]

As also explained in the proposed rule, CARB and the District have demonstrated a clear need for additional time to fully develop and adopt the long-term measures under consideration and have met the statutory requirements for approval of such conceptual measures under CAA section 182(e)(5). *See* 76 57846 57854–57855. The General Preamble at 13524 recommends that a SIP relying on new technology provisions under CAA section 182(e)(5) identify all of the specific long-term measures the State intends to adopt, contain a schedule outlining the specific steps leading to final development and adoption, and contain commitments from the agencies that would be involved in developing and implementing these measures, in addition to satisfying the statutory criteria. However, as discussed in our proposed rule and above, both the 2007 State Strategy and the 2007 Ozone Plan provide lists of the types of technologies and measures that they are pursuing to achieve the emissions reductions needed for attainment of the 8-hour ozone standard in the SJV. *See* 76 FR 57846, 57854–57855 and TSD, section II.E.2.; *see also,* 2007 Ozone Plan, Chapters 7, 8, and 11; 2007 State Strategy, pp. 54–57; 2009 State Strategy Update, p. 25; and 2011 Ozone Plan Update, Appendix A. The State has also committed to share the results of its efforts with the public through Board meetings, workshops and other means. *See* 2009 State Strategy Update, p. 25; *see also,* letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, August 29, 2011. Finally, the State has committed to work to secure resources for continuing research and development and to develop schedules for moving from research to implementation. *Id.* We find that the State and District have adequately addressed the policy criteria in the General Preamble given the significant emissions reductions needed to attain the 1997 8-hour ozone NAAQS in the SJV and the type of sources (*i.e.,* mobile sources) for which technology must be developed, tested, and deployed in order to achieve these reductions. EPA commits to do its share to support the needed research and development activities of CARB and the District.

Comment: AIR asserts that the SJV already violates the 1-hour ozone standard and failed to attain that standard by November 15, 2010 (citing 76 FF 56694 (September 14, 2011)) is ''particularly'' relevant to the approval of the new technology provisions in the 8-hour ozone plan because, according to AIR, the District and CARB ''relied heavily'' on new technology measures in its previous plans for the 1-hour ozone standard and these commitments have not been met. AIR further asserts that EPA cannot reasonably rely on the continued use of the new technologies provision because, according to AIR, the District's and CARB's track record for using this approach has not resulted in the pollution reductions committed to in the SJV 2004 1-hour attainment plan.

Response: EPA is acting today on the SJV 2007 8-hour Ozone SIP, which the State submitted to meet the requirements of part D, title I of the CAA for the 1997 8-hour ozone standard. Neither the CAA's planning requirements related to attainment of the 1-hour ozone standard nor the State's submittals to meet the Act's requirements for that prior standard are germane to our action on the SJV 2007 8-hour Ozone SIP under CAA section 110(k). Additionally, nothing in section 182(e)(5) of the CAA or our implementing regulations requires EPA to take into account the success or failure of a prior plan for a different ambient air quality standard in approving extreme area plan provisions that meet the requirements of CAA section 182(e)(5) for the 1997 8-hour ozone standard. EPA's proposed rule to determine that the SJV failed to attain the 1-hour ozone standard by its applicable attainment date (76 FR 56694, September 14, 2011), which commenters reference, likewise has no bearing on our action on the SJV 2007 8-hour Ozone SIP under CAA section 110(k).

We disagree with AIR's assertions that the District and CARB relied heavily on new technology measures in its previous plans for the 1-hour ozone standards and that these commitments have not been met. The District relied on emissions reductions from new technology measures only in its 2004 Ozone SIP.[35] Reductions from new technology measures in the 2004 Ozone SIP accounted for less than 4 percent of the overall reductions in that SIP's attainment demonstration; and the District subsequently showed that it had

SIP. We assume that the commenters intended to refer, instead, to the source of the five criteria that EPA has recommended for consideration in evaluating new technology provisions under CAA 182(e)(5), which is the General Preamble (57 FR 13498, 13524 (April 16, 1992)).

[34] EPA's General Preamble states that in order to rely on ''new technology provisions'' under CAA section 182(e)(5), a SIP must satisfy the following criteria: (1) Identify all measures, including the long-term measure(s) for which additional time would be needed for development and adoption; (2) show that the long-term measure(s) cannot be fully developed and adopted by the submittal date for the attainment demonstration and contain a schedule outlining the steps leading to final development and adoption of the measure(s); (3) contain commitments from those agencies that would be involved in developing and implementing the schedule for the measure; (4) contain a commitment to develop and submit contingency measures (in addition to those otherwise required for the area) that could be implemented if the measure is not developed or if it fails to achieve the anticipated reductions; and (5) not rely on the new technology measures to meet any emissions reductions requirements within the first 10 years after enactment. See 57 FR 13498, 13524 (April 16, 1992). We note that this language is non-binding guidance although it is phrased in mandatory terms.

[35] The 2004 Ozone SIP is the ''Extreme Ozone Attainment Plan,'' adopted by the SJVUAPCD on October 8, 2004 and submitted to EPA by CARB on November 15, 2004 and the relevant portions of the CARB's ''2003 State and Federal Strategy for the California State Implementation Plan'' adopted on October 23, 2003 and submitted to EPA on January 9, 2004.

As initially submitted, the attainment demonstration in the 2004 Ozone SIP included 5 tpd of NO_X and 5 tpd of VOC emissions reductions from new technology measures (referred to as ''long-term measures'' in 2004 Ozone SIP). See CARB, ''Staff Report, Proposed 2004 State Implementation Plan for Ozone in the San Joaquin Valley,'' September 28, 2004, Table E–2, p. 5. These reductions were part of the District's emissions reductions commitments. Id. However, prior to EPA's action on the 2004 Ozone SIP, the District adopted and submitted rules that provided sufficient emissions reductions to meet all its commitments including its commitments for reductions from new technology measures. *See* 74 FR 33933, 33937 (July 14, 2009). As a result, EPA did not approve any element of the 2004 SIP under the CAA section 182(e)(5) new technology provision. See 75 FR 10420, 10436–37 (March 8, 2010). The 2004 Ozone SIP also included commitments by CARB to achieve 15 tpd of VOC and 20 tpd of NO_X emissions reductions in the SJV by 2010; likewise, these commitments were approved as meeting the requirements of CAA section 110(a)(2)(A) and 172(c)(6) and not CAA section 182(e)(5). Id.

adopted sufficient measures to achieve these reductions. *See* 74 FR 33933, 33937 (July 14, 2009).

Finally, we disagree with commenters' argument that EPA must direct CARB to ''extract from the black box needed reductions they know will not come from future technologies, reduce the overall size of the black box to a reasonable level and better define where the remaining black box reductions are expected to come from.'' It is not possible at this point in time to know that certain emissions reductions will not come from future technologies, and we do not believe it is reasonable to require the State to reduce the amount of emissions reductions attributed to the long-term strategy by either implementing measures or incremental reductions beyond those otherwise mandated by the Act or developing measures based on control techniques not yet identified or commercially available for implementation in the area. As explained above, the State has met the statutory criteria for approval of its long-term strategy under CAA section 182(e)(5).

E. CAA Section 182(d)(1)(A) Requirements

Comment: AIR asserts that EPA has also failed to assess the adequacy of the SIP's compliance with the requirement in CAA section 182(d)(1)(A) that the SIP provide adequate enforceable control measures ''to allow total area emissions to comply with RFP and attainment requirements.'' AIR argues that, because the area has not adopted sufficient enforceable control measures to provide for attainment (citing to its comments that the attainment demonstration is not approvable because, *inter alia,* measures relied on in that demonstration were not in the SIP), this provision must be met and EPA must direct the State/District to adopt the additional measures needed for attainment, either as TCMs to reduce motor vehicle emissions, or as controls on other source categories so that total emissions reductions provide for attainment.

Response: CAA section 182(d)(1)(A) requires the State to ''submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures * * * to attain reductions in motor vehicle emissions as necessary, in combination with other emissions reduction requirements of [title 1, part D, subpart 2], to comply with the requirements of [sections 182] (b)(2)(B) and (c)(2)(B)'' and ''to consider measures specified in section 108(f) * * * and to choose from among and implement such measures as necessary to demonstrate attainment.''

We have determined that the SJV 2007 8-hour Ozone SIP meets the RPF requirements in sections 182(b)(2)(B) and (c)(2)(B) and demonstrates attainment consistent with the subpart 2 requirements and thus also meets the requirements of section 182(d)(1)(A) to adopt transportation control strategies and TCMs as necessary to demonstrate RFP and attainment. *See* 76 FR 57846, 57863 and TSD, section II.H.3.; *see also,* TSD, section III.A.2. (responding to comments on the approvability of the baseline emissions inventory and the attainment demonstration). The SIP also includes documentation that the state considered the transportation control measures listed in CAA section 108(f), evaluated their effectiveness in contributing to expeditious attainment, and concluded that they would not. *See* 2007 Ozone SIP, appendix D; 76 FR 57846, 57852 and 57863 and TSD, sections II.B.3.b. and II.H.2.

We disagree with AIR's summary of the CAA section 182(d)(1)(A) requirements related to RFP and attainment. This specific section does not require that the SIP provide ''adequate enforceable control measures 'to allow total area emissions to comply with RFP and attainment requirements' '' but rather it requires that the state adopt *enforceable transportation strategies and TCM as necessary in combination with other emissions reduction requirement of subpart 2* to demonstrate RFP and to implement *TCMs as necessary* to demonstration attainment. Thus, if other SIP provisions provide for RFP and attainment consistent with applicable CAA requirements (including, in this case, the provisions of CAA section 182(e)(5)), then the state has no obligation under section 182(d)(1)(A) to adopt transportation control strategies and TCMs for RFP and attainment purposes.

III. Approval Status of the Control Strategy Measures and Final Actions on the Attainment Demonstration and Enforceable Commitments

A. Approval Status of Control Strategy Measures

As part of its control strategy for attaining the 1997 8-hour ozone standards in the SJV, the District made specific commitments to adopt nineteen measures on the schedule identified in the Plan. *See* 2007 Ozone Plan, Table 6–1 (revised December 18, 2009). The District has now completed its actions on all measures except for one which it found to be infeasible. *See* Table 1 below. As Table 1 shows, EPA has approved all of the adopted rules except for one, which EPA is not currently crediting with emissions reductions in the RFP or attainment demonstration.

TABLE 1—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2007 OZONE PLAN SPECIFIC RULE COMMITMENTS

Measure number & description	District rule No.	Adoption date		SIP status
		Anticipated	Actual	
S–GOV–1 Composting Biosolids	4565	1st Q–2007	March 2007	Approved: December 13, 2011 (signature date).
S–AGR–1 Open Burning (Phase IV)	4103	2nd Q–2010	April 2010	Approved: September 29, 2011 (signature date).
S–SOL–11 Solvents				
Organic Solvents	4661		September 2007	Approved: 75 FR 24406 (May 5, 2010).
Organic Solvent Degreasing	4662	3rd Q–2007	September 2007	Approved: 74 FR 37948 (July 30, 2009).
Organic Solvent Cleaning	4663		September 2007	Approved: 74 FR 37948 (July 30, 2009).
S–COM–5 Stationary Gas Turbines	4703	3rd Q–2007	September 2007	Approved: 74 FR 53888 (October 21, 2009).

TABLE 1—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2007 OZONE PLAN SPECIFIC RULE COMMITMENTS—Continued

Measure number & description	District rule No.	Adoption date		SIP status
		Anticipated	Actual	
S–IND–24 Soil Decontamination	4651	3rd Q–2007	September 2007	Approved: 74 FR 52894 (October 15, 2009).
S–IND–6 Polystyrene Foam	4682	3rd Q–2007	September 2007	Approved: 76 FR 41745 (July 15, 2011).
S–PET–1&2 Gasoline Storage & Transfer.	4623 4624	4th Q–2007	December 2007	Approved: 74 FR 56120 (October 30, 2009).
S–PET–3 Aviation Fuel Storage		3rd Q–2007	found not feasible	Found infeasible.
S–COM–1 Large Boilers	4306 4320	3rd Q–2008	October 2008	Approved: 75 FR 1715 (January 13, 2010) and 76 FR 16696 (March 25, 2011).
S–COM–2 Boilers, Steam Generators and Process Heaters (2 to 5 MMBtu/hr).	4307	3rd Q–2008	October 2008	Approved: 75 FR 1715 (January 13, 2010).
S–COM–7 Glass Melting Furnaces [1]	4354	3rd Q–2008	October 2008	Approved: 76 FR 53640 (August 29, 2011).
S–SOL–20 Graphic Arts	4607	4th Q–2008	December 2008	Approved: 74 FR 52894 (October 15, 2009).
S–COM–9 Residential Water Heaters	4902	1st Q–2009	March 2009	Approved: 75 FR 24408 (May 5, 2010).
S–GOV–5 Composting Green Waste	4566	4th Q 0 2010	August 2011	Rule adopted August 2011, Submitted November 18, 2011.
S–IND–21 Flares	4311	2nd Q–2009	June 2009	Approved: 76 FR 68106 (November 3, 2011).
S–IND–14 Brandy and Wine Aging	4695	3rd Q–2009	September 2009	Approved: 76 FR 47076 (August 4, 2011).
S–SOL–1 Architectural Coatings	4601	4th Q–2009	December 2009	Approved: 76 FR69135 (November 8, 2011).
S–AGR–2 Confined Animal Facilities	4570	2nd Q–2010	October 2010	Approved: December 13, 2011 (signature date).
S–SOL–6 Adhesives	4653	3rd Q–2010	September 2010	Approved: November 18, 2011 (signature date).

Source: List of measures and anticipated adoption dates: 2007 Ozone Plan, Table 6–1, revised December 18, 2009.

As part of its control strategy for attaining the 1997 8-hour ozone standards in the SJV, CARB committed to propose certain measures on the schedule identified in the 2007 State Strategy. These commitments were updated in the 2011 Progress Report and 2011 Ozone SIP Revisions. We list these measures and their current approval status in Table 2. Of the measures listed in the 2007 State Strategy's updated rulemaking schedule, we note that only reductions from the ''SmogCheck Improvement,'' ''Cleaner In-Use Heavy Duty Trucks,'' ''Cleaner In-Use Off-Road Engines,'' and ''Consumer Products Program'' measures are currently credited with reductions in the attainment demonstration. See 76 FR 57846, 57853 (Table 7).

Generally, EPA will approve a State plan that takes emissions reduction credit for a control measure only where EPA has approved the measure as part of the SIP, or in the case of certain on-road and nonroad measures, where EPA has issued the related waiver of preemption or authorization under CAA section 209(b) or section 209(e). In our September 2011 proposed rule, in calculating and proposing to approve the State's aggregate emissions reductions commitment in connection with our proposed approval of the attainment demonstration, we assumed that full final approval, waiver, or authorization of a number of CARB rules would occur prior to our final action on the San Joaquin Valley 8-hour ozone SIP. *See* 76 FR 57846, 57853 (Table 7). Two specific adopted CARB rules on which the attainment demonstration relies include the Truck Rule and the Drayage Truck Rule (that collectively are included in a State measure referred to as ''Cleaner In-Use Heavy Duty Trucks''). We proposed approval of both rules at 76 FR 40652 (July 11, 2011) but could not take final action on the rules until these rules were approved by the California Office of Administrative Law (OAL). OAL approved the Drayage Truck Rule on November 9, 2011 and the Truck Rule on December 14, 2011. CARB submitted the rules to EPA for final approval on December 9 and 15, 2011, respectively. We expect to complete action on these rules prior to the effective date of this rule.

Based on anticipated approval of these two CARB rules, we are allowing the plan's attainment demonstration, and our final approval of it, to rely on the emissions reductions from these rules for the following reasons:

- Both rules have been adopted by CARB, approved by the California OAL, and submitted to EPA as a revision to the California SIP,[36] and the adopted versions are essentially the same as those for which EPA proposed approval; and
- The comments that we have received on our proposed approval of the two CARB rules (Truck Rule and Drayage Truck Rule) contend that the rules are costly and may not be economically or technologically feasible, but such considerations cannot form the basis for EPA disapproval of a rule submitted by a state as part of the SIP [see *Union Electric Company* v. *EPA,* 427 U.S. 246, 265 (1976)].

We are confident that the final action on the rules will be completed in the

[36] The Truck Rule and the Drayage Truck Rule were included in a SIP submittal dated September 21, 2011. We have included the September 21, 2011 SIP submittal in the docket for this rulemaking.

near-term and that, as a result, continued reliance by the SJV 2007 8-hour Ozone SIP, and our final approval of it, on the emissions reductions associated with the rules is reasonable and appropriate. If, however, we are unable to complete a final action on these rules prior to the effective date of today's action, we will take appropriate remedial action to ensure that our action on the plan is fully supportable or to reconsider that action.

TABLE 2—2007 STATE STRATEGY DEFINED MEASURES APPLICABLE TO THE SJV, SCHEDULE FOR CONSIDERATION AND CURRENT STATUS

State measures	Expected action year	Current status
Smog Check Improvements	2007–2009	Elements approved 75 FR 38023 (July 1, 2010).[37]
Expanded Vehicle Retirement (AB 118)	2007	Adopted by CARB, June 2009; by Bureau of Automotive Repair, September 2010.
Modification to Reformulated Gasoline Program	2007	Approved, 75 FR 26653 (May 12, 2010)
Cleaner In-Use Heavy Duty Trucks (includes Drayage rule)	2007, 2008, 2010	Proposed for approval: 76 FR 40652 (July 11, 2011) See discussion above.
Accelerated Introduction of Cleaner Locomotives	2008	Prop 1B bond funds awarded to upgrade line-haul locomotive engines not already accounted for by enforceable agreements with the railroads. Those cleaner line-hauls will begin operation by 2012.
Cleaner In-Use Off-Road Engines	2007, 2010	Waiver decision pending.
Cleaner In-Use Agricultural Equipment	2013	Incentive program in progress. Additional action expected 2013.
New Emissions Standards for Recreational Boats	2013	Action expected 2013.
Expanded Off-Road Recreational Vehicle Emissions Standards.	2013	Action expected 2013.
Enhanced Vapor Recovery for Above Ground Storage Tanks	2008	Adopted June 2007. Requirements implemented through District Rule 4621.
Additional Evaporative Emissions Standards	2013	Action expected 2013.
Consumer Products Program (I & II)	2008, 2009, 2011	Approved 74 FR 57074 (November 4, 2009), 76 FR 27613 (May 12, 2011) and December 7, 2011 (signature date).
Pesticide Regulation (DPR)	2008, 2009	Submitted October 2009, revisions submitted August 2011.

Source: 2009 State Strategy Status Report, p.4, 2011 Progress Report, Table 1, and 2011 Ozone SIP Revisions, Appendix A–3. Additional information from *www.ca.arb.gov*.

B. Enforceable Emissions Reductions Commitments

For the 2007 Ozone Plan, the District committed to achieve certain aggregate emissions reductions of NO_X and VOC. See 2007 Ozone Plan, Table 6–1 (revised December 18, 2008). See Table 3. EPA is approving these aggregate emissions reductions commitments.

TABLE 3—SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT 2007 OZONE PLAN AGGREGATE EMISSIONS REDUCTIONS COMMITMENTS

[Tons per summer day]

	2011	2012	2014	2017	2020	2023
NO_X	4.4	6.0	6.3	7.8	8.0	8.2
VOC	15.3	26.5	40.5	42.2	44.5	46.3

Source: 2007 Ozone Plan, Table 6–1, revised December 18, 2008.

In the 2007 State Strategy, CARB committed to achieve certain aggregate emissions reductions of 46 tpd NO_X and 25 tpd VOC in the SJV by the attainment year of 2023 that are sufficient, in combination with existing SIP-creditable measures, the District's commitments, and commitments for reductions under the CAA section 182(e)(5) new technologies provision, to attain the 1997 8-hour ozone standard in the San Joaquin Valley by the applicable attainment date of June 15, 2024. CARB also made enforceable commitments to achieve aggregate emissions reductions in the SJV in the RFP milestone years of 2014, 2017, and 2020. See 2007 State Strategy, p. 63; CARB Resolution 07–28, Attachment B, p. 6; and 2009 State Strategy Status Report, p. 21. See Table 4 below.

The 2011 Ozone SIP Revisions revised the State's emissions estimates for certain source categories and projection years and provided additional information on the State and District's progress to date in achieving their total emissions reduction commitments. In this action, we are approving CARB's and the District's emissions reduction commitments as submitted in the 2007 State Strategy, 2009 State Strategy Update and the 2007 Ozone Plan without change, because we do not have sufficient information to determine how the 2011 SIP Revision alters the State's near-term and CAA section 182(e)(5) emissions reduction commitments. We note that the amount and relative proportion of reductions from measures scheduled for adoption under CAA section 182(e)(5), as compared to

[37] California Assembly Bill 2289, passed in 2010, requires the Bureau of Automotive Repair to direct older vehicles to high performing auto technicians and test stations for inspection and certification effective 2013. Reductions shown for the SmogCheck program in the 2011 Ozone SIP Revisions do not include reductions from AB 2289 improvements. 2011 Ozone SIP Revisions, Appendix C.

measures already adopted or scheduled for near-term adoption, should decrease in any future SIP update.

TABLE 4—CARB COMMITMENTS TO SPECIFIC AGGREGATE EMISSIONS REDUCTIONS

[Tons per summer day]

	2014	2017	2020	2023	2023 CAA 182(e)(5)
VOC	23	(1)	24	25	(1)
NO_X	2 17.1	88–93	56	46	81

Source: 2009 State Strategy Status Report, p. 21.
1 No commitment to VOC reductions in 2017 or to VOC reductions pursuant to CAA 182(e)(5) advanced technologies provision.
2 As modified in the final approval of the SJV 2008 $PM_{2.5}$ SIP, *see* 76 FR 69896, 69924.

IV. Approval of the Motor Vehicle Emissions Budgets for Transportation Conformity

CARB submitted updated MVEB for the San Joaquin Valley and their documentation in Appendices A and C, respectively, of the 2011 Ozone SIP Revisions. As part of our review of the budgets' approvability, EPA evaluated the revised budgets using our adequacy criteria in 40 CFR 93.318(e)(4). We posted the revised budgets on EPA's adequacy review Web page on September 19, 2011 and requested public comment by October 19, 2011. We did not receive any comments. As documented in Table K–3 in the TSD, we found that the budgets meet each adequacy criterion. We have completed our detailed review of the 2007 SJV 8-hour Ozone SIP and supplemental submittals including the 2011 Ozone SIP Revisions and are approving the SIP's attainment and RFP demonstrations. We have also reviewed the MVEB submitted with the 2011 Ozone SIP Revisions and have found that they are consistent with the attainment and RFP demonstrations and are based on control measures that have already been adopted and implemented. Therefore, we are approving the 2011, 2014, 2017, 2020, and 2023 MVEB as shown in Table 5.

Now that the approval of the budgets is finalized, the SJV MPOs and the U.S. Department of Transportation are required to use the revised budgets in transportation conformity determinations. Due to the formatting of the budgets (combining emissions changes, recession impacts and reductions from control measures), CARB will need to provide the MPOs with emissions reductions associated with the control measures incorporated into the budgets for the appropriate analysis years so that they can include these reductions in future conformity determinations in accordance with 40 CFR 93.122. In addition, for these conformity determinations, the motor vehicle emissions from implementation of the transportation plan should be projected and compared to the budgets at the same level of accuracy as the budgets in the plan, for example emissions should be rounded to the nearest tenth (*e.g.,* 0.1 tpd).

During the comment period on the proposed approval of the SJV 2007 8-hour Ozone SIP, CARB requested that EPA limit the duration of its approval of the budgets submitted on July 29, 2011 as part of the 2011 Ozone SIP Revisions to last only until the effective date of EPA's adequacy finding for any subsequently submitted budgets. *See* letter, Douglas Ito, Chief, Air Quality and Transportation Planning Branch; California Air Resources Board, October 17, 2011.

The transportation conformity rule allows EPA to limit the approval of budgets. *See* 40 CFR 93.118(e)(1). However, we can only consider a state's request to limit an approval of its MVEB if the request includes the following elements:

- An acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient;
- A commitment to update the budgets as part of a comprehensive SIP update; and
- A request that EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

See 67 FR 69141 (November 15, 2002) (limiting our prior approval of MVEB in certain California SIPs).

Because CARB's request does not include all of these elements, we cannot address it at this time. Once CARB has adequately addressed them, we intend to propose to limit the duration of our approval of the MVEB in the SJV 2007 8-hour Ozone SIP and provide the public an opportunity to comment.[38] The duration of the approval of the budgets, however, is not limited until we complete such a rulemaking.

TABLE 5—MOTOR VEHICLE EMISSIONS BUDGET IN THE SJV 2007 OZONE SIP AS REVISED ON JULY 21, 2011

[Tons per summer day]

Year	2011		2014		2017		2020		2023	
County	ROG	NO_X	ROG	NO_X	ROG	NO_X	ROG	NO_X	ROG	NO_X
Fresno	14.3	36.2	10.7	30.0	9.3	22.6	8.3	17.7	8.0	13.5
Kern (SJV)	12.7	50.3	9.7	42.7	8.7	31.7	8.2	25.1	7.9	18.6
Kings	2.8	10.7	2.1	8.9	1.8	6.7	1.7	5.3	1.6	4.0
Madera	3.4	9.3	2.5	7.7	2.2	5.8	2.0	4.7	1.9	3.6
Merced	5.1	19.9	3.7	16.7	3.2	12.4	2.9	9.9	2.8	7.4
San Joaquin	11.1	24.6	8.4	20.5	7.2	15.6	6.4	12.4	6.3	10.0
Stanislaus	8.5	16.9	6.4	13.9	5.6	10.6	5.0	8.4	4.7	6.4

[38] CARB's letter also requested that we limit the duration of our approval of the MVEB approved with the 2008 $PM_{2.5}$ Plan. These budgets were also submitted on July 29, 2011 as an appendix to the 2001 Ozone SIP Revisions.

TABLE 5—MOTOR VEHICLE EMISSIONS BUDGET IN THE SJV 2007 OZONE SIP AS REVISED ON JULY 21, 2011—Continued

[Tons per summer day]

Year	2011		2014		2017		2020		2023	
County	ROG	NO_X	ROG	NO_X	ROG	NO_X	ROG	NO_X	ROG	NO_X
Tulare	8.8	16.0	6.7	13.2	5.8	10.1	5.3	8.1	4.9	6.2

V. Final Actions

For the reasons discussed in our September 16, 2011 proposed rule (76 FR 57846) and further explained above, EPA is approving California's SIP for attaining the 1997 8-hour ozone NAAQS in the San Joaquin Valley. The California 8-hour ozone attainment SIP for the San Joaquin Valley is composed of the SJVUAPCD's 2007 Ozone Plan as revised in 2009 and 2011 and the SJV-specific portions of CARB's 2007 State Strategy as revised in 2009 and 2011 that address CAA and EPA regulations for attainment of the 1997 8-hour ozone NAAQS in the SJV.

Specifically, EPA is approving under CAA section 110(k)(3) the following elements of the SJV 2007 8-hour ozone attainment SIP:

1. The revised 2002 base year emissions inventory as meeting the requirements of CAA sections 182(a)(1) and 40 CFR 51.915;
2. The reasonably available control measures demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.912(d);
3. The reasonable further progress demonstration as meeting the requirements of CAA section 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.910;
4. The attainment demonstration as meeting the requirements of CAA sections 182(c)(2)(A) and 40 CFR 51.908;
5. The provisions for the development of new technologies pursuant to CAA section 182(e)(5) and CARB's commitment to adopt and submit by 2020 contingency measures to be implemented if the new technologies do not achieve the planned emissions reductions and additional attainment contingency measures meeting the requirements of CAA 172(c)(9) as given in CARB Resolution 11–22 (July 21, 2011), and CARB's commitment to develop and submit by 2020 revisions to the SIP that will: (1) Reflect modifications to the 2023 emissions reduction target based on updated science and (2) identify additional strategies and implementing agencies needed to achieve the needed reductions by 2023 as given in the 2011 Ozone SIP Revisions on page A–8;
6. The contingency measure provisions for failure to make RFP and to attain as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9);
7. The demonstration that the SIP provides for transportation control strategies and measures sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips and to provide for RFP and attainment as meeting the requirements CAA section 182(d)(1)(A);
8. The revised motor vehicle emissions budgets for the RFP years of 2011, 2014, 2017, and 2020 and the attainment year of 2023 submitted on July 29, 2011 because they are derived from approvable RFP and attainment demonstrations and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A;
9. SJVUAPCD's commitments to achieve specific aggregate emissions reductions of direct VOC and NO_X, as listed in Table 6–1 of the 2007 Ozone Plan (as revised December 18, 2008) and as given in Table 3 above; and
10. CARB's commitments to propose certain defined measures, as listed in Table B–1 on page 1 of Appendix B of the 2011 Progress Report and in Appendix A–3 of the 2011 Ozone SIP Revisions, to achieve aggregate emissions reductions of 23 tpd of VOC by 2014; 88–93 tpd of NO_X by 2017; 24 tpd of VOC and 46 tpd of NO_X by 2023 from existing technologies and 81 tpd of NO_X by 2023 from new technologies as provided in CARB Resolution 07–28, Attachment B and the 2009 State Strategy Status Report; p. 20 and as given in Table 4 above; to update the SJV 2007 Ozone Plan modeling to reflect the emissions inventory improvements and any other new information by December 31, 2014 or by the date the SIPs are due for the revised 8-hour ozone standard, whichever comes first, as provided in CARB Resolution 11–22 (July 21, 2011), p. 3, and to achieve the emissions reductions needed to attain the 8-hour ozone standard in the SJV as provided in CARB Resolution 07–28 (September 27, 2007), Appendix B, p. 3, 2009 State Strategy Status Report, p. 13.

Finally, we find that SJVUAPCD has satisfied the clean fuel/advanced technology requirement for boilers in CAA section 182(e)(3) for the SJV.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this approval action as promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely approves certain State requirements for inclusion into the SIP under CAA section 110 and subchapter I, part D and disapproves others, and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Congressional Review Act

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). This rule will be effective on April 30, 2012.

L. Petitions for Judicial Review

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 April 30, 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

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: December 15, 2011.

Jared Blumenfeld,

Regional Administrator, EPA Region 9.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(356)(ii)(B)(*4*), (c)(396)(ii)(A)(*1*)*(i)* and (*2*)*(i),* (c)(397)(ii)(A)(*4*) and (B), and (c)(408).

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(356) * * *

(ii) * * *

(B) * * *

(*4*) CARB Resolution No. 07–28 with Attachments A and B, September 27, 2007. Commitments to achieve the total emissions reductions necessary to attain the Federal standards in the SJV air basin, which represent aggregate emissions reductions of 24 tons per day (tpd) of volatile organic compounds (VOC) and 46 tpd of nitrogen oxides (NO_X) by 2023 from existing technologies and 81 tpd of NO_X by 2023 from new technologies and to achieve 23 tpd of VOC by 2014; 88–93 tpd of NO_X by 2017; 24 tpd of VOC and 56 tpd of NO_X by 2020 as provided in CARB Resolution 07–28, Attachment B, pp. 3–6 as modified by the 2009 State Strategy Status Report, pp. 20–21 as adopted by CARB Resolution No. 09–34 (April 24, 2009).

* * * * *

(396) * * *

(ii) * * *

(A) * * *

(*1*) * * *

(i) Commitment to develop and submit by 2020 revisions to the SIP that will: Reflect modifications to the 2023 emissions reduction target based on updated science and identify additional strategies and implementing agencies needed to achieve the needed reductions by 2023 as given in the 2011 Ozone SIP Revisions on page A–8.

(*2*) * * *

(i) Commitment to develop, adopt and submit by 2020 contingency measures to be implemented if advanced technology measures do not achieve the planned reductions and attainment contingency measures meeting the requirements of CAA 172(c)(9), pursuant to CAA section 182(e)(5) as given on page 4.

(ii) Commitment to update the air quality modeling in the SJV 2007 Ozone Plan to reflect the emissions inventory improvements and any other new information by December 31, 2014 or the date by which state implementation plans are due for the expected revision to the federal 8-hour ozone standard whichever comes first, as provided on page 3.

* * * * *

(397) * * *

(ii) * * *

(A) * * *

(*4*) CARB Resolution No. 07–20 with Attachment A, June 14, 2007.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) 2007 Ozone Plan, adopted on April 30, 2007.

(*2*) SJVUAPCD Governing Board, In the Matter of: Adopting the San Joaquin Valley Unified Air Pollution Control District 2007 Ozone Plan, Resolution No. 07–04–11a, April 30, 2007. Commitments to achieve emissions reductions as described in Table 6–1 of the 2007 Ozone Plan, as amended December 18, 2008.

* * * * *

(408) An amended plan was submitted on April 24, 2009 by the Governor's designee.

(i) [Reserved]

(ii) Additional Material.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) *Amendments to the 2007 Ozone Plan* (amending the rulemaking schedule for Measure S–GOV–5 Organic Waste Operations) adopted on December 18, 2008.

(*2*) SJVUAPCD Governing Board, In the Matter of: Proposed Amendment to the 2007 Ozone Plan to Extend the Rule Adoption Schedule for Organic Waste Operations, SJVUAPCD Governing Board Resolution No. 08–12–18. December 18, 2008.

[FR Doc. 2012–4674 Filed 2–29–12; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 52

Approval of Air Quality Implementation Plans; California; South Coast; Attainment Plan for 1997 8-Hour Ozone Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0622; FRL–9624–6]

Approval of Air Quality Implementation Plans; California; South Coast; Attainment Plan for 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving state implementation plan (SIP) revisions submitted by California to provide for attainment of the 1997 8-hour ozone national ambient air quality standards in the Los Angeles-South Coast area (South Coast). These SIP revisions are the South Coast 2007 Air Quality Management Plan (South Coast 2007 AQMP) (revised 2011) and South Coast-related portions of the 2007 State Strategy (revised 2009 and 2011). EPA is approving the base year emissions inventory; reasonably available control measures demonstration; provisions for transportation control strategies and transportation control measures; the reasonable further progress (RFP) and attainment demonstrations; the transportation conformity motor vehicle emissions budgets for all RFP milestone years and the attainment year; contingency measures for failure to make reasonable further progress and to attain; and Clean Air Act section 182(e)(5) new technologies provisions and associated commitment to adopt contingency measures. EPA is also approving commitments to measures and reductions by the South Coast Air Quality Management District and the California Air Resources Board.

DATES: This rule is effective on April 30, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0622 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the SIP materials are also available for inspection in the following locations:

- California Air Resources Board, 1001 I Street, Sacramento, CA 95812.
- South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

The SIP materials are also electronically available at *http://www.aqmd.gov/aqmp/07aqmp/index.html* and *http://www.arb.ca.gov/planning/sip/2007sip/2007sip.htm.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4192, *tax.wienke@epa.gov.*

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

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I. Summary of EPA's Proposed and Final Actions on the 2007 State Implementation Plan for Attainment of the 1997 8-Hour Ozone Standards in the South Coast Nonattainment Area

On September 16, 2011, EPA proposed to approve California's state implementation plan (SIP) for attaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast).[1] *See* 76 FR 57872. California developed this SIP to provide for expeditious attainment of the 8-hour ozone standards in the South Coast and to meet other applicable 8-hour ozone planning requirements in Clean Air Act (CAA) sections 172(c) and 182 and EPA's 8-hour ozone implementation rule.[2]

California has made five submittals to address the CAA planning requirements for attaining the 1997 8-hour ozone standards in the South Coast. We refer to these submittals collectively as the ''South Coast 2007 8-hour ozone plan'' or the ''8-hour ozone plan.'' The two principal ones are the South Coast Air Quality Management District (SCAQMD or District) Final 2007 South Coast Air Quality Management Plan (AQMP) (amended 2011) and the California Air Resources Board (CARB) Final 2007 State and Federal Strategy (2007 State Strategy) (amended 2009 and 2011).[3] Together, the South Coast 2007 AQMP and the 2007 State Strategy present a comprehensive and innovative strategy for attaining the 1997 8-hour ozone standards in the South Coast.

In our September 2011 notice, EPA proposed to approve the SIP's base year emissions inventory, reasonably available control measures (RACM) demonstration, the reasonable further progress (RFP) and attainment demonstrations, provisions for advanced technology/clean fuels for boilers, provisions for transportation control strategies and transportation control measures (TCMs), transportation conformity motor vehicle emissions budgets (budgets) for all milestone years and the attainment year, contingency

[1] The area referred to as ''Los Angles-South Coast Air Basin'' (South Coast Air Basin or ''South Coast'') includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. For a precise description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305.

[2] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase I; Final rule. 69 FR 23951 (April 30, 2004) and and codified at 40 CFR part 51, subpart Z (8-hour ozone implementation rule).

[3] These SIP submittals are:

1. SCAQMD, Final 2007 Air Quality Management Plan (AQMP), adopted on June 1, 2007 by the SCAQMD and September 27, 2007 by CARB, submitted on November 28, 2007.

2. CARB, *Proposed State Strategy for California's 2007 State Implementation Plan,* as amended and adopted on September 27, 2007 by CARB, submitted on November 16, 2007.

3. CARB, *Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revisions to the SIP Reflecting Implementation of the 2007 State Strategy* (pages 11–27 only), adopted on April 24, 2009 by CARB, submitted on August 12, 2009.

4. *Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions,* adopted on April 28, 2011 by CARB, submitted with the adopting resolution and other supporting documentation by CARB on May 18, 2011.1 See CARB Board Resolution 11–24, April 28, 2011 and letter, James N. Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, May 18, 2011 with enclosures. Appendix F of this SIP revision contained the SCAQMD's *Revisions to the 2007 $PM_{2.5}$ and Ozone State Implementation Plans for the South Coast Air Basin and Coachella Valley (SIP Revisions),* adopted on March 4, 2011 by the SCAQMD Governing Board and approved by the CARB Board on April 28, 2011. This SIP revision includes an update on District rule implementation and commitments provided by SCAQMD for the 2007 AQMP for ozone and $PM_{2.5}$. This SIP revision was included as Appendix F in CARB's 2011 Progress Report and will be referred to as such.

5. CARB, *Proposed 8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins,* adopted on July 21, 2011 by CARB and submitted on July 29, 2011. (2011 Ozone SIP Revision).

measures for failure to make RFP or attain, and CAA section 182(e)(5) new technologies provisions and the associated commitment to adopt contingency measures [4] as meeting the applicable requirements of the CAA. We also proposed to approve enforceable commitments by both the District and CARB to certain measures and emissions reductions.[5] See 76 FR 57872.

A more detailed discussion of each of California's SIP submittals for the South Coast area, the CAA and EPA requirements applicable to them, and our evaluation and proposed actions, can be found in the September 16, 2011 **Federal Register** notice (76 FR 57872) and the technical support document (TSD) for this final action.[6]

EPA is today approving all elements of the South Coast 2007 8-hour Ozone Plan based on our conclusion that they comply with applicable CAA requirements and provide for expeditious attainment of the 1997 8-hour ozone standards in the South Coast nonattainment area.

II. Summary of Public Comments Received on the Proposal and EPA Responses

EPA provided the public an opportunity to comment on our proposed approval of the South Coast 2007 8-hour ozone plan for 30 days following the proposal's September 16, 2011 publication in the **Federal Register**. We received three comment letters in response to our September 16, 2011 proposal. In the following section, we summarize our responses to the most significant comments that we received on the proposals. Our complete responses to comments can be found in the ''Response to Comments'' section of the TSD section III accompanying today's rulemaking.

The first letter came from CARB requesting that we limit the approval of the SIP's transportation conformity motor vehicle emissions budgets until such time the State submits and EPA finds adequate new budgets. *See* letter, Douglas Ito, Chief, Air Quality and Transportation Planning Branch; California Air Resources Board, October 17, 2011. We address CARB's request in Section V below. We received a comment letter from the Natural Resources Defense Council (NRDC) representing various organizations. See letter, Adrian Martinez, Attorney, Natural Resources Defense Council, October 17, 2011. We respond to NRDC's comments below. We also received comments from Ian Scott, a private citizen, on our September proposal. A copy of the comment letters can be found in the docket for today's rule.

A. Control Strategy and Enforceable Commitments

1. Enforceable Commitments

Comment: California Communities Against Toxics, Communities for a Better Environment, Natural Resources Defense Council, and Physicians for Social Responsibility—Los Angeles (commenters) assert that the CARB and District commitments to achieve total tonnage reductions in the South Coast 8-hour ozone plan are not enforceable. Commenters assert that the commitments to achieve total tonnages (which they refer to as ''global commitments'') could be interpreted as ''goals,'' rather than ''strategies,'' and are not enforceable because they are discretionary and open-ended. Commenters cite *Bayview Hunters Point Community Advocates* v. *Metropolitan Transportation Commission,* 366 F.3d 692 (9th Cir. 2004) and *El Comite Para El Bienstar de Earlimart* v. *Warmerdam,* 539 F.3d 1062, 1067 (9th Cir. 2008). Commenters assert that enforcement of the ''global commitments'' by citizens is not possible because neither citizens nor EPA can determine whether CARB has met the ''global commitments,'' and because CARB and the District determine compliance with the ''global commitment'' target, thus leaving them in a situation faced by plaintiffs in *Warmerdam.* Commenters assert that the ''global commitments'' are also not enforceable because there are no measures submitted for inclusion into the SIP to satisfy the tonnage commitment and there are no reporting requirements for ARB and the District, and they cite to EPA's General Preamble at 57 FR 13568 which states, ''[a] regulatory limit is not enforceable if, for example, it is impractical to determine compliance with the published limit.'' Finally, commenters assert that in order to enforce the ''global commitments,'' which depend on how CARB and the District calculate emissions reductions, the methodology that determines how emissions reductions are calculated must also be enforceable. Commenters state that in *Warmerdam* the court found neither the baseline nor methodology enforceable and thus, the plaintiffs were not able to enforce.

Response: Under CAA section 110(a)(2)(A), SIPs must include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the Act, as well as timetables for compliance. Similarly, section 172(c)(6) provides that nonattainment area SIPs must include enforceable emission limitations and such other control measures, means or techniques ''as may be necessary or appropriate to provide for attainment'' of the NAAQS by the applicable attainment date.

Control measures, including commitments in SIPs, are enforced directly by EPA under CAA section 113, and also through CAA section 304(a), which provides for citizen suits to be brought against any person who is alleged ''to be in violation of * * * an emission standard or limitation. * * *'' ''Emission standard or limitation'' is defined in subsection (f) of section 304.[7] As observed in *Conservation Law Foundation, Inc.* v. *James Busey et al.,* 79 F.3d 1250, 1258 (1st Cir. 1996):

> Courts interpreting citizen suit jurisdiction have largely focused on whether the particular standard or requirement plaintiffs

[4] See letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, dated November 18, 2011.

[5] We also proposed in the alternative to disapprove the SIP with respect to certain provisions in CAA section 182(d)(1)(A)for transportation control strategies and measures sufficient to offset any growth in emissions from growth in vehicle miles traveled or the number of vehicle trips. In *Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), the U.S. Court of Appeals for the Ninth Circuit held that, with respect to the first element, section 182(d)(1)(A) of the CAA requires States to adopt transportation control measures and strategies whenever vehicle emissions are projected to be higher than they would have been had vehicle miles traveled not increased, even when aggregate vehicle emissions are actually decreasing. EPA has filed a petition for rehearing on this issue. Docket Nos. 09–71383 and 09–71404 (consolidated), Docket Entry 41–1, *Petition for Panel Rehearing.*

At the time of our September proposal, the Ninth Circuit had not yet issued its mandate in the *AIR* case, and EPA had not adopted the court's interpretation for the reasons set forth in the Agency's petition for rehearing, pending a final decision by the court. We stated in our proposal that if the court denied the Agency's petition for rehearing and issued its mandate before EPA issued a final rule on the South Coast 2007 8-Hour Ozone SIP, then we anticipated that we would not be able to finalize approval of the South Coast 2007 8-Hour Ozone SIP with respect to the first element (i.e., offsetting emissions growth) of section 182(d)(1)(A). *See* 76 FR 57872, 57890. Therefore, we proposed in the alternative to disapprove the South Coast 2007 8-Hour Ozone SIP with respect to the first element of section 182(d)(1)(A) based on the plan's failure to include sufficient transportation control strategies and TCM to offset the emissions from growth in VMT. *Id.* The court has still not issued its mandate; therefore, we are approving the South Coast 2007 8-Hour Ozone SIP as meeting the requirements of CAA section 182(d)(1)(A).

[6] ''*Final Technical Support Document and Response to Comments for the Final Rulemaking Action on the South Coast 2007 8-hour Ozone Plan and the South Coast Portions of the Revised 2007 State Strategy,*'' Air Division, U.S. EPA Region 9, December 2011. The TSD can be found in the docket for this rulemaking.

[7] EPA can also enforce SIP commitments pursuant to CAA section 113.

sought to enforce was sufficiently specific. Thus, interpreting citizen suit jurisdiction as limited to claims ''for violations of specific provisions of the act or specific provisions of an applicable implementation plan,'' the Second Circuit held that suits can be brought to enforce specific measures, strategies, or commitments designed to ensure compliance with the NAAQS, but not to enforce the NAAQS directly. See, e.g., *Wilder, 854 F.2d at 613–14.* Courts have repeatedly applied this test as the linchpin of citizen suit jurisdiction. See, e.g., *Coalition Against Columbus Ctr.* v. *City of New York, 967 F.2d 764, 769–71 (2d Cir. 1992); Cate* v. *Transcontinental Gas Pipe Line Corp., 904 F. Supp. 526, 530–32 (W.D. Va. 1995); Citizens for a Better Env't* v. *Deukmejian, 731 F. Supp. 1448, 1454–59* (N.D. Cal.), modified, *746 F. Supp. 976 (1990).*

Thus courts have found that the citizen suit provision cannot be used to enforce the aspirational goal of attaining the NAAQS, but can be used to enforce specific strategies to achieve that goal including enforceable commitments to develop future emissions controls.

We describe CARB's and the District's commitments in the 2007 State Strategy (revised in 2009 and 2011) and the 2007 AQMP in detail in our proposal (76 FR 57872).[8] The 2007 State Strategy includes commitments to propose defined new measures and an enforceable commitment for emissions reductions sufficient, in combination with existing measures and the District's commitments, to attain the 1997 8-hour ozone NAAQS in the South Coast by June 15, 2024. *See* CARB Resolution 07–28, Attachment B at p. 4 and 2009 State Strategy Status Report, p. 20. For the South Coast, the State's emissions reductions commitments, as submitted in 2007 and revised by the 2009 State Strategy Update, are to achieve 152 tpd of NO_X and 46 tpd of VOC in the South Coast area by 2014, and 141 tpd NO_X and 54 tpd VOC in the South Coast area by 2023. See 76 FR 57872, at 57881; 2009 State Strategy Status Report, p. 20.

The SCAQMD's commitments as submitted in 2007 (and revised in 2011) were to achieve 9.2 tpd NO_X and 19.3 tpd VOC by 2023. See 76 FR 57872, Table 2, at 57878; see also 2011 Progress Report, Appendix F, Tables 2 and 3, and SCAQMD Board Resolution 11–9, March 4, 2011. As discussed above, the State's total emissions reduction commitment is for 152 tpd of NO_X and 46 tpd of VOC by 2014, and 141 tpd of NO_X and 54 tpd of VOC by 2023, which the State remains obligated to achieve through the adoption of enforceable measures by 2023. *See* TSD, Table D–5; *see also* CARB Resolution 07–28, Attachment B at p. 4. The language used in the Board's resolution adopting the South Coast 2007 AQMP to describe its commitment is mandatory and unequivocal in nature:

> Be it further resolved, that the District *will develop, adopt, submit and implement* the short- and mid-term control measures as identified in Tables 4–2A and 4–2B of the 2007 AQMP (Main Document) as expeditiously as possible in order to meet or exceed the commitments identified in Table 4–10 of the 2007 AQMP (Main Document), and to substitute any other measures as necessary to make up any emission reduction shortfall. [emphasis added]
>
> SCAQMD Board Resolution No. 07–9, p. 10.

Thus, CARB's commitments here are to adopt and implement measures that will achieve specific amounts of NO_X and VOC reductions by specific years. These are not mere aspirational goals to ultimately achieve the standards. Rather, the State and District have committed to adopt enforceable measures that will achieve these specific amounts of emission reductions by the RFP year of 2014 and the attainment year (2023). *See* 40 CFR 51.908(d) (requiring implementation of all control measures needed for expeditious attainment no later than the beginning of the year prior to the attainment date) and 70 FR 71633, 71612 (November 29, 2005). All of these control measures are subject to State and local rulemaking procedures and public participation requirements, through which EPA and the public may track the State/District's progress in achieving the requisite emission reductions. EPA and citizens may enforce these commitments under CAA sections 113 and 304(a), respectively, should the State/District fail to adopt measures that achieve the requisite amounts of emission reductions by the specified year. We conclude that these enforceable commitments to adopt and implement additional control measures to achieve aggregate emission reductions on a fixed schedule are appropriate means, techniques, or schedules for compliance under sections 110(a)(2)(A) and 172(c)(6) of the Act.

Commenters cite *Bayview* as support for their contention that the plan's commitments are unenforceable aspirational goals. *Bayview* does not, however, provide any such support. That case involved a provision of the 1982 Bay Area 1-hour ozone SIP, known as TCM 2, which states in pertinent part:

> Support post-1983 improvements identified in transit operator's 5-year plans, after consultation with the operators adopt ridership increase target for 1983–1987.
>
> Emission Reduction Estimates: These emission reduction estimates are predicated on a 15% ridership increase. The actual target would be determined after consultation with the transit operators.
>
> Following a table listing these estimates, TCM 2 provided that ''[r]idership increases would come from productivity improvements * * *.''

Ultimately the 15% ridership estimate was adopted by the Metropolitan Transportation Commission (MTC), the implementing agency, as the actual target. Plaintiffs subsequently attempted to enforce the 15% ridership increase. The court found that the 15% ridership increase was an unenforceable estimate or goal. In reaching that conclusion, the court considered multiple factors, including the plain language of TCM 2 (e.g., ''[a]greeing to establish a ridership 'target' is simply not the same as promising to attain that target,'' *Bayview* at 698); the logic of TCM 2, i.e., the drafters of TCM 2 were careful not to characterize any given increase as an obligation because the TCM was contingent on a number of factors beyond MTC's control, *id.* at 699; and the fact that TCM 2 was an extension of TCM 1 that had as an enforceable strategy the improvement of transit services, specifically through productivity improvements in transit operators' five-year plans, *id.* at 701. As a result of all of these factors, the Ninth Circuit found that TCM 2 clearly designated the productivity improvements as the only enforceable strategy. *Id.* at 703.

The commitments in the 2007 State Strategy (revised in 2009 and 2011) and South Coast 2007 AQMP are in stark contrast to the ridership target that was deemed unenforceable in *Bayview.* The language in CARB's and the District's commitments, as stated multiple times in multiple documents, is specific; the intent of the commitments is clear; and the strategy of adopting measures to achieve the required reductions is completely within CARB's and the District's control. Furthermore, as stated previously, CARB and the District

[8] The 2011 Ozone SIP Revision revised the State's emissions estimates for certain source categories and projection years and provided additional information on the State and District's progress to date in achieving their total emission reduction commitments. In this action, we are approving CARB's and the SCAQMD's emission reduction commitments as submitted in the 2007 State Strategy, as revised by the 2009 State Strategy Update, and South Coast 2007 AQMP because we do not have sufficient information to determine how the 2011 SIP Revision alters the State's near-term and long-term emission reduction commitments. We note that the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5), as compared to measures already adopted or scheduled for near-term adoption, should decrease in any future SIP update.

identify specific emission reductions that they will achieve, how they could be achieved and the time by which these reductions will be achieved, i.e., by the 2023 attainment year. *See* Tables 3 and 4.

CARB's and the District's commitments here are analogous to the terms of the contingency measures in *Citizens for a Better Environment* v. *Deukmejian,* 731 F. Supp. 1448 (N.D. Cal. 1990), [known as *CBE I],* for the transportation sector in the 1982 Bay Area 1-hour ozone SIP. The provision states: ''If a determination is made that RFP is not being met for the transportation sector, MTC will adopt additional TCMs within 6 months of the determination. These TCMs will be designed to bring the region back within the RFP line.'' The court found that ''[o]n its face, this language is both specific and mandatory.'' *Id.* at 1458. In *CBE I,* CARB and MTC argued that TCM 2 could not constitute an enforceable strategy because the provision fails to specify exactly what TCMs must be adopted. The court rejected this argument, finding that ''[w]e discern no principled basis, consistent with the Clean Air Act, for disregarding this unequivocal commitment simply because the particulars of the contingency measures are not provided. Thus we hold that the basic commitment to adopt and implement additional measures, should the identified conditions occur, constitutes a specific strategy, fully enforceable in a citizen's action, although the exact contours of those measures are not spelled out.'' *Id.* at 1457. In concluding that the transportation and stationary source contingency provisions were enforceable, the court stated: ''Thus, while this Court is not empowered to enforce the Plan's overall objectives [footnote omitted; attainment of the NAAQS]—or NAAQS—directly, it can and indeed, must, enforce specific strategies committed to in the Plan.'' *Id.* at 1454; *see also Citizens for a Better Environment* v. *Metropolitan Tranp. Comm'n,* 746 F. Supp. 976, 980 (N.D. Cal. 1990) [known as CBE II] (rejecting defendants' argument that RFP and the NAAQS are coincident and stating that the court's enforcement of the *contingency plan,* an express strategy for attaining NAAQS, is distinct from simply ordering that NAAQS be achieved).

As in the *CBE* cases, CARB and the District commit to propose or adopt measures, which are not specifically identified, to achieve specific tonnages of emission reductions by specified years. Thus, the commitment to specific tonnage reductions is comparable to a commitment to achieve RFP. Similarly, a commitment to achieve a specific amount of emission reductions through adoption and implementation of unidentified measures is comparable to the commitments to adopt unspecified TCMs and stationary source measures. The key is that the commitment must be clear in terms of what is required, e.g., a specified amount of emissions reductions or the achievement of a specified amount of progress (i.e., RFP). CARB's and the District's commitments are thus a specific enforceable strategy rather than an unenforceable aspirational goal.

Commenters' reliance on *El Comite* (referred to as *Warmerdam)* to argue that CARB's commitments are not enforceable is misplaced. In *El Comite,* The plaintiffs in the district court attempted to enforce a provision of the 1994 California 1-hour ozone SIP known as the Pesticide Element. The Pesticide Element relied on an inventory of pesticide VOC emissions to provide the basis to determine whether additional regulatory measures would be needed to meet the SIP's pesticides emissions target. To this end, the Pesticide Element provided that ''ARB will develop a baseline inventory of estimated 1990 pesticidal VOC emissions based on 1991 pesticide use data * * *.'' *El Comite Para El Bienestar de Earlimart* v. *Helliker,* 416 F. Supp. 2d 912, 925 (E.D. Cal. 2006). CARB subsequently employed a different methodology that it deemed more accurate to calculate the baseline inventory. The plaintiffs sought to enforce the commitment to use the original methodology, claiming that the calculation of the baseline inventory constitutes an ''emission standard or limitation.'' The district court disagreed:

> By its own terms, the baseline identifies emission sources and then quantifies the amount of emissions attributed to those sources. As defendants argue, once the sources of air pollution are identified, control strategies can then be formulated to control emissions entering the air from those sources. From all the above, I must conclude that the baseline is not an emission ''standard'' or ''limitation'' within the meaning of *42 U.S.C. 7604(f)(1)–(4).*

Id. at 928. In its opinion, the court distinguished *Bayview* and *CBE I,* pointing out that in those cases ''the measures at issue were designed to reduce emissions.'' *Id.*

On appeal, the plaintiffs shifted their argument to claim that the baseline inventory and the calculation methodology were necessary elements of the overall enforceable commitment to reduce emissions in nonattainment areas. The Ninth Circuit agreed with the district court's conclusion that the baseline inventory was not an emission standard or limitation and rejected plaintiffs' arguments attempting ''to transform the baseline inventory into an enforceable emission standard or limitation by bootstrapping it to the commitment to decide to adopt regulations, if necessary.'' *Id.* at 1073.

While commenters cite the Ninth Circuit's *El Comite* opinion, its utility in analyzing the CARB and District commitments here is limited to that court's agreement with the district court's conclusion that neither the baseline nor the methodology qualifies as an independently enforceable aspect of the SIP. Rather, it is the district court's opinion, in distinguishing the commitments in *CBE* and *Bayview,* that provides insight into the situation at issue in our action. As the court recognized, a baseline inventory or the methodology used to calculate it, is not a measure to reduce emissions. It instead ''identifies emission sources and then quantifies the amount of emissions attributed to those sources.'' In contrast, as stated previously, in the 2007 State Strategy (revised 2009 and 2011) and South Coast 2007 AQMP, CARB and the District commit to adopt and implement measures sufficient to achieve specified amounts of emission reductions by a date certain. As described above, a number of courts have found commitments substantially similar to CARB's here to be enforceable under CAA section 304(a).

2. Baseline Measures, Baseline Inventories, and Attainment Demonstration

Comment: NRDC asserts that EPA's approval of the inventory in the Plan would violate CAA sections 172(c)(3) and 182(a)(1) because the baseline inventory includes emissions reduction credit for both ''waiver measures'' and ''non-waiver measures'' adopted before 2007 (together referred to as ''baseline measures'') that have not been approved into the SIP. NRDC argues that EPA has not evaluated each of these baseline measures to determine if they are creditable or quantified the emissions reductions attributed to each of these measures. Additionally, NRDC asserts that EPA should disapprove the attainment demonstration because EPA has not approved mobile source baseline measures as part of the SIP. NRDC asserts that ''[t]he total tonnage attributed to these unsubmitted and non-SIP approved measures in the attainment demonstration is not clear, because EPA does not differentiate between reductions from SIP-approved measures, waiver measures, and those

that have not received EPA approval.'' Thus, NRDC argues, ''a significant amount of emission reductions claimed in the attainment demonstration are not SIP creditable, a finding that EPA must make before approving the attainment demonstration.'' NRDC references CAA sections 110(a)(2)(A) and 172(c)(6) in support of these assertions and argues that ''EPA has failed to find that the reductions from the unsubmitted rules have occurred, are enforceable, or are otherwise consistent with the Act, EPA's implementing regulations, and the General Preamble.''

NRDC identifies the following rules as examples of ''non-waiver'' baseline measures that have not been SIP-approved:

- Requirements to Reduce Idling Emissions from New and In-Use Trucks (adopted October 20, 2005);
- Heavy Duty Diesel Chip Reflash (adopted March 27, 2004);
- Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities (adopted December 8, 2005);
- Solid Waste Collection Vehicle Rule (adopted September 24, 2003);
- Fork Lifts and Other Industrial Equipment (adopted May 26, 2006).

Response: We disagree with these assertions. We explained in our proposal TSD (section II.A.3.) our reasons for concluding both that the 2002 base year inventory in the SIP is comprehensive, accurate, and current as required by CAA section 182(a)(1) and that the projected baseline inventories provide adequate bases and support for the RFP and attainment demonstrations in the South Coast 2007 8-hour Ozone plan.[9]

Specifically, with respect to mobile source emissions, we believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers (''waiver measures'') is appropriate in the attainment and RFP demonstrations and for other SIP purposes notwithstanding the fact that such rules are not approved as part of the California SIP. In the proposal TSD, we explained why we believe such credit is appropriate. *See* proposal TSD at section II.D.3.c.i. Historically, EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) expanded the flexibility granted to California in order ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare'' (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, EPA treated the waiver measures similarly to the Federal motor vehicle control requirements, which EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision.

EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures in attainment and RFP demonstrations and for other SIP purposes by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. EPA verifies the emissions reductions from motor-vehicle-related waiver measures through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emissions reductions from EPA's motor vehicle standards are reflected in an analogous model known as MOVES.[10]) The South Coast 2007 8-hour ozone plan was developed using a version of the EMFAC model referred to as EMFAC2007, which EPA has approved for use in SIP development in California. *See* 73 FR 3464 (January 18, 2008). Thus, the emissions reductions that are from the California on-road ''waiver measures'' and that are estimated through use of EMFAC are as verifiable as the emissions reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model. All other states use the MOVES model (and prior to release of MOVES, the MOBILE model) in their baseline inventories without submitting the federal motor vehicle regulations for incorporation into their SIPs.

Similarly, emissions reductions that are from California's waiver measures for non-road engines and vehicles (e.g., agricultural, construction, lawn and garden and off-road recreation equipment) are estimated through use of CARB's OFFROAD emissions factor model.[11] (Emissions reductions from EPA's non-road engine and vehicle standards are reflected in an analogous model known as NONROAD). Since 1990, EPA has treated California non-road standards for which EPA has issued waivers in the same manner as California motor vehicle standards, *i.e.,* allowing credit for standards subject to the waiver process without requiring submittal of the standards as part of the SIP. In so doing, EPA has treated the California non-road standards similarly to the Federal non-road standards, which are relied upon, but not included in, various SIPs. *See* generally TSD at section II.D.3.c.i.

CARB's EMFAC and OFFROAD models employ complex routines that predict vehicle fleet turnover by vehicle model years and include control algorithms that account for all adopted regulatory actions which, when combined with the fleet turnover algorithms, provide future baseline projections. *See* 2007 State Strategy, Appendix F at 7–8. For stationary sources, the California Emission Forecasting System (CEFS) projects future emissions from stationary and area sources (in addition to aircraft and ships) using a forecasting algorithm that applies growth factors and control profiles to the base year inventory.[12] *See id.* at 7. The CEFS model integrates the projected inventories for both stationary and mobile sources into a single database to provide a comprehensive statewide forecast inventory, from which nonattainment area inventories are extracted for use in establishing future baseline planning inventories. *See id.* In 2011, CARB updated the baseline emissions projections for several source categories to account for, among other things, more recent economic forecasts and improved methodologies for estimating emissions from the heavy duty truck and construction source categories. *See* 2011 Ozone SIP Revisions, Appendix B. These methodologies for projecting future emissions based on growth factors and existing Federal, State, and local controls were consistent with EPA guidance on developing projected baseline inventories. *See* TSD at section

[9] For ozone nonattainment areas, a State that satisfies the specific inventory requirements of CAA section 182(a)(1) also satisfies the general inventory requirements of CAA section 172(c)(3). *See* 57 FR 13498, 13503 (April 16, 1992).

[10] MOVES replaced the MOBILE model as EPA's on-road mobile source emission estimation model for use in SIPs and conformity in 2010.

[11] Information about CARB's emissions inventories for on-road and non-road mobile sources, and the EMFAC and OFFROAD models used to project changes in future inventories, is available at *http://www.arb.ca.gov/msei/msei.htm.*

[12] Information on base year emissions from stationary point sources is obtained primarily from the districts, while CARB and the districts share responsibility for developing and updating information on emissions from various area source categories. *See* 2007 State Strategy, Appendix F at 21.

II.A; *see also* ''Procedures for Preparing Emissions Projections,'' EPA Office of Air Quality Planning and Standards, EPA–450/4–91–019, July 1991; ''Emission Projections,'' STAPPA/ALAPCO/EPA Emission Inventory Improvement Project, Volume X, December 1999 (available at *http://www.epa.gov/ttnchie1/eiip/techreport/volume10/x01.pdf*). In sum, the 2002 base year and future projected baseline inventories in the South Coast 2007 8-hour Ozone plan were prepared using a complex set of CARB methodologies to estimate and project emissions from stationary sources, in addition to the most recent emissions factors and models and updated activity levels for emissions associated with mobile sources, including: (1) The latest EPA-approved California motor vehicle emissions factor model (EMFAC2007) and the most recent motor vehicle activity data from each of the MPOs in the South Coast area; (2) improved methodologies for estimating emissions from specific source categories; and (3) CARB's non-road mobile source model (the OFFROAD model). *See* TSD, section II.A. (referencing, *inter alia,* 2007 State Strategy at Appendix F) and 2011 Ozone SIP Revision. EPA has approved numerous California SIPs that rely on base year and projected baseline inventories including emissions estimates derived from the EMFAC, OFFROAD, and CEFS models. *See, e.g.,* 65 FR 6091 (February 8, 2000) (proposed rule to approve 1-hour ozone plan for South Coast) and 65 FR 18903 (April 10, 2000) (final rule); 70 FR 43663 (July 28, 2005) (proposed rule to approve PM–10 plan for South Coast and Coachella Valley) and 70 FR 69081 (November 14, 2005) (final rule); 74 FR 66916 (December 17, 2009) (direct final rule to approve ozone plan for Monterey Bay); 76 FR 41338 (July 13, 2011) (proposed rule to approve in part and disapprove in part the $PM_{2.5}$ plan for the San Joaquin Valley) and 76 FR 69896 (November 9, 2011) (final rule); and 76 FR 41562), (July 14, 2011) (proposed rule to approve in part and disapprove in part the $PM_{2.5}$ plan for the South Coast Air Basin) and 76 FR 69928 (November 9, 2011) (final rule). The commenter has provided no information to support a claim that these methodologies for developing base year inventories and projecting future emissions in the South Coast are inadequate to support the RFP and attainment demonstrations in the South Coast 2007 8-hour Ozone plan.

For all of these reasons and as discussed in our proposal (76 FR 57872, 57876), we conclude that the 2002 base year inventory in the 2007 8-hour Ozone plan is a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants'' in the South Coast area, consistent with the requirements for emissions inventories in CAA section 182(a)(1), 40 CFR 51.915, and 40 CFR part 51, subpart A. In addition, we conclude that the projected future year baseline inventories were prepared consistent with EPA's guidance on development of emissions inventories and attainment demonstrations and, therefore, provide an adequate basis for the RFP and attainment demonstrations in the Plan under CAA sections 172(c)(2), 181(a)(1), and 182(c)(2). *See* TSD at section II.A.4.

Finally, we disagree with NRDC's assertion that EPA has not identified the total amount of emission reductions attributed to baseline measures in the projected inventories. The total amounts of emission reductions attributed to baseline measures in the South Coast 2007 8-Hour Ozone SIP, as revised in 2011, are 352 tpd of VOC and 531 tpd of NO_X. *See* 76 FR 57872, 57885, Table 8 at line E; *see also* TSD, Table D–6 at line B.

As to the five specific baseline measures that NRDC asserts should be SIP-approved before crediting in the RFP and attainment demonstrations:

• *Requirements To Reduce Idling Emissions from New and In-Use Trucks (effective November 15, 2006)* [13] and *Fork Lifts and Other Industrial Equipment Rule* (adopted May 26, 2006). Both of these mobile source measures are pending EPA waiver determinations under CAA section 209(b) or section 209(e).[14] We expect that EPA will act on these requests for waivers of preemption or authorization under CAA section 209 in the near term, and that our final approval of the South Coast 2007 8-hour Ozone plan based in part on its reliance on the emissions reductions associated with these rules is, therefore, reasonable and appropriate. If, however, EPA either denies or does not issue the State's requested waiver for any of these measures prior to the effective date of today's action, we will take appropriate remedial action to ensure that our action on the plan is fully supportable or to reconsider that action.

• *Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities (adopted December 8, 2005).* CARB's staff report on this measure indicates that the projected emissions reductions from this measures are 0.18 tpd NO_X and 0.11 tpd VOC *statewide* in 2015 and 0.09 tpd NO_X and 0.05 tpd VOC statewide in 2020. *See* Staff Report: Proposed Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Owned or Operated by Public Agencies and Utilities, October 2005, at pp. 56–57. South Coast has approximately 35 percent of the statewide fleet (*id.*); therefore, the *de minimis* amounts of emission reductions attributed to this measure in the South Coast 2007 8-hour Ozone plan do not affect our evaluation of its attainment and RFP demonstrations.

• *Solid Waste Collection Vehicle Rule (adopted September 24, 2003).* CARB's staff report on this measure indicates that the projected emissions reductions from this measure are 2.3 tpd NO_X and 0.72 tpd VOC *statewide* in 2015 and 0.6 tpd NO_X and 0.34 tpd VOC *statewide* in 2020. *See* Supplemental Staff Report: Proposed Diesel Particulate Matter Control Measure for On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles, August 8, 2003, at pg. 20. South Coast has approximately 35 percent of the statewide fleet (*id.*); therefore, the *de minimis* amounts of emission reductions attributed to this measure in the South Coast 2007 8-hour Ozone plan do not affect our evaluation of its attainment and RFP demonstrations.

• *Heavy Duty Diesel Engine-Chip Reflash rule (adopted March 27, 2004)*

[13] EPA is currently reviewing a request from CARB for a determination as to whether certain requirements of these anti-idling rules are preempted by sections 209(a) of the CAA; certain provisions are conditions precedent pursuant to section 209(a) of the Act; certain provisions are within-the-scope of previous waivers and authorizations issued pursuant to sections 209(b) and 209(e) of the Act, respectively; and at least one provision requires and merits a full authorization pursuant to section 209(e) of the Act. *See* 75 FR 43975 (July 27, 2010). CARB estimates that the operational requirement of the anti-idling rule, which is not subject to a CAA section 209 waiver, achieves 1.3 tpd of NO_X in the South Coast. *See Memorandum,* Doris Lo, Air Division, Planning Office (AIR–2), to San Joaquin Valley $PM_{2.5}$ Docket No. EPA–R09–OAR–2010–0516 ''South Coast and San Joaquin Valley Emissions Reductions from ARB's Operational Idling Requirements, ''September 28, 2011, in the docket for today's action.

[14] *See* letter, James Goldstene, Executive Officer, CARB to Stephen L. Johnson, Administrator, EPA RE: Request for Authorization Determination Pursuant to Clean Air Act Section 209(e) for Amendments to California's Off-Road Emissions Standards Regulation for large Spark-Ignition (LSI) Engines and Fleet Requirement for In-Use LSI Forklifts and Other Industrial Equipment and California State Motor Vehicle and Nonroad Engine Pollution Control Standards; Truck Idling Requirements; Opportunity for Public Hearing and Request for Public Comment; Notice Of Opportunity For Public Hearing And Comment. 75 FR 43975 (July 27, 2010)

(''Chip Reflash'' rule). This rule was intended to ensure expeditious compliance with CARB's NO_X emission standard for heavy-duty diesel (HDD) engines by requiring installation of ''Low-NO_X Software.'' The Chip Reflash rule was invalidated in part by a California State Court, and CARB repealed the related regulations in June 2007. The emission reduction credit attributed to Chip Reflash in CARB's baseline inventories is limited to vehicles that have been ''reflashed,'' *i.e.,* physically installed the Low-NO_X Software,[15] removal of which would constitute a violation of the CAA and/or California state law. *See* the statutory anti-tampering laws in CAA section 203(a)(3) and California Vehicle Code section 27156. Thus, the NO_X emissions reductions attributed to ''reflashed'' engines are enforceable under the CAA and/or California state laws.

Comment: NRDC asserts that EPA has not approved any CARB mobile source baseline measures as part of the SIP or reviewed those measures to consider whether they achieve the reductions claimed by CARB, and that EPA cannot approve the Plan when such a ''huge component of the control strategy'' has not been SIP-approved. NRDC also asserts that CARB has not submitted copies of its mobile source baseline measures to EPA as part of this plan. NRDC also asserts that waiver measures may not be used in attainment demonstrations because EPA makes no finding during the waiver process that the rules achieve the reductions claimed or that the measures are SIP creditable. NRDC also notes that these issues are the subject of litigation in the 9th Circuit U.S. Court of Appeals in *Sierra Club* v. *EPA,* Consolidated Case Nos. 10–71457 and 10–71458.

[15] The 2007 State Strategy, Appendix A, ''Emission Inventory Output Tables'' documents the adjustment in the baseline that CARB made to account for Chip Reflash (or Heavy-Duty Diesel Engine Software Upgrade). As described in appendix A, CARB staff estimates that the overall benefits of the software upgrade regulation plus related actions provided approximately 38 tons per day of NO_X emissions reductions statewide in year 2007. CARB also indicates that it took into account the fact that the software upgrade regulation had been invalidated by including no additional emissions reductions from chip reflash other than those that had already occurred due to compliance with the regulation (prior to invalidation by the court), voluntary upgrade programs, ongoing engine rebuilds, engines upgrades by manufacturers exempt from the regulation, and interstate trucks. CARB staff confirmed that the baseline adjustment for chip reflash in the 2007 State Strategy reflects emission reduction credit only for engines that have been ''reflashed.'' *See Memorandum,* Doris Lo, Air Division, Planning Office (AIR–2); to the San Joaquin Valley $PM_{2.5}$ Docket No. EPA–R09–OAR–2010–0516, ''SIP Credit for Heavy-Duty Diesel Engine Low-NO_X Software (''Chip Reflash'');'' September 28, 2011 in the docket for today's action.

Response: We continue to believe that credit for emissions reductions from implementation of California mobile source rules that are subject to CAA section 209 waivers (''waiver measures'') is appropriate notwithstanding the fact that such rules are not approved as part of the California SIP. In our September 16, 2011 proposed rule and the technical support document (TSD) for that proposal, we explained why we believe such credit is appropriate. *See* 76 FR 57872, at 57879–57880 and the proposal TSD, pp. 86–90. Historically, EPA has granted credit for the waiver measures because of special Congressional recognition, in establishing the waiver process in the first place, of the pioneering California motor vehicle control program and because amendments to the CAA (in 1977) expanded the flexibility granted to California in order ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare,'' (H.R. Rep. No. 294, 95th Congr., 1st Sess. 301–2 (1977)). In allowing California to take credit for the waiver measures notwithstanding the fact that the underlying rules are not part of the California SIP, EPA treated the waiver measures similarly to the Federal motor vehicle control requirements, which EPA has always allowed States to credit in their SIPs without submitting the program as a SIP revision. As we explained in the Proposal TSD (p. 87), credit for Federal measures, including those that establish on-road and nonroad standards, notwithstanding their absence in the SIP, is justified by reference to CAA section 110(a)(2)(A), which establishes the following content requirements for SIPs: ''* * * enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), * * *, as may be *necessary or appropriate* to meet the applicable requirements of this chapter.'' (emphasis added). Federal measures are permanent, independently enforceable (by EPA and citizens), and quantifiable without regard to whether they are approved into a SIP, and thus EPA has never found such measures to be ''necessary or appropriate'' for inclusion in SIPs to meet the applicable requirements of the Act. Section 209 of the CAA establishes a process under which EPA allows California's waiver measures to substitute for Federal measures, and like the Federal measures for which they substitute, EPA has historically found, and continues to find, based on considerations of permanence, enforceability, and quantifiability, that such measures are not ''necessary or appropriate'' for California to include in its SIP to meet the applicable requirements of the Act.

First, with respect to permanence, we note that, to maintain a waiver, CARB's on-road waiver measures can be relaxed only to a level of aggregate equivalence to the Federal Motor Vehicle Control Program (FMVCP). See section 209(b)(1). In this respect, the FMVCP acts as a partial backstop to California's on-road waiver measures (i.e., absent a waiver, the FMVCP would apply in California). Likewise, Federal nonroad vehicle and engine standards act as a partial backstop for corresponding California nonroad waiver measures. The constraints of the waiver process thus serve to limit the extent to which CARB can relax the waiver measures for which there are corresponding EPA standards, and thereby serve an anti-backsliding function similar in substance to those established for SIP revisions in CAA sections 110(l) and 193. Meanwhile, the growing convergence between California and EPA mobile source standards diminishes the difference in the emissions reductions reasonably attributed to the two programs and strengthens the role of the Federal program in serving as an effective backstop to the State program. In other words, with the harmonization of EPA mobile source standards with the corresponding State standards, the Federal program is becoming essentially a full backstop to most parts of the California program.

Second, as to enforceability, we note that the waiver process itself bestows enforceability onto California to enforce the on-road or nonroad standards for which EPA has issued the waiver. CARB has as long a history of enforcement of vehicle/engine emissions standards as EPA, and CARB's enforcement program is equally as rigorous as the corresponding EPA program. The history and rigor of CARB's enforcement program lends assurance to California SIP revisions that rely on the emissions reductions from CARB's rules in the same manner as EPA's mobile source enforcement program lends assurance to other state's SIPs in their reliance on emissions reductions from the FMVCP. While it is true that citizens and EPA are not authorized to enforce California waiver measures under the Clean Air Act (i.e., because they are not in the SIP), citizens and EPA are authorized to enforce EPA standards in the event that

vehicles operate in California without either California or EPA certification.

As to quantifiability, EPA's historical practice has been to give SIP credit for motor-vehicle-related waiver measures by allowing California to include motor vehicle emissions estimates made by using California's EMFAC (and its predecessors) motor vehicle emissions factor model in SIP inventories. EPA verifies the emissions reductions from motor-vehicle-related waiver measures through review and approval of EMFAC, which is updated from time to time by California to reflect updated methods and data, as well as newly-established emissions standards. (Emissions reductions from EPA's motor vehicle standards are reflected in an analogous model known as MOVES.) The EMFAC model is based on the motor vehicle emissions standards for which California has received waivers from EPA but accounts for vehicle deterioration and many other factors. The motor vehicle emissions estimates themselves combine EMFAC results with vehicle activity estimates, among other considerations. *See* the 1982 Bay Area Air Quality Plan, and the related EPA rulemakings approving the plan (see 48 FR 5074 (February 3, 1983) for the proposed rule and 48 FR 57130 (December 28, 1983) for the final rule) as an example of how the waiver measures have been treated historically by EPA in California SIP actions.[16] The South Coast 8-hour ozone plan was developed using a version of the EMFAC model referred to as EMFAC2007, which EPA has approved for use in SIP development in California. *See* 73 FR 3464 (January 18, 2008). Thus, the emissions reductions that are from the California on-road ''waiver measures'' and that are estimated through use of EMFAC are as verifiable as are the emissions reductions relied upon by states other than California in developing their SIPs based on estimates of motor vehicle emissions made through the use of the MOVES model.

Moreover, EPA's waiver review and approval process is analogous to the SIP approval process. First, CARB adopts its emissions standards following notice and comment procedures at the state level, and then submits the rules to EPA as part of its waiver request. When EPA receives new waiver requests from CARB, EPA publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. Once again, in substance, the process is similar to that for SIP approval and supports the argument that one hurdle (the waiver process) is all Congress intended for California standards, not two (waiver process plus SIP approval process). Second, just as SIP revisions are not effective until approved by EPA, changes to CARB's rules (for which a waiver has been granted) are not effective until EPA grants a new waiver, unless the changes are ''within the scope'' of a prior waiver and no new waiver is needed. Third, both types of final actions by EPA—i.e., final actions on California requests for waivers and final actions on state submittals of SIPs and SIP revisions may be challenged under section 307(b)(1) of the CAA in the appropriate United States Court of Appeals.

NRDC correctly notes that EPA's treatment of California waiver measures in SIP actions is the subject of current litigation in *Sierra Club* v. *EPA,* Consolidated Case Nos. 10–71457 and 10–71458 (9th Circuit).

Comment: NRDC argues that our reliance on the general savings clause in CAA section 193 for the proposal to grant emissions reduction credit to California's waiver measures without first having California submit and EPA approve them into the SIP is inappropriate for two reasons. First, NRDC argues that CAA section 193 only saves those ''formal rules, notices, or guidance documents'' promulgated before the effective date of the 1990 amendment that are not inconsistent with the CAA. It asserts that the plain language of the CAA requires that California submit the control measures, rules and regulations used to meet CAA requirements as part of the SIP and that nothing in CAA title II or section 209 provide a basis for EPA's position. Second, NRDC argues that there is no automatic presumption that Congress is aware of an agency's interpretations and we have not provided any evidence that Congress was aware of our interpretation regarding the SIP treatment of California's mobile source control measures. NRDC also argues that our positions that Congress must expressly disapprove of EPA's long-standing interpretation and Congressional silence equates to a ratification of EPA's interpretation are incorrect.

Response: In the Proposal TSD (pp. 89–90), we indicated that we believe that section 193 of the CAA, the general savings clause added by Congress in 1990, effectively ratified our long-standing practice of granting credit for the California waiver rules because Congress did not insert any language into the statute rendering EPA's treatment of California's motor vehicle standards inconsistent with the Act. Rather, Congress extended the California waiver provisions to most types of nonroad vehicles and engines, once again reflecting Congressional intent to provide California with the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare. Requiring the waiver measures to undergo SIP review in addition to the statutory waiver process is not consistent with providing California with the broadest possible discretion as to on-road and nonroad vehicle and engine standards, but rather, would add to the regulatory burden California faces in establishing and modifying such standards, and thus would not be consistent with Congressional intent. In short, we believe that Congress intended California's mobile source rules to undergo only one EPA review process (i.e., the waiver process), not two.

In summary, we disagree that our interpretation of CAA section 193 is fundamentally flawed. EPA has historically given SIP credit for waiver measures in our approval of attainment demonstrations and other planning requirements such as reasonable further progress and contingency measures submitted by California. We continue to believe that section 193 ratifies our long-standing practice of allowing credit for California's waiver measures notwithstanding the fact they are not approved into the SIP, and correctly reflects Congressional intent to provide

[16] EPA's historical practice in allowing California credit for waiver measures notwithstanding the absence of the underlying rules in the SIP is further documented by reference to EPA's review and approval of a May 1979 revision to the California SIP entitled, ''Chapter 4, California Air Quality Control Strategies.'' In our proposed approval of the 1979 revision (44 FR 60758, October 22, 1979), we describe the SIP revision as outlining California's overall control strategy, which the State had divided into vehicular sources and non-vehicular (stationary source) controls. As to the former, the SIP revision discusses vehicular control measures as including technical control measures and transportation control measures. The former refers to the types of measures we refer to herein as waiver measures, as well as fuel content limitations, and a vehicle inspection and maintenance program. The 1979 SIP revision included several appendices, including appendix 4–E, which refers to ''ARB vehicle emission controls included in title 13, California Administrative Code, chapter 3 * * *,'' including the types of vehicle emission standards we refer to herein as waiver measures; however, California did not submit the related portions of the California Administrative Code (CAC) to EPA as part of the 1979 SIP revision submittal. With respect to the CAC, the 1979 SIP revision states: ''The following appendices are portions of the California Administrative Code. Persons interested in these appendices should refer directly to the code.'' Thus, the State was clearly signaling its intention to rely on the California motor vehicle control program but not to submit the underlying rules to EPA as part of the SIP. In 1980, we finalized our approval as proposed. See 45 FR 63843 (September 28, 1980).

California with the broadest possible discretion in the development and promulgation of on-road and nonroad vehicle and engine standards.[17]

B. Pre-Baseline Emission Reduction Credits

Comment: NRDC comments that the 8-hour Ozone Plan allows for the use of emissions reduction credits (ERC) from sources that have shutdown prior to the Plan's baseline date of 2002. NRDC asserts that these pre-baseline ERCs represent an allowance for unmitigated growth in emissions. It argues that allowing this growth is inconsistent with the Plan's claim that existing opportunities for controlling emissions do not exist and therefore it is necessary to rely on future technologies to attain the 8-hour standards and undermines EPA's ability to demonstrate compliance with the CAA. It further argues that EPA cannot claim that the Plan provides for expeditious attainment if it allows this unmitigated emissions growth, and that EPA's RACM analysis is undermined because these avoided emissions coupled with reasonably available controls could be adequate to advance attainment by more than a year. Finally, NRDC argues that in order to comply with the RACM requirement of section 172(c)(1), EPA must evaluate what additional reductions would be needed if the combined impact of these VOC and NO_X emissions were avoided.

Response: The District accounted for the existing pre-base year ERCs in its RFP and attainment inventories in a manner consistent with the CAA requirements set forth in Part D and 40 CFR part 51.[18] This means that all emission reductions for which ERCs were granted were modeled as being in the air.[19] The CAA requires this demonstration in anticipation of new sources that will utilize these ERCs as offsets in order to obtain NSR permits.

Under the NSR program, all new major sources (i.e., those with a potential to emit more than 10 tpy of VOC or NO_X) and any increase of permitted emissions of these pollutants, must install control technologies in order to meet the most stringent emissions limitations that have been achieved in practice by comparable sources (that is, they must meet the lowest achievable emissions rate (LAER) as defined in CAA section 171(3)). [South Coast Rule 1303—Requirements (paragraph (a))] Thus, these future emissions already reflect the use of the most stringent technologies currently available to limit emissions. To further reduce these future emissions would require the development of new or improved technologies, as is the case with existing emission sources already subject to RACT. Accordingly, we do not agree with the NRDC's assertion that allowing this emissions growth is inconsistent with the Plan's determination that additional opportunities for controlling emissions do not currently exist and therefore the area must rely on development of new technologies to attain.

Finally, we disagree with NRDC's claims that the 8-hour Ozone Plan cannot provide for expeditious attainment if it allows this growth in emissions and that the RACM analysis is undermined because these ''avoided emissions coupled with reasonably available controls could be adequate to advance attainment by more than a year.'' As stated above, the growth in ozone precursor emissions coming from sources emitting more than 10 tpy, will occur only after the source installs controls that achieve the lowest achievable emission rate, which is a higher control level than RACM. In addition, such sources with emission increases are required to provide emission offsets at a 1 to 1.2 ratio, meaning that for each new ton of emissions a source wishes to emit, it must provide a 1.2 ton reduction from the South Coast 8-hour Ozone Plan emission inventory. [South Coast Rule 1303—Requirements (paragraph (b)(2))] Thus overall, NSR provides a backstop mechanism to ensure attainment is provided as expeditiously as possible.

C. Rule Effectiveness in District Rules

Comment: NRDC asserts that the SCAQMD should not assume a 100 percent rule effectiveness rate for its control measures. Citing EPA's definition of ''rule effectiveness'' in 40 CFR 51.50 and EPA guidance on accounting for rule effectiveness in preparing emissions estimates, NRDC argues that ''EPA recommends an effectiveness factor of 80% for all stationary source and non-tailpipe mobile source control measures for future controlled scenarios'' and that the District's use of a 100 percent rule effectiveness factor is unsupported and inconsistent with EPA guidance. NRDC claims that ''EPA's approval of this plan in light of these unrealistic and unlawful rule effectiveness assumptions would be arbitrary and capricious.''

Specifically, NRDC asserts that the District's use of a 100% rule effectiveness factor amounts to an assertion that it can ''ensure complete and continual compliance at all sources covered by the regulation'' and that the Plan does not meet this standard. NRDC quotes from the 2007 AQMP, in which the District describes enforcement, source monitoring, and compliance verification programs, to argue that the 2007 AQMP ''relies on anecdotal information to support this 100% assumption.'' NRDC asserts that the SCAQMD's approach ignores the need for rule effectiveness improvements when in fact a CARB audit showed lower reported compliance rates. NRDC also states that for the gasoline transfer and dispensing operations category (Rule 461), the SCAQMD had correctly identified an emission-related non-compliance rate of 37% and ''adjusted the base and future year emissions estimates by 75% in this category to reflect a 25% compliance rate.'' In support of these assertions, NRDC references the following EPA guidance documents: ''Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications'' (EPA 452/R–94–001, January 1994) (''1994 RE Guidance''); ''Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories,'' EPA–452–R–92–010, November 1992 (''1992 RE Guidelines''); and Memorandum from Sally Shaver, Director, Air Quality Strategies & Standards Division, EPA, to EPA Air Division Directors, Regions I–X, ''Ozone Nonattainment Planning: Decentralization of Rule Effectiveness Policy, April 27, 1995 (''1995 Shaver Memo'').

Response: We note as a threshold matter that it is not clear which specific element of the South Coast 2007 Ozone SIP the commenter's concerns apply to. Assuming that NRDC intended to argue that the SCAQMD's assumption of 100 percent rule-effectiveness in its estimates of base year and/or projected year emissions led to defects in the emissions inventories and in the RACM, RFP or attainment demonstrations that rely on those inventories, we disagree for the reasons provided below.

CAA section 182(a)(1) requires each State having an ozone nonattainment area to submit a ''comprehensive, accurate, current inventory of actual

[17] In this regard, we disagree that we are treating the waiver measures inconsistently with other California control measures, such as consumer products and fuels rules, for the simple reason that, unlike the waiver measures, there is no history of past practice or legislative history supporting treatment of other California measures, such as consumer products rules and fuels rules, in any manner differently than is required as a general rule under CAA section 110(a)(2)(A), i.e., state and local measures that are relied upon for SIP purposes must be approved into the SIP.

[18] See the South Coast 2007 AQMP, Appendix III, Tables 2–8 and Appendix III, Attachment B, Table B–8.

[19] See the South Coast 2007 AQMP, Appendix III, pg 2–28.

emissions from all sources'' as described in CAA section 172(c)(3) and ''in accordance with guidance provided by the Administrator.'' *See also* 40 CFR 51.915 and part 51, subpart A. This ''base year'' emissions inventory reflects the State's best estimates of actual emissions [20] from all sources of the relevant pollutant(s) in the area in a recent calendar year [21] and provides the starting point for measuring the area's progress toward attainment. *See, e.g.,* CAA sections 182(c)(2)(B) and 182(b)(1)(B); *see also* 70 FR 71612, 71677 (November 29, 2005) (noting that several CAA ozone planning requirements, including milestones that measure progress toward attainment, are ''keyed to'' the emissions inventory). After developing a base year emissions inventory, States use modeling and other analyses to calculate projection year (or future ''baseline'') inventories and target emission levels, which then inform the State's development of progress milestones and control strategies for attaining the NAAQS. *See* General Preamble, 57 FR 13498 at 13507–13510.

Rule effectiveness (''RE'') is a term that describes a method to account for the reality that not all facilities covered by a rule are in compliance with the rule 100% of the time. *See* ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/R–05–001, August 2005, Appendix B (''2005 RE Guidance'') at B–3; *see also* 40 CFR 51.50 (defining ''rule effectiveness'' for purposes of air emissions reporting requirements). Additionally, RE accounts for the fact that control equipment does not always operate at its assumed control efficiency. *See id.* EPA recommends that States consider RE as part of the calculation of emission estimates for stationary point and non-point (or ''area'') sources when developing base year and projection year emissions inventories. *See* 2005 RE Guidance at B–1. Rule effectiveness adjustments are generally not applied to mobile sources because the effects of mobile source noncompliance have been integrated into the inputs of EPA's mobile source emissions factor models. *See* ''Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications'' (EPA 452/R–94–001, January 1994) (''1994 RE Guidance'') at 1–4 and 3–9.

EPA policy on RE applies only to emissions estimates involving the use of a control device or control technique and states that in some cases, even where control devices or techniques are used, RE adjustments may not be necessary. For example, when emissions can be calculated by means of a direct determination, an RE adjustment is not necessary because the emissions estimate is not contingent on the effectiveness of controls. *See* ''Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications'' (EPA 452/R–94–001, January 1994) (''1994 RE Guidance'') See 1994 RE guidance at 3–5; *see also* 2005 RE Guidance at B–3. A direct determination is one in which emissions are calculated directly (e.g., based on explicit records for each type of coating and/or solvent used) rather than from estimates of uncontrolled emissions and level of control. *See* ''Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories,'' EPA–452/R–92–010, November 1992 (''1992 RE Guidelines''), at 12. In addition, uncontrolled sources are not subject to an RE adjustment, and sources with directly determined emission estimates in the base year inventory should not have RE applied in a projected inventory. *See* 1994 RE Guidance at 3–19.

Earlier EPA guidance recommended that where a RE should apply, States should generally use a default value of 80 percent RE. *See, e.g.,* ''Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories,'' EPA–452/R–92–010, November 1992 (''1992 RE Guidelines'') at 2. In 2005, EPA revised its policy in recognition that RE can vary widely between different types of industry and in different states or areas. *See generally* 2005 RE Guidance; *see also* Memorandum from Sally Shaver, Director, Air Quality Strategies & Standards Division, EPA, to EPA Air Division Directors, Regions I–X, ''Ozone Nonattainment Planning: Decentralization of Rule Effectiveness Policy, April 27, 1995 (''1995 Shaver Memo'') (providing alternatives to EPA's recommended 80 percent default value for RE). The 2005 RE Guidance provides that instead of assuming an across the board 80% default value for RE, States should consider a list of the factors that are most likely to affect RE in developing base year and projection year inventories.

The base year inventory in the South Coast 2007 Ozone SIP is an inventory of actual emissions estimates for year 2002. According to the Plan, information on base year emissions from stationary point sources in California is obtained primarily from the districts, while CARB and the districts share responsibility for developing and updating information on emissions from various non-point (*i.e.,* area) source categories. *See* 2007 State Strategy, Appendix F at 21; South Coast 2007 AQMP, Appendix III at pp. 1–9 through 1–15 (describing the SCAQMD's and CARB's methodologies for developing 2002 base year emissions estimates for stationary point and area sources). The 2002 point source emission inventory was developed using emissions data reported by stationary point sources subject to the 2002/2003 Annual Emissions Reporting (AER) Program, which applies to facilities emitting at least 4 tons per year (tpy) of VOC or NO_X, among other sources. *See* South Coast 2007 AQMP, Appendix III at pp. 1–9. Because these emissions were based on direct emissions data, no RE adjustments were necessary for these emission estimates. The 2002 area source emission inventory was developed using source-specific methodologies based on activity data, emission factors, and other information. *Id.* at 1–10 through 1–15. The SCAQMD included emissions from smaller industrial point sources (emitting <4 tpy) not subject to the AER Program in this area source emissions inventory. *Id.* at 1–9.

The projected year inventories in the South Coast 2007 Ozone SIP were developed based on emissions projections calculated using a CARB model called the California Emission Forecasting System (CEFS). The CEFS model projects future emissions from stationary point and area sources (in addition to aircraft and ships) using a forecasting algorithm that applies growth factors and control profiles to the base year inventory. *See* 2007 State Strategy, Appendix F at 7. Mobile source emission projections are estimated using CARB's EMFAC and OFFROAD emission factor

[20] Base year emissions inventories should include both anthropogenic and biogenic sources of ozone precursor emissions from stationary, area, and mobile sources capable of affecting air quality within the nonattainment area. *See* ''General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, 13502 (April 16, 1992) (''General Preamble''). Because most emission sources do not monitor and report emissions continuously, emissions inventories are by nature ''estimates of actual releases to the atmosphere.'' 70 FR 71612, 71666 (November 29, 2005).

[21] For areas designated nonattainment for the 1997 8-hour ozone standard in 2004, EPA recommended that States use 2002 as the base year for SIP planning purposes. *See* Memorandum dated November 18, 2002, from Lydia Wegman, Air Quality Strategies and Standards Division, EPA, to Regional Air Division Directors, ''2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$ and Regional Haze Programs.''

models.[22] *See* 2007 State Strategy, Appendix F at 7–8. The CEFS model then integrates the projected inventories for both stationary and mobile sources into a single database to provide a comprehensive statewide forecast inventory, from which nonattainment area inventories are extracted by the districts for use in establishing future baseline planning inventories. *See id.* at 7, 8.

The South Coast 2007 AQMP describes how the District developed the future baseline inventories [23] in the Plan, based in part on the emissions data and baseline projections provided by CARB and other California agencies. *See generally* South Coast 2007 AQMP, Appendix III. The District's projections took into account the controls implemented under SCAQMD rules adopted as of June 2006, most CARB regulations adopted by June 2005, and a specific set of growth rates from the Southern California Association of Governments (SCAG) for population, industry, and motor vehicle activity, among other factors. *See id.* at 2–3. In 2011, CARB updated the baseline emissions projections for several source categories to account for, among other things, more recent economic forecasts and improved methodologies for estimating emissions from the heavy duty truck and construction source categories. *See* 2011 Ozone SIP Revision at Appendix B. These methodologies for projecting future emissions based on growth factors and existing Federal, State, and local controls were consistent with EPA guidance on developing projected baseline inventories. *See* TSD at section II.A; *see also* ''Procedures for Preparing Emissions Projections,'' EPA Office of Air Quality Planning and Standards, EPA–450/4–91–019, July 1991; ''Emission Projections,'' STAPPA/ALAPCO/EPA Emission Inventory Improvement Project, Volume X, December 1999 (available at *http://www.epa.gov/ttnchie1/eiip/techreport/volume10/x01.pdf*). NRDC correctly notes that the stationary point and the area source emissions projections that the SCAQMD developed as inputs to these projected future baseline inventories generally included an assumption of 100% RE. *See* South Coast 2007 AQMP, Appendix IV at A–7; *see also* Memorandum to File dated December 5, 2011, Wienke Tax, EPA Region 9, RE: ''SCAQMD Emissions Estimation Methodology.'' In response to the comment, we have further evaluated the projected baseline inventories in the Plan to determine whether an assumption of 100% RE was appropriate and to what extent it may have affected the control strategy. As explained below, we believe the SCAQMD's methodologies for projecting emissions were reasonable and that, even assuming that the District should not have used 100% RE for certain source categories, the impact on the overall emissions projections would have been insignificant.

With respect to both NO_X and VOC emissions from stationary point sources, which account for roughly 80% of the total NO_X projections for stationary sources and roughly 13% of the total VOC projections for stationary sources, no RE adjustments were necessary because the base year emissions estimates were developed from reported emissions data (i.e., direct determinations). Moreover, the SCAQMD's compliance and enforcement programs generally meet the recommended criteria in EPA's 2005 RE Guidance for use of the highest range of RE factors for stationary sources.[24] For example, all stationary point sources in the South Coast that emit or have the potential to emit at least 10 tons per year of VOC or NO_X are subject to the District's EPA-approved title V operating permits program in SCAQMD Regulation XXX [25] (*see* SCAQMD Rule 3001), which requires subject facilities to regularly report compliance information to the SCAQMD. *See, e.g.,* SCAQMD Rule 3004(a)(4)(f) (requiring semi-annual reports) and (a)(10) (requiring annual compliance certifications). In addition, the SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program, which generally applies to stationary point sources that emit 4 tons or more per year of NO_X or SO_X in the year 1990 or subsequent years (*see* SCAQMD Rule 2001(b)), also contains stringent compliance monitoring and reporting requirements. *See, e.g.,* SCAQMD Rule 2012(c)(2) (requiring NO_X sources to install, maintain and operate a Continuous Emissions Monitoring System or other equivalent monitoring device) and SCAQMD Rule 2012(c)(3) (requiring NO_X sources to install, maintain and operate a reporting device to electronically report daily NO_X emissions to the District and to submit monthly emissions reports). Thus, even in the absence of direct determination, these compliance requirements and programs would adequately support the SCAQMD's use of the highest range of RE factors (94 to 100%) in projecting emissions from stationary point sources of VOC and NO_X emissions in the South Coast area.

The SCAQMD's regulations for VOC area sources that were accounted for in the projected baseline inventories (*i.e.,* rules adopted as of June 2006) also contain stringent recordkeeping and reporting requirements which generally meet EPA's recommended criteria for use of the highest range of RE factors for area sources.[26] *See, e.g.,* SCAQMD Rule 109 (as amended May 2, 2003) (requiring numerous types of VOC area sources to keep daily records of types of coatings and/or solvents used); *see also* Memorandum to File dated December 9, 2011, Wienke Tax, EPA Region 9, RE: ''SCAQMD Compliance and Enforcement Programs.'' The SCAQMD also administers numerous compliance assistance programs, including classroom instruction, web-based tutorials, and mailings. *See, e.g., http://www.aqmd.gov/comply/index.html*, *http://www.aqmd.gov/aqmd/aqmd_training.htm*, and *http://www.aqmd.gov/pubinfo/Publications/Advisor/2011/Nov2011Advisor.pdf*, page 8). These compliance requirements and programs generally support the SCAQMD's use of the highest range of

[22] CARB's EMFAC and OFFROAD models for estimating emissions from on-road and non-road mobile sources employ complex routines that predict vehicle fleet turnover by vehicle model years and include control algorithms that account for all adopted regulatory actions which, when combined with the fleet turnover algorithms, provide future baseline projections. *See* 2007 State Strategy, Appendix F at 7–8. Information about the EMFAC and OFFROAD models is available at *http://www.arb.ca.gov/msei/msei.htm.* The most recent EMFAC model that EPA has approved for use in SIP development in California is EMFAC2007. *See* 73 FR 3464 (January 18, 2008).

[23] By ''future baseline inventories'' or ''projected baseline inventories,'' we mean projected emissions inventories for future years that account for, among other things, the effects of economic growth and adopted emissions control requirements.

[24] For stationary point sources, the 2005 RE Guidance provides that the following factors, among others, may support the use of the highest RE range (94 to 100%) in developing emissions estimates: the regulatory agency requires source-specific monitoring for compliance purposes and frequent submittal of monitoring records; the agency conducts inspections involving compliance test methods with a high degree of accuracy, such as stack testing or other types of precise emissions measurements; and/or the agency has authority to impose punitive measures, including monetary fines, towards violators such as in delegated title V operating permit programs. *See* 2005 RE Guidance at B–6.

[25] *See* 68 FR 65637 (November 21, 2003) (final rule approving revisions to SCAQMD's title V operating permits program effective January 1, 2004).

[26] For stationary area sources, the 2005 RE Guidance provides that the following factors, among others, may support the use of the highest RE range (86 to 100%) in developing emissions estimates: Over 90% of facilities inspected in the source category are in compliance; the regulatory agency requires sources to submit some type of compliance certification; and/or a compliance assistance program exists and is adequately staffed. *See* 2005 RE Guidance at B–9.

RE factors (86 to 100%) in projecting emissions from area sources of VOC emissions in the South Coast area.

We expect that at least some of these VOC area sources are uncontrolled and therefore do not require any RE adjustment. Additionally, of those VOC area sources that are subject to controls, we understand many are subject to compliance requirements that enable the District to make direct determinations of emissions estimates (*e.g.,* through ''mass balance'' accounting of the types of coatings and/or solvents used), which also would not require any RE adjustment. *See, e.g.,* SCAQMD Rule 109 (as amended May 2, 2003).

Assuming conservatively, however, that some RE adjustments may have been appropriate for area sources, we have evaluated the impact that such adjustments may have had on the overall NO_X and VOC emissions projections for 2023. With respect to NO_X emissions, area sources account for about 20% of projected NO_X emissions from stationary sources and less than 3% of the total NO_X inventory for the 2023 projection year. *See* South Coast 2007 AQMP, Appendix III, Attachment B at Table B–9, and Memorandum to File, Wienke Tax, EPA Region 9 Air Planning Office, dated December 14, 2011. Thus, even assuming conservatively that a lower RE factor is appropriate for *all* area sources of NO_X emissions, the impact of such an adjustment on the future baseline NO_X emission inventory would affect less than 3% of the total projected NO_X inventory (roughly 14 tpd). Assuming that application of an 86% [27] rather than 100% factor would directly increase these NO_X emissions estimates by 14 percent, then the projected 2023 NO_X emissions inventory would increase by less than 3 tpd. This amount is adequately covered by CARB's enforceable commitment to achieve 141 tpd of NO_X by 2023. 76 FR 57872, 57881 (Table 6). CARB's 2011 SIP Revision reduced the 2023 projected NO_X inventory by 12 tpd compared to the Plan as submitted in 2007, indicating a surplus in NO_X reductions of 12 tpd in the Plan as revised. *See* letter dated August 10, 2011, from Lynn Terry, CARB, to Deborah Jordan, EPA Region 9, with attachment (transmitting emission inventory improvement information). Because the State's and District's enforceable commitments have not been revised, CARB remains obligated to achieve the total amount of emission reductions identified in its original commitment (141 tpd). The NO_X surplus of 12 tpd included in this enforceable commitment adequately covers the potential increase of 3 tpd due to RE adjustments.

With respect to VOC emissions, roughly half of the total projected VOC summer planning inventory for 2023 is attributed to stationary point and area sources. *See* South Coast 2007 AQMP, Appendix III, Attachment B at Table B–9. Of these stationary source VOC emissions, approximately 40% are attributed to consumer products (*see id.*), which prior to 2007 were not subject to any SCAQMD VOC regulations that the District would have accounted for in its emissions projections.[28] Most of the remaining VOC emissions (roughly 130 tpd) are attributed to area sources that are either uncontrolled or subject to SCAQMD regulations, such as cleaning and surface coating operations, architectural coating operations, and farming operations (*e.g.,* fertilizer applications). *See* South Coast 2007 AQMP, Appendix III, Attachment B at Table B–9. As NRDC correctly notes (and does not take issue with), the SCAQMD made significant RE adjustments to the gasoline transfer and dispensing source category subject to SCAQMD Rule 461 (petroleum marketing), which accounts for roughly 15% (20 tpd) of these remaining VOC area source emissions. This leaves approximately 110 tpd of VOC emissions attributed to area sources under the SCAQMD's jurisdiction for which RE adjustments may have been appropriate but for which California has not specifically provided data on whether they were made. All together, these area sources account for approximately 20% of the total projected VOC summer planning inventory for 2023. *See* South Coast 2007 AQMP, Appendix III, Attachment B at Table B–9.

Assuming conservatively that *all* of these VOC emissions are from regulated area sources for which direct determinations of emission cannot be made, and that a lower RE factor is appropriate for the emissions projections for all of these sources, the impact of such an adjustment on the future baseline VOC emission inventory for 2023 would affect only about 20% of the total projected VOC inventory (roughly 110 tpd). Further assuming that application of an 86% RE factor would directly increase these VOC emissions estimates by 14 percent, the projected 2023 VOC emissions inventory would increase by approximately 15.4 tpd. We note that CARB's 2011 SIP Revision reduced the 2023 projected VOC inventory by 5 tpd compared to the Plan as submitted in 2007, indicating a surplus in VOC reductions of 5 tpd in the Plan as revised. *See* letter dated August 10, 2011, from Lynn Terry, CARB, to Deborah Jordan, EPA Region 9, with attachment (transmitting emission inventory improvement information). Because the State's and District's enforceable commitments have not been revised, CARB remains obligated to achieve the total amount of VOC emission reductions identified in its original commitment (54 tpd). *See* 76 FR 57872, 57881 (Table 6). Taking into account this 5 tpd surplus in CARB's VOC emission reduction commitments, we assume the potential difference in the State's projected VOC inventory for 2023, had the State applied an 86% RE factor, would have been approximately 10.4 tpd or less than 2% of the total projected VOC inventory for 2023. Given the multiple conservative assumptions leading to this small difference in the emissions estimates for VOC area sources, we do not believe that an RE adjustment for VOC area sources would have altered our evaluation of the South Coast 2007 Ozone plan.

For all of these reasons and as discussed in our proposal (76 FR 57872), we have concluded that the 2002 base year inventory in the South Coast 2007 Ozone SIP is a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants'' in the South Coast area, consistent with the requirements for emissions inventories in CAA section 182(a)(1), 40 CFR 51.915, and 40 CFR part 51, subpart A. In addition, we conclude that the projected baseline inventories for 2011, 2014, 2017, 2020, and 2023 were prepared consistent with EPA's guidance on development of emissions inventories and attainment demonstrations and, therefore, provide an adequate basis for the RACM, RFP and attainment demonstrations in the Plan. *See* TSD at section II.A. Given the continuously-evolving nature of estimating emissions, however, we will continue to work with CARB and the

[27] We believe an RE factor of 86%, which is the lowest factor under ''Range 1'' for non-point (area) sources in EPA's 2005 RE Guidance, is a reasonable assumption for these calculations given the rigorous compliance requirements in SCAQMD's area source regulations and the District's compliance assistance programs.

[28] Consumer products in California are generally subject to CARB's Consumer Products Regulations (CPR) in title 17, sections 94500–94575 of the California Code of Regulations (CCR). In March 2009, the SCAQMD adopted VOC content requirements for certain consumer products not subject to CARB's CPR, but these District regulations are not accounted for in the South Coast 2007 Ozone SIP's emissions inventories. *See* SCAQMD Rule 1143.

SCAQMD to ensure that their base year and projection year SIP emissions inventories accurately account for rule effectiveness and reflect the best available estimates of current and future emissions.

D. CAA Section 182(e)(5) New Technology Provisions

Comment: Commenters (NRDC, CCAT, DCAP, PSR–LA and CBE) state that California's reliance on ''black box'' measures in the South Coast 2007 Ozone SIP fails to meet the requirements and intent of the Clean Air Act by allowing the State to defer its responsibility to attain federal standards. Commenters state that there are three problems with how the State and District are using 182(e)(5).

First, commenters state that it is arbitrary for EPA to approve a ''black box'' with 281 tons per day or 55% of the reductions needed, given its lack of definition. Another commenter (private citizen) also asserts that the SIP relies too heavily on unknown ''black box'' solutions, which the commenter claims make up 49.6% of needed NO_X reductions and 43% of combined VOC and NO_X reductions.

Second, commenters assert that section 182(e)(5) is intended to address new technologies that will develop over time but that in California, ''new technologies alone will not sufficiently reduce pollution to attain federal air quality standards.'' Citing a description in EPA's TSD (at pg. 79) of a potential measure described by CARB as ''prioritizing federal transportation funding to support air quality goals,'' commenters argue that ''[t]his example clearly fails to meet all the criteria required for Black Box use,'' and that while ''tying air quality to transportation planning'' is important for attainment, the black box cannot be used as a basis for not requiring implementation of ''existing'' strategies such as increased public transit that do not require the development of new technologies.

Finally, commenters state that the section 182(e)(5) commitments are vague and insufficient and that EPA cannot approve the attainment demonstration ''unless the Section 182(e)(5) measures comply with the CAA.'' Citing both section 182(e)(5) of the Act and EPA's January 8, 1997 final rule approving the 1-hour ozone plan for several California nonattainment areas (62 FR 1150, 1179), commenters assert that the new technology measures must: (1) Contain sufficient definition; (2) contain schedules for development of the new technologies; (3) contain commitments for funding; (4) depend on development of new technologies; and (5) include an enforceable commitment to develop and adopt necessary contingency measures. Commenters assert that the South Coast 2007 Ozone SIP ''only attempts to comply with requirement number (5),'' that the generalized discussion in the Plan provides little assurance of CARB's ability to develop these measures, and that approval of these measures is therefore arbitrary and capricious.

Response: First, we disagree with the commenters' contention that EPA's proposed approval of the Plan is arbitrary because of the amount of emission reductions attributed to the ''black box'' (or ''long-term strategy''),[29] or because they are undefined. As an initial matter, we note that the commenters' assertions about the percentages of the needed emission reductions attributed to the long-term strategy are not correct.[30] The correct percentages of the needed NO_X and VOC emission reductions attributed to the long-term strategy in the South Coast 2007 Ozone SIP are 26 and 9 percent, respectively, as explained further below.

The CAA does not provide a quantitative limit on the extent to which the attainment demonstration for an extreme ozone nonattainment area may rely on new technology provisions under CAA section 182(e)(5). As we explained in our proposed rule, section 182(e)(5) of the Act authorizes EPA to approve provisions in an extreme area plan which ''anticipate development of new control techniques or improvement of existing control technologies,'' and to approve an attainment demonstration based on such provisions if the State demonstrates that: (1) Such provisions are not necessary to achieve incremental reductions required during the first 10 years after the effective date of designation for the 1997 ozone NAAQS, and (2) the State has submitted enforceable commitments to submit adopted contingency measures meeting certain criteria no later than 3 years before proposed implementation of the new technology measures. *See* 76 FR 57872, 57881–57883. EPA interprets this provision to mean that the measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies. *See* General Preamble at 13524.

The majority of the emissions reductions in the South Coast 2007 Ozone SIP are attributed to already adopted and near-term measures. *See* 76 FR 57872, 57876–89. Our summary of South Coast's 8-hour ozone attainment demonstration in the proposed rule shows that the South Coast area needs to reduce emissions from 2002 levels by a total of 910 tpd of NO_X and 461 tpd of VOC to attain the 8-hour ozone standards by June 15, 2024. *See* 76 FR 57872, 57885 at Table 8. Approximately 74% of these needed NO_X reductions and 91% of the needed VOC reductions are attributed to already adopted or near-term measures (i.e., measures that will be adopted and implemented by 2014). *See* 76 FR 57872, 57886 (Table 9) and 57879–57880 (Tables 3 and 4) (identifying CARB and SCAQMD measures recently adopted or scheduled for near-term consideration). These measures include all reasonably available control measures and generally represent the most stringent air pollution control requirements for stationary, area, and mobile sources nationwide. *See* 76 FR 57872, 57877–57881. This leaves about 26% of the needed NO_X reductions and 9% of the needed VOC reductions to be met through the long-term strategy under CAA section 182(e)(5).[31] *See* 76 FR 57872, 57885 at Table 9.

Given the demonstrated need for emissions reductions from new and improved control techniques to reduce air pollution in the South Coast area (*see* TSD at 79), we believe it is reasonable for the State to attribute these amounts of emission reductions to the long-term strategy.[32] As we stated in

[29] Throughout this notice we use the terms ''long-term strategy'' or ''new technology provisions'' interchangeably to refer to the plan provisions that anticipate development of new or improved control techniques under CAA section 182(e)(5), which the commenters refer to as the ''black box.''

[30] It appears that the commenters overestimated the percentage of ''black box'' emission reductions in the Plan by calculating the amount of needed NO_X and VOC reductions without taking into account the reductions attributed to baseline measures and emissions inventory improvements.

[31] For NO_X, the long-term emission reductions are 241 tpd in 2023 or approximately 26 percent of 910 tons, the total reductions needed. For VOC, the long-term emission reductions are 40 tpd in 2023 or approximately 9 percent of the 461 tons of VOC reductions needed.

[32] During development of the 2007 State Strategy, CARB staff analyzed whether current NO_X technologies for mobile sources are clean enough to provide all the emission reductions needed for ozone attainment in the South Coast and San Joaquin Valley. ARB included in this analysis the phasing in of the cleanest new technology standards from 2007–2017 that ARB and U.S. EPA have already adopted for diesel engines: 0.2 g/bhp-hr on-road truck standards in 2010, full offroad Tier 4 standards in 2014, and the recent U.S. EPA-proposed low-NO_X standards for locomotive engines starting in 2017. The totals of remaining emissions after full clean-up of the legacy diesel fleets in the South Coast air basin still exceed the

our proposed rule, however, we expect the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5) should decrease in any future SIP update, and EPA will not approve any future SIP revisions with an increase in the 182(e)(5) reductions for 2023 without a convincing showing that the technologies relied upon in the near-term rules are infeasible or ineffective in achieving emissions reductions in the near-term. *See* 76 FR 57872, 57883. Moreover, to the extent new modeling performed in any subsequent SIP revision demonstrates that there is an increase in the year 2023 carrying capacity for VOC and NO_X, this change may not be used to decrease the amount of emissions reductions scheduled to be achieved by any near-term measure from the South Coast 2007 Ozone SIP unless CARB or the SCAQMD make the convincing showing described above.

Second, we disagree with the commenters' suggestion that CAA section 182(e)(5) allows only for plan provisions that rely on ''new technologies'' and that this necessarily means the District must adopt additional ''existing strategies'' that do not rely on new technologies. Section 182(e)(5) of the Act allows for approval of extreme area plan provisions that ''anticipate development of new control techniques or improvement of existing control technologies,'' which EPA interprets to include ''those that may anticipate future technological developments as well as those that may require complex analyses and decision making and coordination among a number of government agencies.'' See 57 FR 13498, 13524. Thus, in addition to plan provisions that rely on ''new technologies,'' section 182(e)(5) contemplates provisions that are as of yet undefined because they require, for example, time for State and local agencies to evaluate complex technical information and to seek public participation in their regulatory processes.

The commenters correctly note that EPA's TSD identified ''prioritiz[ation of] federal transportation funding to support air quality goals'' among a number of potential long-term strategies that CARB had identified for further consideration (*see* TSD at 79, citing 2007 State Strategy, pp. 55–56), but they do not describe any specific control measure that such budgetary decisions could support and that is reasonably available for current implementation in the South Coast area. Likewise, although the commenters assert generally that ''increased transit'' and other ''existing strategies'' should be required as control measures because these do not require the development of new technologies, they have not identified any particular control measure that the State should be obligated to include in its plan for attaining the 1997 8-hour ozone NAAQS.

CARB and the SCAQMD have adopted all of the control measures for NO_X and VOC that are reasonably available for current implementation in the South Coast area and have submitted enforceable commitments to adopt additional measures achieving specific amounts of emission reductions by specific years. *See* 76 FR 57872, 57877–57881 and 57886. These measures are not sufficient, however, to achieve the significant amounts of NO_X and VOC reductions necessary to attain the 1997 8-hour ozone NAAQS in the South Coast by June 15, 2024. Absent new information about additional control measures that are cost-effective and technically feasible for current implementation in the area, we believe it is reasonable to allow the State and District time to develop additional control measures based on new or improved control techniques under CAA section 182(e)(5).

Third, we disagree with commenters that the section 182(e)(5) commitments are vague and insufficient. As discussed in our proposed rule, CARB has submitted enforceable commitments to achieve specific amounts of NO_X and VOC reductions by 2023 through the development of new or improved control techniques under CAA section 182(e)(5). The total tonnage commitment in the South Coast is for 241 tpd NO_X and 40 tpd VOC. See 76 FR 57872, 57881–57882 and 2009 State Strategy Status Report, p. 20. With respect to the requirement for contingency measures in CAA section 182(e)(5)(B), we explained in our proposed rule that CARB's 2011 Ozone SIP Revision contains the State's enforceable commitment ''to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions'' (76 FR 57872, 57882, referencing CARB Resolution 11–22, July 21, 2011), and in a letter dated November 18, 2011 to EPA Region 9, CARB confirmed that EPA's understanding of this enforceable commitment is correct. *See* letter dated November 18, 2011, from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9.

In addition, as explained in our proposed rule (76 FR at 57882), the South Coast 2007 Plan identifies numerous potential measures currently under consideration as part of the long-term strategy, and CARB has committed to submit a SIP revision by 2020 that will identify the additional strategies and implementing agencies needed to achieve the needed reductions by the beginning of the 2023 ozone season. *See* 2011 Ozone SIP Revision, p. A–8; *see also* letter dated August 29, 2011 from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, U.S. EPA, Region 9 (describing California's climate change programs, clean car technologies, programs to accelerate hybrids and plug-in technologies, greenhouse gas emission reduction targets for passenger vehicles, and SCAQMD's efforts to transition to broad use of zero- and near-zero emission technologies for freight transportation and passenger vehicles and to increase energy efficiency in buildings). We note also that CARB has stated its intent to convene annual strategy meetings with the Districts and EPA to discuss progress in the development of its new technology measures, and to secure resources for continuing research and development of new technologies. *See* letter dated August 29, 2011, from James N. Goldstene, Executive Officer, California Air Resources Board, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9; *see also* 2009 State Strategy Status Report, pp. 25–27.

Finally, commenters reference CAA section 182(e)(5) and EPA's final rule approving an ozone SIP previously submitted by California (62 FR 1150, 1179) [33] in support of its assertion that the long-term strategy must satisfy five ''requirements,'' of which, commenters contend, the South Coast 2007 Ozone SIP addresses only one. We disagree with this characterization of both the requirements of CAA section 182(e)(5) and the provisions in the South Coast 2007 Ozone SIP.

As explained above and in our proposed rule, EPA interprets the Act to allow EPA to approve the State's

NO_X carrying capacity by 133 tpd. *See* 2007 State Strategy, p. 54.

[33] We note that although this final action included EPA's approval of new technology provisions under CAA section 182(e)(5) as part of California's SIP for the 1-hour ozone NAAQS in the South Coast area, this prior rulemaking action is not germane to today's action on the South Coast 2007 Ozone SIP. We assume that the commenters intended to refer, instead, to the source of the five criteria that EPA has recommended for consideration in evaluating new technology provisions under CAA 182(e)(5), which is the General Preamble (57 FR 13498, 13524 (April 16, 1992)).

conceptual new technology provisions and credit them toward the attainment demonstration if the state makes the required commitment to submit contingency measures, which then must be submitted to EPA no later than 3 years before proposed implementation and EPA concludes that the measures are not needed to achieve the first 10 years of required rate of progress reductions. *See* 76 FR 57846, 57854. The five ''requirements'' for approval of new technology provisions that commenters reference are not statutory or regulatory requirements but recommended criteria. *See* General Preamble at 13524.[34]

As also explained in the proposed rule, CARB and the District have demonstrated a clear need for additional time to fully develop and adopt the long-term measures under consideration and have met the statutory requirements for approval of such conceptual measures under CAA section 182(e)(5). *See* 76 57872 57881–57883. The General Preamble at 13524 recommends that a SIP relying on new technology provisions under CAA section 182(e)(5) identify all of the specific long-term measures the State intends to adopt, contain a schedule outlining the specific steps leading to final development and adoption, and contain commitments from the agencies that would be involved in developing and implementing these measures, in addition to satisfying the statutory criteria. However, as discussed in our proposed rule and above, both the 2007 State Strategy and the South Coast 2007 AQMP provide lists of the types of technologies and measures that they are pursuing to achieve the emissions reductions needed for attainment of the 8-hour ozone standards in the South Coast. *See* 76 FR 57872, 57882–57853 and TSD, section II.C.2.d*; see also,* 2007 AQMP, Chapters 4 and 7; 2007 State Strategy, pp. 54–57; 2009 State Strategy Update, p. 25; and 2011 Ozone Plan Update, Appendix A. The State has also committed to share the results of its efforts with the public through Board meetings, workshops and other means. *See 2009 State Strategy Update,* p. 25; *see also,* letter, James Goldstene, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9, August 29, 2011. Finally, the State has committed to work to secure resources for continuing research and development and to develop schedules for moving from research to implementation. *Id.* We find that the State and District have adequately addressed the policy criteria in the General Preamble given the significant emissions reductions needed to attain the 1997 8-hour ozone NAAQS in the South Coast and the type of sources (i.e., mobile sources) for which technology must be developed, tested, and deployed in order to achieve these reductions. EPA commits to do its share to support the needed research and development activities of CARB and the District.

Comment: Commenters state that the South Coast will exceed the 1-hour ozone standards by 30% in 2010 and that this is relevant because the South Coast's 1-hour ozone plan relied heavily on ''black box'' measures. Commenters argue that the South Coast area failed to meet the 1-hour standards ''because the commitments to develop and implement Black Box measures never fully came to fruition'' (citing EPA's September 14, 2011 proposal to determine that the South Coast area failed to attain the 1-hour ozone standards by the applicable attainment date (76 FR 56694)) and that EPA cannot reasonably rely on the continued use of the ''black box'' because the District and CARB's track record using this approach has not delivered the pollution reductions that were promised in prior plans. Commenters state that EPA must direct CARB to ''extract from the black box'' needed reductions they know will not come from future technologies, reduce the overall size of the black box to a reasonable level and better define where the remaining black box reductions are expected to come from.

Response: EPA is acting today on the South Coast 2007 Ozone SIP, which the State submitted to meet the requirements of part D, title I of the CAA for the 1997 8-hour ozone standards. Neither the CAA's planning requirements related to attainment of the 1-hour ozone standards nor the State's submittals to meet the Act's requirements for that prior standards are germane to our action on the South Coast 2007 SIP under CAA section 110(k). Additionally, nothing in section 182(e)(5) of the CAA or our implementing regulations requires EPA to take into account the success or failure of a prior plan for a different NAAQS in approving extreme area plan provisions that meet the requirements of CAA section 182(e)(5) for the 1997 8-hour ozone standards. EPA's proposed rule to determine that the South Coast area failed to attain the 1-hour ozone standards by its applicable attainment date (76 FR 56694, September 14, 2011), which commenters reference, likewise has no bearing on our action on the South Coast 2007 Ozone SIP under CAA section 110(k).

Moreover, we disagree with commenters' contention that the South Coast area failed to meet the 1-hour ozone standards ''because the commitments to develop and implement Black Box measures never fully came to fruition.'' The failure of an area to attain a NAAQS by the applicable attainment date does not mean that the State has failed to achieve the emissions reductions anticipated in the SIP, whether under CAA section 182(e)(5) or otherwise. The control strategy (including the ''black box'') that EPA previously approved for the South Coast area (62 FR 1150) was developed long before the attainment date using the best scientific information available at the time, including estimates of the area's carrying capacity using photochemical grid modeling and other technical tools and assumptions. This control strategy, however, has proven insufficient to attain the 1-hour ozone standards by the applicable attainment date of November 15, 2010, due to imperfect estimates as to the carrying capacity of the South Coast air basin with respect to the 1-hour ozone standards and other imperfections in the tools and assumptions upon which the prior plans were based. A State may fully implement all measures that are predicted as necessary to attain a particular NAAQS and still fail to attain that NAAQS.

Finally, we disagree with commenters' argument that EPA must direct CARB to ''extract from the black box needed reductions they know will not come from future technologies, reduce the overall size of the black box to a reasonable level and better define where the remaining black box reductions are expected to come from.'' It is not possible at this point in time to know that certain emission reductions will not come from future technologies, and we do not believe it is reasonable to require the State to reduce the

[34] EPA's General Preamble states that in order to rely on ''new technology provisions'' under CAA section 182(e)(5), a SIP must satisfy the following criteria: (1) Identify all measures, including the long-term measure(s) for which additional time would be needed for development and adoption; (2) show that the long-term measure(s) cannot be fully developed and adopted by the submittal date for the attainment demonstration and contain a schedule outlining the steps leading to final development and adoption of the measure(s); (3) contain commitments from those agencies that would be involved in developing and implementing the schedule for the measure; (4) contain a commitment to develop and submit contingency measures (in addition to those otherwise required for the area) that could be implemented if the measure is not developed or if it fails to achieve the anticipated reductions; and (5) not rely on the new technology measures to meet any emissions reductions requirements within the first 10 years after enactment. *See* 57 FR 13498, 13524 (April 16, 1992). We note that this language is non-binding guidance although it is phrased in mandatory terms.

amount of emission reductions attributed to the long-term strategy by either implementing measures or incremental reductions beyond those otherwise mandated by the Act or developing measures based on control techniques not yet identified or commercially available for implementation in the area. As explained above, the State has met the statutory criteria for approval of its long-term strategy under CAA section 182(e)(5).

Comment: Commenters state that the commitment by CARB to submit a revision to EPA by 2020 provides little assurance that the black box strategies will work. Citing *Association of Irritated Residents (AIR)* v. *EPA,* 632 F.3d 584, 592 n.2 (9th Cir. 2011) (discussing the triennial review process in California law and the triennial inventory requirement under the federal Clean Air Act), commenters state that delaying a revision until 2020 and not requiring more frequent updates is arbitrary and capricious because both California law and the CAA contain requirements for updating clean air plans more frequently than every nine or ten years. Commenters also argue that delaying submittal of an update until 2020 is arbitrary and capricious because this is too late to allow time to remedy any problems that may need CARB regulations, transportation infrastructure and other technology developments that will require more than three years to develop.

Response: As discussed in our proposed approval, CARB has committed to achieve all of the emission reductions attributed to the section 182(e)(5) conceptual new technology measures by the attainment year (2023) and has satisfied the section 182(e)(5) criteria for approval of its new technology provisions by demonstrating that the measures are not relied on for RFP and committing to submit adopted contingency measures by 2020 to be implemented should the anticipated reductions from new or improved technologies not occur. In addition, as discussed above, CARB has stated its intent to continue the State's ambitious clean technology development programs and has committed to public outreach as well as annual meetings to update EPA on its progress. Although we recognize the commenters' concerns about the absence of any specific milestones or updates prior to 2020, the Act does not mandate that the SIP include specific enforceable actions during this period.

The triennial review process cited in *AIR* is a California state law requirement applicable to air quality plans developed pursuant to the California Clean Air Act to meet California's ambient air quality standards. *See* California Health and Safety Code Section 40924(b) and 40925(a). The CAA triennial inventory requirement cited in that decision is an emissions inventory requirement in CAA section 182(a)(3), which requires States with ozone nonattainment areas to submit revised inventories every three years until redesignation to attainment. *See also* 40 CFR part 51, subpart A. Neither the triennial review requirement under the California CAA nor the periodic inventory requirement under the Federal CAA applies to our evaluation of new technology provisions under CAA section 182(e)(5).

E. CAA Section 182(d)(1)(A) Requirements

Comment: NRDC asserts that EPA has also failed to assess the adequacy of the SIP's compliance with the requirement in CAA section 182(d)(1)(A) that the SIP provide adequate enforceable control measures ''to allow total area emissions to comply with RFP and attainment requirements.'' NRDC argues that, because the area has not adopted sufficient enforceable control measures to provide for attainment (citing to its comments that the attainment demonstration is not approvable because, *inter alia,* measures relied on in that demonstration were not in the SIP), this provision must be met and EPA must direct the State/District to adopt the additional measures needed for attainment, either as TCMs to reduce motor vehicle emissions, or as controls on other source categories so that total emissions reductions provide for attainment.

Response: CAA section 182(d)(1)(A) requires the State to ''submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures * * * to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements of [title 1, part D, subpart 2], to comply with the requirements of [sections 182] (b)(2)(B) and (c)(2)(B)'' and ''to consider measures specified in section 108(f) * * * and to choose from among and implement such measures as necessary to demonstrate attainment.''

We have determined that the South Coast 2007 8-hour Ozone plan meets the RFP requirements in sections 182(b)(2)(B) and (c)(2)(B) and demonstrates attainment consistent with the subpart 2 requirements and thus also meets the requirements of section 182(d)(1)(A) to adopt transportation control strategies and TCMs as necessary to demonstrate RFP and attainment. *See* 76 FR 57872, 57890 and TSD, section II.F.3; *see also* TSD, section III.A.2. (responding to comments on the approvability of the baseline emissions inventory and the attainment demonstration). The SIP also includes documentation that the state considered the transportation control measures listed in CAA section 108(f), evaluated their effectiveness in contributing to expeditious attainment, and concluded that they would not. *See* South Coast 2007 AQMP, Appendix IV–C; 76 FR 57872, 57879 and 57890 and TSD, sections II.C.2.b. and II.F.2.

We disagree with NRDC's summary of the CAA section 182(d)(1)(A) requirements related to RFP and attainment. This specific section does not require that the SIP provide ''adequate enforceable control measures 'to allow total area emissions to comply with RFP and attainment requirements' '' but rather it requires that the state adopt *enforceable transportation strategies and TCM as necessary in combination with other emissions reduction requirement of subpart 2* to demonstrate RFP and to implement *TCMs as necessary* to demonstrate attainment. Thus, if other SIP provisions provide for RFP and attainment consistent with applicable CAA requirements (including, in this case, the provisions of CAA section 182(e)(5)), then the state has no obligation under section 182(d)(1)(A) to adopt transportation control strategies and TCMs for RFP and attainment purposes.

F. Comments on Motor Vehicle Emissions Budgets

See section IV. Motor Vehicle Emissions Budgets for Transportation Conformity.

III. Approval Status of the Control Strategy Measures and Final Actions on the Attainment Demonstration and Enforceable Commitments

A. Approval Status of Control Strategy Measures

As part of its control strategy for attaining the 8-hour ozone standards in the South Coast, the District made specific commitments to adopt or revise fifteen measures for SIP credit on the schedule identified in the revised 2007 AQMP. See SCAQMD, *Revisions to the 2007 $PM_{2.5}$ and Ozone State Implementation Plans for the South Coast Air Basin and Coachella Valley (SIP Revisions),* Tables 2 through 5. The District has now completed most of its adoption actions and EPA has approved most of the adopted rules. See Table 1

below. The rules we have not yet approved have not been credited with emissions reductions in the attainment demonstration.

TABLE 1—APPROVAL AND SUBMITTAL STATUS OF DISTRICT RULES IN THE SOUTH COAST 2007 AQMP

District rule	Adoption date	Current SIP approval status
Rule 445—Woodburning fireplaces and wood stoves.	03/07/08	74 FR 27716, 6/11/09.
Rule 461—Gasoline transfer and dispensing	03/07/08	71 FR 18216, 4/11/06.
Rule 1110.2—Liquid and gaseous fuels—stationary ICEs.	02/01/08	74 FR 18995, 4/27/09.
Rule 1111—Further NO_X reductions from space heaters.	11/06/09	75 FR 46845, 08/04/10.
Rule 1127—Livestock Waste	08/06/04	Under EPA review.
Rule 1138—Restaurant Operations	2012	66 FR 36170, 7/11/01.
Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents.	12/03/10	76 FR 70888, 11/16/11.
Rule 1144—Vanishing oils and rust inhibitors	07/09/10	76 FR 70888, 11/16/11.
Rule 1145—Plastic, Rubber, Leather and Glass Coatings.	12/3/04	75 FR 40726, 07/14/10.
Rule 1146—NO_X from industrial, institutional, commercial boilers, steam gens, and process heaters.	09/05/08	Proposed limited approval/limited disapproval 76 FR 40303, 7/8/11.
Rule 1146.1—NO_X from small industrial, institutional, commercial boilers, steam gens, and process heaters.	09/05/08	Proposed limited approval/limited disapproval 76 FR 40303, 7/8/11.
Rule 1147—NO_X reductions from miscellaneous sources.	12/05/08	75 FR 46845, 08/04/10.
Rule 1149—Storage Tank and Pipeline Cleaning and Degassing.	05/02/08	74 FR 67821, 12/21/09.
Rule 2002—Further SO_X reductions from RECLAIM.	11/4/10	76 FR 50128, 8/12/11.
Rule 2301—Indirect Source Review	Scheduled for SCAQMD Board adoption in 2012.	
Rule 1123—Refinery Pilot Program	Scheduled for SCAQMD Board adoption in February 2012 [a].	N/A.
Rule 2449—SOON program	5/2/08	Under EPA review.
AB923 Light and medium duty vehicle high emitter program.	No rules associated with these measures	N/A.
AB923 Light and medium duty vehicle high emitter program.	No rules associated with these measures	N/A.

[a] See SCAQMD Governing Board Agenda Item 22, December 2, 2011 Board Meeting.

As part of its control strategy for attaining the 8-hour ozone standards in the South Coast, CARB committed to propose certain measures on the schedule identified in the 2007 State Strategy. These commitments, which were updated in the 2011 Ozone SIP revision, and their current approval status, are shown in Table 2. Of the measures listed in the 2007 State Strategy's updated rulemaking schedule, we note that only reductions from the ''SmogCheck Improvements,'' ''Cleaner In-Use Heavy-Duty Trucks and Buses,'' ''Cleaner In-Use Off-Road Equipment (over 25 hp),'' ''Ship Auxiliary Engine Cold Ironing and Clean Technology,'' ''Cleaner Main Ship Engines and Fuel—Main Engines,'' ''Clean UP Existing Harbor Craft,'' and ''Consumer Products'' are currently credited with emissions reductions in the attainment demonstration. See 76 FR 57872 (Table 5).

Generally, EPA will approve a State plan that takes emissions reduction credit for a control measure only where EPA has approved the measure as part of the SIP, or in the case of certain on-road and nonroad measures, where EPA has issued the related waiver of preemption or authorization under CAA section 209(b) or section 209(e). In our September 2011 proposed rule, in calculating and proposing to approve the State's aggregate emissions reductions commitment in connection with our proposed approval of the attainment demonstration, we assumed that full final approval, waiver, or authorization of a number of CARB rules would occur prior to our final action on the South Coast 8-hour ozone plan. See 76 FR 57872, at 57880–57881 (Table 5). Two specific CARB rules on which the attainment demonstration relies include the Truck Rule and the Drayage Truck Rule. We proposed approval of both rules at 76 FR 40652 (July 11, 2011), but will be unable to take final action on the rules until after taking final action on the plan because, while CARB has adopted the rules, the rules cannot take effect until approved by the California Office of Administrative Law (OAL) and such approval will not happen before EPA's final action must be taken on the plan. On November 9, 2011, OAL approved the Drayage Truck rule, and December 14, 2011 OAL approved the Cleaner In-Use Heavy Duty Truck rule. CARB submitted the drayage rule on December 9, and the truck rule on December 15, and we expect to complete action on these rules prior to the effective date of this rule.

Based on anticipated approval of these CARB rules, we are allowing the plan's attainment demonstration, and our final approval of it, to rely on the emissions reductions from the CARB rules for the following reasons:

• Both rules have been adopted by CARB, approved by the California OAL, and submitted to EPA as a revision to the California SIP,[35] and the adopted

[35] The Truck Rule and Drayage Truck Rules were included in a SIP submittal dated September 21, 2011. We have placed this SIP submittal in the docket for this rulemaking.

versions are essentially the same as those for which EPA proposed approval;

• The comments that we have received on our proposed approval of the CARB rules contend that the rules are costly and may not be economically or technologically feasible, but such considerations cannot form the basis for EPA disapproval of a rule submitted by a state as part of a SIP [see *Union Electric Company* v. *EPA;* 427 U.S. 246, 265 (1976)];

We are confident that the final action on the rules will be completed in the near term and that, as a result, continued reliance by the South Coast 2007 8-hour ozone plan, and our final approval of it, on the emissions reductions associated with the rules is reasonable and appropriate. If, however, we are unable to complete a final action on the rules prior to the effective date of today's action, we will take appropriate remedial action to ensure that our action on the plan is fully supportable or to reconsider that action.

TABLE 2—REVISED 2007 STATE STRATEGY DEFINED MEASURES SCHEDULE FOR CONSIDERATION AND CURRENT STATUS

State measures	Expected action year	Implementation date	Current status
Defined Measures in 2007 State Strategy			
Smog Check Improvements (Bureau of Automotive Repair).	2007–2009	2008–2010; 2013	Elements approved 75 FR 38023 (July 1, 2010).[36]
Expanded Vehicle Retirement (AB 118)	2007	2009	Adopted by CARB, June 2009; by BAR, September 2010.
Modifications to Reformulated Gasoline Program	2007	2010	Approved 75 FR 26653 (May 12, 2010).
Cleaner In-use Heavy Duty Trucks (includes Drayage Truck Rule).	2007, 2008, 2010	2011–2015	Proposed approval 76 FR 40562, July 11, 2011. See discussion above.
Auxiliary Ship Cold Ironing and Other Clean Technologies.	2007–2008	2010	Waiver granted; 76 FR 77515, December 13, 2011.
Cleaner Main Ship Engines and Fuels	Fuel: 2008–2011 Engines: 2008	Fuel: 2009–2015 Engines: 2011.	Proposed approval 76 FR 40562, July 11, 2011. See discussion above.
Port Truck Modernization	2007, 2008, 2010	2008–2020	Adopted December 2007 and December 2008.
Accelerated Introduction of Cleaner Locomotives	2008	2012	Prop 1B funds awarded to upgrade line-haul locomotive engines not already accounted for by enforceable agreements with the railroads. Those cleaner line-hauls will begin operation by 2012.
Clean Up Existing Harbor Craft	2007, 2010	2009–2018	Waiver granted; 76 FR 77521, December 13, 2011.
Cleaner In-Use Off-Road Engines	2007, 2010	2009	Waiver decision pending.
New Emissions Standards for Recreational Boats	2013	tbd	Partially adopted, July, 2008; additional action expected 2013.
Expanded Off-Road Recreational Vehicle Emissions Standards.	2013	tbd	Partially adopted, July, 2008; additional action expected 2013.
Enhanced Vapor Recovery for Above Ground Storage Tanks.	2008	2009–2016	Adopted June, 2007.
Additional Evaporative Emissions Standards	2009	2010–2012	Partial adoption: September, 2008 (outboard marine tanks).
Consumer Products Program (I & II)	2008, 2009, 2011	2010–2014	Approved 74 FR 57074 (November 4, 2009), 76 FR 27613 (May 12, 2011), and approval signed December 7, 2011.

Sources: 2009 State Strategy Status Report, p. 23 (footnotes in original not included) and 2011 Progress Report, Appendix B, Table B–1. Additional information from *www.ca.arb.gov.* Only defined measures with 8-hour ozone, VOC, SO_X or NO_X reductions in South Coast are shown here.

B. Enforceable Commitments

For the 2007 Ozone Plan, the District committed to achieve certain aggregate emissions reductions of NO_X and VOC. See SCAQMD, *Revisions to the 2007 $PM_{2.5}$ and Ozone State Implementation Plans for the South Coast Air Basin and Coachella Valley (SIP Revisions),* Table 1. EPA is approving these aggregate emissions reductions commitments.

TABLE 3—SOUTH COAST AQMD 2007 OZONE PLAN EMISSIONS REDUCTIONS COMMITMENTS

[2023 Tons per summer day]

	NO_X	VOC
2023	9.2	19.3

Source: SCAQMD, 2007 AQMP, Table 4–2A, page 4–10, as revised by Appendix F of the 2011 Progress Report.

In the 2007 State Strategy, CARB committed to achieve certain aggregate emissions reductions of 141 tpd NO_X and 54 tpd VOC in the South Coast by the attainment year of 2023 that are sufficient, in combination with existing SIP-creditable measures, the District's commitments, and commitments for reductions under the CAA section 182(e)(5) new technologies provision, to attain the 1997 8-hour ozone standards in the South Coast by the applicable attainment date of June 15, 2024. CARB also made enforceable commitments to achieve aggregate emissions reductions in the South Coast in the RFP milestone years of 2014 and 2020. See 2007 State Strategy, p. 63; CARB Resolution 07–28, Attachment B, p. 4; and 2009 State Strategy Status Report, p. 20. See Table 4 below.

[36] California Assembly Bill 2289, passed in 2010, requires the Bureau of Automotive Repair to direct older vehicles to high performing auto technicians and test stations for inspection and certification effective 2013.

TABLE 4—CARB COMMITMENTS TO SPECIFIC AGGREGATE EMISSIONS REDUCTIONS

[Tons per summer day]

	NO_X	VOC
2014	152	46
2020 [a]	144	52
2023	141	54
2023 CAA 182(e)(5)	241	40

[a] The 2020 commitment in the South Coast is necessary to provide for attainment in the downwind nonattainment areas. The South Coast 8-hour ozone plan does not rely on this emission reduction commitment for 2020. *Source:* 2009 State Strategy Status Report, p. 20.

The 2011 Ozone SIP Revision revised the State's emissions estimates for certain source categories and projection years and provided additional information on the State and District's progress to date in achieving their total emission reduction commitments. In this action, we are approving CARB's and the SCAQMD's emission reduction commitments as submitted in the 2007 State Strategy, 2009 State Strategy Update and the 2007 AQMP without change, because we do not have sufficient information to determine how the 2011 SIP Revision alters the State's near-term and long-term emission reduction commitments. We note that the amount and relative proportion of reductions from measures scheduled for long-term adoption under section 182(e)(5), as compared to measures already adopted or scheduled for near-term adoption, should decrease in any future SIP update.

IV. Approval of Motor Vehicle Emissions Budgets for Transportation Conformity

CARB submitted revised transportation conformity motor vehicle emissions budgets for the South Coast nonattainment area and their documentation in Appendices A and C, respectively, of the 2011 Ozone SIP Revision. The revised budgets are for NO_X and VOC for the RFP years of 2011, 2014, 2017 and 2020, and the attainment year of 2023. No budgets were included for the RFP year of 2008 because it is no longer applicable as a conformity analysis year. Additional information associated with the motor vehicle emission budget calculations were provided in Attachment 1 of the CARB Ozone SIP Revision supplement and an electronic mail from CARB.[37]

As part of our review of the approvability of the budgets, we have evaluated the revised budgets using our adequacy criteria in 40 CFR 93.318(e)(4). We posted the revised budgets on our Web site for adequacy review on September 19, 2011 for a 30-day comment period which ended on October 19, 2011 (see *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). We received no comments on our adequacy posting. We have completed our adequacy review of these budgets (see the TSD, Section H) and also have completed our detailed review of the South Coast 2007 8-hour ozone plan and supplemental submittals, including the 2011 Ozone SIP Revision, and are approving the SIP's attainment and RFP demonstrations. We have also reviewed the revised budgets submitted with the 2011 Ozone SIP Revision and have found that they are consistent with the attainment and RFP demonstrations and are based on control measures that have already been adopted and implemented. Therefore, we are approving the 2011, 2014, 2017, 2020 and 2023 budgets as shown in Table 5 below.

Now that the approval of the budgets is finalized, the area's metropolitan planning organization, the Southern California Association of Governments (SCAG) and the U.S. Department of Transportation are required to use the revised budgets in transportation conformity determinations after the effective date of the approval. Due to the formatting of the budgets (combining emissions changes, recession impacts and reductions from control measures), CARB will need to provide SCAG with emission reductions associated with the control measures incorporated into the budgets for the appropriate analysis years in future conformity determinations per 40 CFR section 93.122. In addition, for these conformity determinations, the motor vehicle emissions from implementation of the transportation plan should be projected and compared to the budgets at the same level of accuracy as the budgets in the plan, for example, emissions should be rounded to the nearest ton (e.g., 11 tpd).

TABLE 5—MOTOR VEHICLE EMISSIONS BUDGETS IN THE SOUTH COAST 2007 8–HOUR OZONE SIP AS REVISED ON JULY 21, 2011

[Tons per summer day]

	2011		2014		2017		2020		2023	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
South Coast Air Basin	172	328	136	277	119	224	108	185	99	140

Source: "8-Hour Ozone State Implementation Plan Revisions and Technical Revisions to the $PM_{2.5}$ State Implementation Plan Transportation Conformity Budgets for the South Coast and San Joaquin Valley Air Basins," Appendix C, submitted July 29, 2011.

During the comment period on the proposed approval of the South Coast 2007 8-hour ozone SIP, CARB requested that EPA limit the duration of our approval of the motor vehicle emission budgets submitted on July 29, 2011 until the effective date of EPA's adequacy finding for any subsequently submitted budgets. See letter, Douglas Ito, Chief, Air Quality and Transportation Planning Branch, California Air Resources Board, October 17, 2011.

The transportation conformity rule allows EPA to limit the approval of budgets. See 40 CFR 93.118(e)(1). However, we can only consider a state's request to limit our approval if a state adequately addresses three factors. First, the state must acknowledge and explain why the budgets under consideration have become outdated or deficient; second, the state must make a commitment to update the budgets as part of a comprehensive SIP update. Finally, the state must request that EPA limit the duration of its approval to the point in time when the new budgets have been found to be adequate for transportation conformity purposes. See 67 FR 69141 (November 15, 2002) (limiting our prior approval of budgets in certain California SIPS).

[37] See electronic mail from Douglas Ito, Chief, Air Quality and Transportation Planning Branch, CARB, to Elizabeth Adams, Deputy Director, Air Division, EPA Region 9, dated August 11, 2011.

Because CARB's request does not include all these elements, we cannot address CARB's request at this time. Once CARB has submitted additional information to adequately address these factors, EPA intends to propose to limit the duration of our approval of the budgets in the South Coast 2007 8-hour ozone plan and to provide the public an opportunity to comment.[38] The duration of the approval of the budgets will not be limited until we complete the rulemaking initiated by that proposal.

V. Final Actions

For the reasons discussed in our September 16, 2011 proposal and explained further above, EPA is approving California's SIP for attaining the 1997 8-hour ozone NAAQS in the South Coast nonattainment area. California's 8-hour ozone attainment SIP for the South Coast nonattainment area is composed of the relevant portions of the South Coast 2007 AQMP as revised in 2011 and the South Coast-specific portions of CARB's 2007 State Strategy as revised in 2009 and 2011 that address CAA requirements and EPA regulations for attainment of the 1997 8-hour ozone standards in the South Coast nonattainment area.

Specifically, EPA is approving under CAA section 110(k)(3) the following elements of the South Coast 8-hour ozone attainment SIP:

1. The revised 2002 base year emissions inventory as meeting the requirements of CAA section 182(a)(1) and 40 CFR 51.915;
2. The reasonably available control measure demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.912(d);
3. The reasonable further progress demonstration as meeting the requirements of CAA sections 172(c)(2) and 182(c)(2)(B) and 40 CFR 51.910;
4. The attainment demonstration as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.908;
5. The provisions for the development of new technologies pursuant to CAA section 182(e)(5) and CARB's commitment to adopt and submit by 2020 contingency measures to be implemented if the new technologies do not achieve the planned emissions reductions, in addition to additional attainment contingency measures meeting the requirements of CAA section 172(c)(9), pursuant to CAA section 182(e)(5) as given in CARB Resolution 11–22 (July 21, 2011); and CARB's commitment to develop and submit by 2020, revisions to the SIP that will (1) reflect modifications to the 2023 emission reduction target based on updated science and (2) identify additional strategies and implementing agencies needed to achieve the needed reductions by the beginning of the 2023 ozone season as given in the 2011 Ozone SIP Revision, p. A–8;
6. The contingency measure provisions for failure to make RFP and to attain as meeting the requirements of CAA sections 172(c)(9) and 182(c)(9);
7. The demonstration that the SIP provides for transportation control strategies and measures sufficient to offset any growth in emissions from growth in VMT or the number of vehicle trips, and to provide for RFP and attainment, as meeting the requirements of CAA section 182(d)(1)(A);
8. The revised motor vehicle emissions budgets for the RFP milestone years of 2011, 2014, 2017 and 2020, and for the attainment year of 2023, because they are derived from approvable RFP and attainment demonstrations and meet the requirements of CAA sections 176(c) and 40 CFR part 93, subpart A;
9. The SCAQMD's commitments to achieve specific aggregate emission reductions of NO_X and VOC as listed in Table 4–2A of the South Coast 2007 AQMP (as revised March 4, 2011) and as given in Table 3; and
10. CARB's commitments to propose certain defined measures, as listed in Appendix B, Table B–1 of the 2011 Ozone SIP Revision; to achieve specific aggregate emission reductions of 152 tpd of NO_X and 46 tpd of VOC by 2014; 141 tpd of NO_X and 54 tpd of VOC from existing technologies in the South Coast nonattainment area by 2023; and 241 tpd of NO_X and 40 tpd of VOC from new technologies by 2023 as provided in CARB Resolution 07–28, Attachment B, and the 2009 State Strategy update, p. 20; and to achieve the emissions reductions needed to attain the 8-hour ozone standards in the South Coast nonattainment area as provided in CARB Resolution 07–28, Attachment B, p. 4, 2009 State Strategy Status Report, p. 20 and as given in Table 4.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in

[38] In the same comment letter, CARB also requested that we limit the duration of our recent approval of the $PM_{2.5}$ motor vehicle budgets. These budgets were also submitted on July 29, 2011 as an appendix to the 2011 Ozone SIP Revision.

estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely approves certain State requirements for inclusion into the SIP under CAA section 110 and subchapter I, part D, and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. Congressional Review Act

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). This rule will be effective on April 30, 2012.

L. Petitions for Judicial Review

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 April 30, 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 15, 2011.

Jared Blumenfeld,

Regional Administrator, Region 9.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(397) (ii)(A)(*5*), (c)(398)(ii)(A)(*3*) and (c)(401)(ii)(A)(*1*)*(i)* and (*2*)*(i).*

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(397) * * *

(ii) * * *

(A) * * *

(*5*) CARB Resolution No. 07–28 with Attachments A and B, September 27, 2007. Commitment to achieve the total emissions reductions necessary to attain the Federal standards in the South Coast air basin, which represent 152 tpd of NO_X and 46 tpd of VOC by 2014, and 54 tpd of VOC and 141 tpd of nitrogen oxides by 2023 for purposes of the 1997 8-hour ozone NAAQS, as described in Resolution No. 07–28 at Attachment B, p. 4, and modified by CARB Resolution No. 09–34 (April 24, 2009) adopting the ''Status Report on the State Strategy for California's 2007 State Implementation Plan (SIP) and Proposed Revision to the SIP reflecting Implementation of the 2007 State Strategy.''

* * * * *

(398) * * *

(ii) * * *

(A) * * *

(3) SCAQMD Governing Board Resolution 07–9, ''A Resolution of the Governing Board of the South Coast Air Quality Management District certifying the final Program Environmental Impact Report for the 2007 Air Quality Management Plan, adopting the Final 2007 Air Quality Management Plan (AQMP), to be referred to after adoption as the Final 2007 AQMP, and to fulfill USEPA Requirements for the use of emissions reductions form the Carl Moyer Program in the State Implementation Plan,'' June 1, 2007. Commitments to achieve emissions reductions (including emissions reductions of 19.3 tpd of VOC and 9.2 tpd of nitrogen oxides by 2023) as described by SCAQMD Governing Board Resolution No. 07–9, p. 10, June 1, 2007, and modified by SCAQMD Governing Board Resolution 11–9, p. 3, March 4, 2011, and commitments to adopt and submit control measures as described in Table 4–2A of the Final 2007 AQMP, as amended March 4, 2011.

* * * * *

(401) * * *

(ii) * * *

(A) * * *

(*1*) * * *

(i) Commitment to develop and submit by 2020 revisions to the SIP that will reflect modifications to the 2023 emissions reduction target based on updated science, and identify additional strategies and implementing agencies needed to achieve the needed reductions by 2023 as given in the 2011 Ozone SIP Revision on page A–8.

(*2*) * * *

(i) Commitment to develop, adopt and submit by 2020 contingency measures to be implemented if advanced technology measures do not achieve the planned emissions reductions, and attainment contingency measures meeting the requirements of CAA section 172(c)(9), pursuant to CAA section 182(e)(5) as given on p. 4.

* * * * *

[FR Doc. 2012–4673 Filed 2–29–12; 8:45 am]

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Part IV

Department of Veterans Affairs

38 CFR Part 61

VA Homeless Providers Grant and Per Diem Program; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 61

RIN 2900–AN81

VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to revise and reorganize regulations which contain the Department of Veterans Affairs' (VA) Homeless Providers Grant and Per Diem Program. This rulemaking would update our current regulations, implement and authorize new VA policies, and generally improve the clarity of part 61.

DATES: Comments must be received by VA on or before April 30, 2012.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll free number). Comments should indicate that they are submitted in response to ''RIN 2900–AN81 VA Homeless Providers Grant and Per Diem Program.'' 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 for an appointment. (This is not a toll free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Guy Liedke, VA Homeless Providers Grant and Per Diem Program Office, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (877) 332–0334. (This is a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 501, 2001, 2011, 2012, 2061, and 2064, the VA Homeless Providers Grant and Per Diem Program, provides capital grants and per diem to public or nonprofit private entities who assist homeless veterans by helping to ensure the availability of supportive housing and service centers to furnish outreach, rehabilitative services, vocational counseling and training, and supportive housing. The regulations governing this program are located at part 61 of title 38, CFR. We are proposing to rewrite those regulations to establish certain new policies and procedures related to the administration of this program. In addition, technical and clarifying changes are proposed. We discuss the significant and substantive changes below in a section-by-section analysis. Changes that are not described below were made for technical reasons or to improve readability and are not intended to be substantive.

We propose to revise the statutory authority for part 61 to include 38 U.S.C. 2001, because that authority establishes that the purpose of chapter 20 of title 38, U.S.C., ''is to provide for the special needs of homeless veterans.'' We propose to eliminate the reference to 38 U.S.C. ''7721 note'' because section 7721 was repealed in 2006. *See* Public Law 109–233, title IV, § 402(c) (June 15, 2006).

We also propose to remove current § 61.20 because the authority to award these grants has expired. Public Law 107–95 established 38 U.S.C. 2012(c)(3) to provide grants to renovate facilities that already received a capital grant under § 3 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (Pub. L. 102–590; 38 U.S.C. 7221 note). Such grants were solely for renovations to comply with the Life Safety Code of the National Fire Protection Association. This authority has expired.

Section 61.0 Purpose

We propose to make some non-substantive changes to current § 61.0.

Section 61.1 Definitions

We are adding or modifying several definitions in order to provide conformity and clarity in their use within part 61, and are removing others that are no longer relevant to the reorganized and clarified part 61. New definitions and significant changes are addressed below.

We would move the definition of ''capital lease'' to § 61.4, and make the substantive changes to that definition as discussed later in this document.

We would add a definition of ''default'' defined as ''a determination by VA that an awardee has materially failed to comply with the terms and conditions of an award.'' This is a program-specific definition that is consistent with the common definition of the term ''default'' as it relates to contractual compliance.

We would revise the definition of ''homeless'' to be consistent with 38 U.S.C. 2002(1), which defines a ''homeless veteran'' as ''a veteran who is homeless (as that term is defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)).''

We would add a definition of ''Notice of Fund Availability (NOFA)'' that would refer readers to § 61.60, the substantive provision governing NOFAs. We believe this may be helpful to users who are unfamiliar with the term.

We would add a definition of ''operational'' and define the term to describe a program in which ''all VA inspection requirements under this part have been met and an activation document has been issued by the VA National GPD Program.'' This clarifies that a program cannot be considered operational, i.e., in effect, under part 61 until it has complied with all applicable regulations, and VA has recognized it as such.

We would add a definition of ''participant agreement,'' because the term would be used in §§ 61.13 and 61.82, as revised. The definition would state that a participant agreement is ''any written or implied agreement between a grant recipient agency and a program participant that outlines the requirements for program compliance, participant or service delivery.''

We would add a definition of ''project'' and define as ''all activities that define the parameters of the purpose of the grant.'' We note that VA provides additional details for specific projects in the notices of fund availability that serve as the bases for specific grant awards.

We would add a definition of ''recipient'' as ''the entity whose employer or taxpayer identification number is on the Application for Federal Assistance (SF 424) and is consequently responsible to comply with all terms and conditions of the award.'' We would also state that, ''For the purpose of this part the terms ''grantee'', ''recipient'', and ''awardee'' are synonymous and interchangeable.'' These terms are used in this manner throughout part 61, and it is consistent with the common definitions of these terms to use them to describe the entity that is receiving the grant and therefore should be primarily responsible for compliance with part 61.

We would revise the definition of ''supportive housing.'' The current definition requires that supportive housing be ''transitional housing'' or part of a project designed to meet the needs of homeless veterans. The term ''transitional'' can be misleading, because in some cases supportive housing can include a detoxification facility or other facility with a medical focus. The revised definition would require that ''supportive housing'' provide supportive services for

homeless veterans ''designed to either (1) facilitate the movement of homeless veterans to permanent housing; or (2) provide specific medical treatment such as detoxification, respite, or hospice treatments.'' Finally, the revised rule would also clarify the current rule that supportive housing cannot be emergent or permanent by design, by providing examples of types of housing that are not considered supportive housing. We note that this clarification will be helpful because we have received applications for emergent care facilities and permanent housing.

We would move the definition of ''supportive services'' to its own section, § 61.2, for organizational purposes, but would not revise the substance of the definition.

We would add a definition of ''total project cost'' and define as ''the sum of all costs incurred by a recipient for the acquisition, rehabilitation, and new construction of a facility, or van(s), identified in a grant application.'' This definition would be consistent with the use of this term throughout part 61, as it defines the total cost in terms of the costs that would be allowable under this part. We would use the term ''total project cost'' in § 61.16(c)(5) where we require that the value of matching funds must be for a cost that is included in the calculation of the total project cost, thereby decreasing the total expenditures of the grantee.

We would define ''VA National GPD Program'' as ''the VA Homeless Providers Grant and Per Diem Program.'' We would use the defined term as an abbreviation in our regulations.

We propose to remove the definition of ''fee'' in the revised rule. Currently, we define the term as ''a fixed charge for a service offered by a recipient under this part, that is in addition to the services that are outlined in the recipient's application; and [is] not paid for by VA per diem or provided by VA, (e.g., cable television, recreational outings, professional instruction or counseling).'' Rather than define the term, we would add detail in § 61.82 concerning participant fees and extracurricular fees. Under § 61.82(a), participant fees may be required under the specified circumstances, and extracurricular fees may be charged only under circumstances that are substantively the same as those specified in the current rule. Grant programs vary widely across the country, and we believe that it will be clearer to simply discuss fees in more detail in § 61.82 than to attempt to provide a single definition of the term ''fee.''

Section 61.2 Supportive Services—General

We would move the definition of ''supportive services'' from current § 61.1 into its own section, without substantive revision. We have done this because the definition is very detailed and contains a substantive rule that recipients must design supportive services, in addition to providing extensive criteria for the design of such services.

Section 61.3 Notice of Fund Availability

We would move the current provision regarding the Notice of Fund Availability to earlier in part 61. Specifically, we propose to move the substance of current § 61.60 to new § 61.3. No substantive changes are proposed.

Section 61.4 Definition of Capital Lease

Under current § 61.1, a capital lease ''means a lease that will be in effect for the full period in which VA may recover all or portions of the capital grant amount.'' This definition is too narrow because this period is, at a minimum, 20 years (under proposed § 61.67(b)), and many leases will not be able to meet the requirement that the lease be in effect for the full period. Therefore, we propose to require that a ''capital lease'' be in effect for all of the period of recovery listed in § 61.67(b), or satisfy one of three criteria, including: (1) The lease transfers ownership to the lessee at the expiration of the lease term, (2) The lease contains a bargain purchase option, or (3) The present value of lease payments that are applied to the purchase are equal to or greater than 90 percent of the fair market value of the asset. We had used these same three criteria in a prior version of this regulation, and attempted to simplify the definition in the current rule; however, this simplification caused unexpected problems. Therefore, we are returning to this former definition because it is standard for the real estate industry but, again, will make it applicable only to leases that will not run for 20 years or more. The provisions protect VA in the event that the improved property is used for something other than the purpose of the grant. Due to the complexity and substantive nature of this proposed definition, we would reorganize it into its own section.

In addition, we would refer to a ''capital lease'' in the regulation as a ''conditional sales contract.'' The latter term is well-understood in the industry.

Section 61.10 Capital Grants—General

We propose to make some non-substantive changes to current § 61.10.

Section 61.11 Capital Grants—Application Packages

We would generally simplify the language used to describe the requirements of an application for a capital grant.

In paragraph (b)(7)(iii), we propose to require that the applicant ''will insure the site to the same extent they would insure a site bought with their own funds.'' We believe that this requirement will help ensure that the applicant takes measures to protect the capital securing VA's grant investment. We would remove the reference to ''vans'' because we address capital grants for vans separately under proposed § 61.18, where we maintain the requirement from the current rule that vans be insured ''to the same extent they would insure a van bought with their own funds.''

In paragraph (b)(7), we propose to require ''[a] statement from the applicant that all of the following are true'', followed by, in paragraphs (b)(7)(i) through (vi), the items that appear in current § 61.11(b)(12). The current regulation requires ''[r]easonable assurances'' that the items are true. We believe that a statement to that effect is sufficient for purposes of the application. This includes, in paragraph (b)(7)(vi), a statement that no more than 25 percent of the grant-awarded beds are occupied by non-veterans. This accurately reflects the statutory requirement that ''not more than 25 percent of the services provided under the project will be provided to individuals who are not veterans.'' 38 U.S.C. 2011(e)(4). A provision to enforce this requirement would be added at § 61.80(r).

Section 61.12 Capital Grant Application Packages—Threshold Requirements

We would revise paragraph (a) to include several specific requirements that must be met at the ''threshold'' stage, or else the application will not be rated under § 61.13. These threshold requirements will help VA eliminate incomplete applications, applications by ineligible entities, and the like, prior to rating such applications. In particular, we would require that the applicant submit a signed Application for Federal Assistance (SF 424) that contains the employer or taxpayer identification number (EIN/TIN) that corresponds to the applicant's Internal

Revenue Service 501(c)(3) or (19) determination letter, noting that for applicants that apply under a group EIN/TIN, the IRS letter must list the applicant as a sub-unit of the parent EIN/TIN. We would require that the applicant provide documentation showing that it is under the parent EIN/TIN. Such documentation could include a copy of the organization directory identifying them as a sub-unit, or other similar types of documents. Including this material will improve our ability to process the application efficiently, and will help avoid any delays related to our need to request this material at a later date.

We would delete current paragraph (c), which requires that the application propose to serve homeless veterans, because it is redundant in light of current paragraph (d) (paragraph (c) in proposed § 61.12), which requires that the activities for which assistance is requested must be eligible for funding under part 61.

We would also redesignate current § 61.12(i) as proposed paragraph (h) and add a new paragraph (i) at the end of the regulation. Proposed paragraph (h) would require that the applicant not have been ''notified by VA as being in default'' as opposed to the current rule, which requires that the applicant ''is not in default.'' By requiring that the applicant not have been notified as being in default, we can eliminate applicants who we suspect of being in default, but who are still going through the final process of determining actual default. Because VA grant funds are limited, permitting applicants suspected of being in default to remain in the applicant pool could seriously jeopardize the overall success of this grant program. Notification of default occurs after a lengthy development process, and we do not believe that we would be appropriately safeguarding the proper use of limited funds if we were to allow a grant to issue to an applicant who was under investigation for default. Proposed paragraph (i)(1) would require that the applicant, during the 5 years preceding the date of the application, not have had more than two grants in development. This will ensure that applicants are not overcommitted to the VA National GPD Program. Proposed paragraphs (i)(2) and (3) would eliminate applicants who have failed to establish up to two previous awarded grant projects or who had a previous grant or per diem project award terminated or transferred to another eligible entity for failure to comply with the terms and conditions of the award. Requiring adherence to these threshold requirements will reduce the risk to the Government and the public, as well as help homeless veterans by increasing the likelihood that grants will be given only to organizations that demonstrate the ability to complete projects and provide quality supportive housing and services.

Section 61.13 Capital Grant Application Packages—Rating Criteria

We propose to revise the rating criteria for capital and non capital grant applications by eliminating the rating for leveraging, cost effectiveness, and innovation; modifying the requirements for need, targeting, ability, and coordination; adding criteria for a completion confidence rating; and adjusting the minimum points necessary to be fundable from 600 cumulative points to 750 cumulative points out of a possible 1000. We note that these rating criteria would also be used to rank special-needs grants. This would reduce the redundancy of current application requirements, provide an improved picture of overall applicant project viability, and emphasize cost matching requirements, thereby providing an increased likelihood of successful project completion and the delivery of quality services to homeless veterans. Rather than offer a score based on leveraged funds, we propose to require applicants to include documentation showing matching funds as part of the application package, but we would not provide any additional score based on that documentation. This would be required under § 61.11(b)(2)(ii). Currently, awardees have 30 days after conditional selection to submit this match documentation. We do not believe that requiring the documentation to be submitted with the application will be an undue burden, and we believe that it will eliminate duplication of the information at both the conditional and final selections.

The remainder of proposed § 61.13 would contain the rating criteria for capital grants, which we would revise to reflect the criteria called for under revisions that we are making to the application for a capital grant. A discussion of the new criteria follows.

In proposed paragraph (b) we would continue to award 300 points based on the project plan; however, we have expanded and revised the items that must be demonstrated in order to receive these 300 points. According to internal reviewers and grant panels, which consist primarily of VA clinicians and VA homeless specialists, the current regulation could better describe to applicants the essential elements of a capital grantee's program, such as addressing nutritional needs of participants, providing a clean and sober environment, etc. We believe that these revised criteria would clarify this information for grantees and would provide a better quality of service and care for our veterans.

Proposed paragraph (c) would lower from 150 to 100 the number of points awarded for outreach, which is called ''targeting'' in the current regulation. We have decreased the number of points because VA has outreach resources available to assist programs with this function. Moreover, programs that have historically been successful are even less likely to require outreach, as they are established and have proven their ability to reach and serve veterans. Therefore, we would take 50 points out of outreach and award them under paragraph (f), which assesses our overall confidence in the program's likelihood of success. Completion confidence, in proposed paragraph (f), would enable us to take into account, for example, whether the applicant has previously failed to perform (e.g., had grant funds revoked), whether we believe that the applicant is overextended or has questionable inspection histories, etc. We note that the criteria under proposed paragraph (c) are identical to those in the current regulation (38 CFR 61.13(c)).

Proposed paragraph (d) would continue to award 200 points based on the applicant's ability to develop and operate a project; however, feedback from our review panels has been that we need more extensive information concerning who will be providing the services to veterans, their qualifications, and what percentage of their time would be dedicated to this activity. The revised criteria are intended to demonstrate that the program's staff will be effective and capable, operationally, of meeting the program's needs. We note that we would no longer require, as required by current § 61.13(d)(9), a showing of fiscal solvency because as a practical matter our application reviewers who score the applications are for the most part clinicians who do not have the expertise to review financial statements. More importantly, we do not believe that this is an essential element to scoring the application. However, we note that under proposed § 61.16, VA would not actually award a grant, irrespective of the score assigned to an application, unless the applicant can demonstrate sufficient funding for the project.

Proposed paragraphs (e) and (g) would be identical to the current regulation at § 61.13(e) and (i).

Finally, we would not include in these proposed rules current § 61.13(f), ''[i]nnovative quality of proposal.'' We think that the proposed paragraph (f),

''[c]ompletion confidence,'' is based on actual performance and the overall content of the proposal. In addition, whether or not a project is innovative may not indicate whether the program will actually succeed. VA is not as concerned with whether a program is similar to existing programs (i.e., whether it is innovative) as we are with whether the program is likely to provide successful outcomes to our veterans.

Section 61.14 Capital Grants—Selection of Grantees

Proposed paragraph (a) is substantively identical to current paragraph (a). We note that the references to conditional selection would refer to the selection of applicants who submitted a complete application package, which would include information about matching funding. The current regulations do not require that such information be submitted at the threshold stage. In this regard, the conditional application process would be different under these new regulations, because this information would already have been submitted during the application stage.

Proposed paragraph (b) would revise the ''tiebreaker'' provisions in current paragraph (b). Under the current rule, ties are broken based on the ''need'' score, but we propose to use the ''coordination'' score as the tiebreaker because our experience in managing this program has shown that programs that are able to coordinate with other programs such as other supportive housing, health care, and social services programs, have more successful outcomes. We would similarly include a tiebreaker provision for per diem applications in proposed § 61.32(b).

In proposed paragraph (c), we would reserve the right to reduce or reject applications that we believe will not be cost effective. It is substantively similar to current § 61.13(h), except that under these proposed rules it would serve as a basis to deny an application rather than as a scoring criterion because although we eliminated this criterion as a rating criterion (because cost-effectiveness should not, in our view, be a primary consideration in determining the overall quality of an application), we continue to believe that cost-effectiveness is a high priority for managing our program. If the program is highly rated but simply cannot be considered economically viable, it would be irresponsible for us to grant the application. More likely, if we believe that it is not necessary to provide the level of grant funds requested in the application, then we believe that we should be able to grant the application but decrease the amount of funding to what we consider a reasonable amount. Thus, authorizing reducing or rejecting the application on this basis will give proper weight to cost-effectiveness.

In proposed paragraph (d), we would describe the mechanisms for the transfer of a grant award when a previously awarded recipient can no longer provide the services and/or housing. This mechanism, which is not present in the current rule, is needed in order to prevent a lapse in services to homeless veterans within a particular geographic area who were served by the prior grant recipient.

Section 61.15 Capital Grants—Obtaining Additional Information and Awarding Capital Grants

In proposed paragraph (a)(1), we restate the requirement that applicants who have been conditionally selected submit ''[a]ny additional information necessary to show that the project is feasible, including a plan from an architect, contractor, or other building professional that provides estimated costs for the proposed design.'' The current version requires that match documentation be submitted at this time, but under these revised regulations, detailed match documentation would be required as part of the initial application package. Therefore, we retain the mention of match documentation in this section but plan to request additional match documentation only when necessary. The rest of § 61.15 would be substantively identical to the current rule.

Section 61.16 Matching Funds for Capital Grants

Proposed paragraph (a) would restate much of current § 61.16. We would attempt to clarify, without substantive change, the percentages of funding that may be provided by VA and the matching funds that must be provided by the grantee.

In proposed paragraph (b), we would restate the last sentence of current § 61.16; however, we would add that ''developer's fees'' are not allowable costs because we have found that such fees are difficult to justify in the vast majority of cases.

Proposed paragraph (c) would specify the documentation required to demonstrate the match. We believe it will be helpful to include the details of what documentation is required to demonstrate compliance with the statutory requirement in 38 U.S.C. 2011(c).

Section 61.17 Site Control for Capital Grants

We would revise paragraph (a) to add that the grantee must establish control or ownership through assignment to the entity whose employer or taxpayer identification number is on the Application for Federal Assistance (SF424). This is necessary to ensure that site control rests with the grantee, i.e., the entity whose employer or taxpayer identification number is on the SF424. Moreover, under paragraph (a)(1) we would allow for alternate assignments, which can be used by non-profit organizations to assign site control to different divisions within their same organization (e.g., a non-profit organization using non-taxable units to hold the property, thereby limiting the liability of the greater organization).

We note that this does not mean that VA will not award grants to non-profit organizations who are working with tax-credit entities. We would permit tax credit entities to use a capital lease to demonstrate site control.

In proposed paragraph (a)(1), we would set forth criteria to grant alternative assignments. The criteria attempt to reduce opportunities to profit through alternative assignments, because our grants are not designed to benefit for-profit entities.

We would also reorganize the current provisions for clarity.

Proposed paragraph (c) would restate the 1-year deadline to establish site control, which is contained in current paragraph (a). We have added that grantees who do not establish control within 1 year may request a reasonable extension, or the grant may be terminated. This reflects current VA National GPD Program practice. In addition, we would clarify that extensions will be authorized if the grantee was not at fault for being unable to exercise site control and the lack of site control does not affect the grantee's ability to complete the project. These are the only reasons that we would deny an extension.

Section 61.18 Capital Grants for Vans

Proposed § 61.18 would set forth in a separate section all current provisions relating to capital grants for vans. Because we would no longer be considering vans as part of the rating criteria for capital grants in general, we would add scoring criteria specific to vans in paragraph (d).

Section 61.19 Transfer of Capital Grants

We propose to add § 61.19, which describes the mechanisms for the

transfer of a grant award when a previously awarded recipient can no longer provide the services and/or housing. This is needed in order to prevent a lapse in services to homeless veterans within a particular geographic area who were served by the prior grant recipient.

Section 61.30 Per Diem—General

We propose to reorganize and clarify the information in the current rule. We would also add that VA may terminate per diem only awards if the funds are not being used for supportive services within 180 days after the date on the notification of award letter.

Section 61.31 Per Diem—Application Packages

Proposed § 61.31 is substantively identical to the current rule, except that we propose not to include current § 61.31(b)(1), which requires that the application justify the need for per diem, because the requirement is unnecessary and redundant in light of the other, more specific application requirements set forth in the rule.

Section 61.32 Per Diem Application Packages—Rating Criteria

Proposed paragraph (a) is essentially the same as current § 61.32(a). In paragraph (b), we would add a tiebreaker provision, as discussed above in the discussion of proposed § 61.14.

Section 61.33 Payment of Per Diem

We propose to simplify the language throughout this section, and eliminate redundancy within the section. For example, current § 61.33(c) states that non-capital-grant recipients must enter into an agreement with VA; however, that requirement is currently reflected in §§ 61.61 and 61.32(c). Similarly, the current rule refers several times to inspection requirements, but these are already established in current § 61.65. We would eliminate these duplications because they are unnecessary and because restating them here might create confusion as to whether, and the extent to which, the other provisions also apply.

Section 61.40 Special Need Grants—General

In proposed § 61.40, we would clarify existing procedures for applying for a special need grant. We would also make the following significant change: Currently, we permit grantees to submit an application for a special need grant only after they have already been granted a capital or non-capital grant. Under the proposed rule, we would authorize awarding special need grants to any eligible entity that can establish that they would target the special need populations identified in this section. We are making this change to increase the pool of applicants to include those entities who are not already grantees.

In accordance with the new application process described in § 61.40 for special need grants, we would cross-reference the rating and substantive requirements in the other sections that also would be applicable to this new procedure and application package. We would eliminate § 61.43, which sets forth rating criteria for special need application packages, because these applications would be scored as capital or non-capital grant applications.

Section 61.41 Special Need Grants—Application Packages and Threshold Requirements

We would combine the substance of current §§ 61.41 and 61.42 into proposed § 61.41, simplify the language of the current rules, and revise the application criteria to conform with proposed § 61.12, which sets forth threshold requirements for capital grant applications. We note that some requirements of proposed § 61.12 are not contained in current § 61.42, such as a requirement that the application be submitted on the correct form. We believe that the threshold requirements in proposed § 61.12 should apply to special need grants applications to provide an appropriate basis for the elimination of applicants who do not meet certain minimum standards, and will contribute to a more efficient application process overall.

Section 61.44 Awarding Special Need Grants and Payment of Special Need Per Diem

Proposed paragraph (a) would simply state the requirement for an executed agreement under § 61.61.

Proposed paragraph (b) would describe the nature of the special need grant—such grants differ from capital and non-capital (Per Diem Only (PDO)) grants because the per diem payment is slightly higher and is based on the program addressing the needs of the targeted populations. The authorizing statute, 38 U.S.C. 2061, does not set forth either a capital grant amount or per diem rate for the purposes of a special need grant. Increased capital grant amounts will be provided as a natural result of the increased building and project costs related to these targeted populations (such as wheelchair ramps, other Americans with Disability Act building requirements, security locks and cameras for women and children, etc.). Special needs non-capital grants may be awarded for up to twice the amount of per diem awarded to non-special-needs grants. We also note that the proposed rule would not require a match for these grants, but would continue to require a match for special needs capital grants.

The amount of the per diem payment would be the lesser of (1) 100 percent of the daily cost of care estimated by the special need recipient for furnishing services to homeless veterans with special need that the special need recipient certifies to be correct, minus any other sources of income; or (2) Two times the current VA State Home Program per diem rate for domiciliary care. Pursuant to 38 U.S.C. 2061(a), VA ''shall carry out a program to make grants to * * * grant and per diem providers in order to encourage development by those * * * providers of programs for homeless veterans with special needs.'' Moreover, in order to adequately incentivize grantees to cater to veterans with special needs, we believe that the rate of per diem must be greater than the rate of per diem paid to a capital grantee who does not provide a program for veterans with special needs. Therefore, we believe that it is consistent with the statute to set forth special rates of per diem for these programs in order to encourage both capital and non-capital grantees to serve the targeted populations. The specific per diem calculation is based on what we believe reflects the amount of increased daily costs related to this specialty care.

Section 61.50 Technical Assistance Grants—General

We would increase the specificity in this regulation to help ensure that we select the most deserving grant recipients, which will further the needs of the overall program. The changes are consistent with current practice and with the purposes of 38 U.S.C. 2064.

The last sentence of paragraph (a) would bar current recipients of any grant under this part (other than a technical assistance grant), or their sub-recipients, from receiving technical assistance grants. Technical assistance grantees learn highly technical information and get one-on-one assistance from VA National GPD Program officials to help them provide accurate information to the potential grant applicants that they provide services to. As such, they are, as a practical matter, an extension of program office staff. Therefore, we believe that it is unfair to allow these grantees to compete against other entities for other grants under this part because there may be a bias perceived

by other applicants in favor of these technical assistance grantees, who, again, have extensive access to VA National GPD Program officials.

Section 61.51 Technical Assistance Grants—Application Packages

We do not propose any substantive changes to current § 61.51. We would delete current § 61.51(b)(1), which requires that the application justify the need for the grant, because the requirement is unnecessary and redundant in light of the other, more specific application requirements set forth in the rule.

Section 61.52 Technical Assistance Grant Application Packages—Threshold Requirements

This section is substantively identical to the current section, except that we would make it a threshold requirement that the applicant must not have been notified by VA that they were in default, whereas the current rule requires only that the applicant not be in default. We would also revise this requirement to cover those rare instances where VA discovers that an applicant may be in default during the application process, but VA has not been able to verify the default, as well as those rare instances where an applicant is technically in default but is unaware of the default and is able to quickly resolve the issue before VA institutes notification procedures. As noted above, VA grant funds are limited and permitting applicants suspected of being in default to remain in the applicant pool could seriously jeopardize the overall success of this grant program. Notification of default occurs after a lengthy development process, and we do not believe that we would be appropriately safeguarding the proper use of limited funds if we were to allow a grant to issue to an applicant who was under investigation for default.

Section 61.53 Technical Assistance Grant Application Packages—Rating Criteria

We propose to add paragraph (c)(6), which would allow VA to use historical documents of past performance both VA and non-VA, including those from other Federal, state and local agencies and audits by private or public entities in scoring applications. This will help us have a better perspective of the applicant's overall past performance, which may serve as an indicator of future performance.

Section 61.54 Awarding Technical Assistance Grants

Much of proposed § 61.54 remains the same as current § 61.54, with the exception of a few significant changes. In proposed paragraph (d), we would change the time period during which VA may make payments for technical assistance from 3 years (with permission to re-apply in response to a Notice of Fund Availability) to ''the period specified in the Notice of Fund Availability.'' We propose this change because we want to be able to establish periods (that will generally be longer than 3 years), based on fund availability.

We would remove current paragraph (e), which states that the amount of a technical assistance grant under this part may not exceed the cost of the estimated cost of the provision of technical assistance. Current paragraph (e) was superfluous because under current and proposed paragraph (d), the amount of the grant will be the estimated total operational cost; therefore, logically, the grant cannot be for more than that amount.

In proposed paragraph (e), which is based on current paragraph (f), we would change, ''VA will not pay for sustenance or lodging under a technical assistance grant'' to ''VA will not pay for sustenance or lodging for the nonprofit community participants or attendees at training conferences offered by technical assistance grant recipients; however, the grantee may use grant funds to recover such expenses.'' The current rule can be read to bar any such payment related to a technical assistance grant activity; however, we did not intend to bar the grantees themselves from recovering these costs. The proposed revision will make this section consistent with our original intent.

Section 61.55 Technical Assistance Reports

We propose to make some non-substantive changes to current § 61.55.

Section 61.61 Agreement and Funding Actions

We would move current § 61.61(c) to paragraph (a), because it applies only to our enforcement of executed agreements. We would also reorganize provisions that appeared in current § 61.61(f), (g) and (i) by moving them to § 61.67(a). They provide that VA may seek recovery where a capital grant recipient fails to provide supportive services and/or supportive housing for the minimum period of operation; VA may obligate any recovered funds without fiscal year limitation; and where a recipient has no control over causes for delays in implementing a project, VA may extend the 3-year period described in current § 61.67(a), as appropriate. These provisions relate to recovery, and not to funding actions, and therefore it makes more organizational sense to locate them in § 61.67, ''Recovery provisions.'' Otherwise, proposed paragraphs (a) through (e) contain the substance of current § 61.61 with some changes for purposes of readability.

Section 61.62 Program Changes

In proposed paragraph (b), we propose to eliminate the $100,000 threshold grant amount for seeking approval of cumulative transfers among direct cost categories that exceed, or are expected to exceed, 10 percent of the approved budget. This is because some of our grantees do not even receive a grant of $100,000. In addition, we believe that by requiring greater oversight we will be able to ensure that the funds awarded are used for the purpose for which the grant was made and that we are aware of all changes between direct cost categories.

We propose to add a new paragraph (f) that would require recipients to inform VA ''in writing of any key position and address changes in/of their organization within 30 days of the change, i.e., new executive director or chief financial officer, permanent change of address for corporate communications.'' This requirement will help ensure that we are aware of necessary contact information.

Section 61.63 Procedural Error

We propose to eliminate the requirement that when ''an application would have been selected but for a procedural error committed by VA, VA will select that application for potential funding when sufficient funds become available if there is no material change in the information that resulted in its selection.'' Instead, we propose to reconsider such an application in the next funding round, if there has not been any material change in the information that resulted in its selection. Notwithstanding that this provision addresses VA's own procedural errors, we do not believe it is appropriate to require VA to select the overlooked applicant at the expense of another, better qualified applicant who may apply in the next funding round. Such a requirement could be to the detriment of the homeless veterans serviced by the project.

Section 61.64 Religious Organizations

We propose to make some non-substantive changes to current § 61.64.

Section 61.65 Inspections

This section is substantively identical to current § 61.65, except that we would clarify that inspections necessary to determine compliance with this part include compliance with the terms of the grant agreement. This clarification reflects our original intent in promulgating this proposed rule. It is important to verify compliance with the terms of the agreement, which may contain specifics verifiable upon inspection.

Section 61.66 Financial Management

We propose to revise this section to specifically reference the CFR provisions which codify the requirement for use of accounting procedures set forth by the Office of Management and Budget Given that these procedures are codified in regulation VA grantees have already been subject to them, but placing them in this Part highlights their applicability to GPD grantees.

Section 61.67 Recovery Provisions

In proposed paragraph (b), we have revised the chart showing the grant amount/years in operation calculation necessary to apply the formula described in paragraph (b). We would revise the chart by extending the period of operation from 7 to 20 to 20 to 40 years, and by changing the grant amount relating to periods of years within that proposed 20 to 40-year period. We did this to better reflect industry standards for both accounting and real estate methodologies for calculating depreciation and asset worth.

Proposed paragraph (c) clarifies that capital grantees are subject to real property disposition as required by 38 CFR 49.32 when the grantee no longer is providing services through a grant awarded under this part. This is a separate legal requirement that has always applied to grants under this part; we add it only to provide notice to grantees.

Section 61.80 General Operation Requirements for Supportive Housing and Service Centers

In proposed paragraph (a), we would require a sprinkler system unless a facility is specifically exempted under the Life Safety Code. This provision is to help ensure the safety of our veterans. We also removed language that appears in the current rule concerning the timing of compliance with the Life Safety Code because the deadline for compliance was in 2006. Thus, that language is outdated.

We have added an explanation of the requirements for a clean and sober environment. These requirements are intended to ensure that illegal drug use and/or alcohol use do not prevent participants from peacefully enjoying the supportive housing or services provided by the grantee. These requirements are consistent with the clean and sober policies established in the regulations governing Housing and Urban Development at 24 CFR 5.855 *et seq.*

We propose to revise paragraph (c) to require a quarterly technical performance report that must include information that will help VA assess whether the recipient is performing adequately. We specify that such report ''must be filed once during each quarter and no later than January 30, April 30, July 30, and October 30.''

We would also add provisions reflecting performance measures set forth in the grant application. These are found in paragraphs (m) through (q).

Section 61.81 Outreach Activities

We propose to make some non-substantive changes to current § 61.81.

Section 61.82 Participant Fees for Supportive Housing

We propose to revise the section header from ''Resident rent for supportive housing'' to ''Participant fees for supportive housing.'' We also propose to specifically describe the requirements regarding the charge and use of such fees. We propose not to discuss rent, as we do in the current rule, because of the significant variation in the definitions of rents between localities. We believe that the proposed language will allow VA to operate the program in a more flexible, locally appropriate manner.

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'' requiring 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 the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has determined that it is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in 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 proposed rule would have no such effect on state, local, or tribal governments, or on the private sector.

Paperwork Reduction Act

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.

The proposed rule at §§ 61.11, 61.12, 61.15, 61.17, 61.31, 61.41, 61.51, 61.55, 61.62 and 61.80 contains collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Accordingly, under § 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

Collections at §§ 61.11, 61.12, 61.15, 61.17, 61.31, 61.41, 61.51, and 61.55 have been previously approved under OMB 2900–0554 (Homeless Providers Grant and Per Diem Program). Collections at §§ 61.62 and 61.80 are

new. We are seeking an approval of the information collection on a non-emergency basis. Accordingly, we are also requesting comments on the collection of information provisions contained in §§ 61.62 and 61.80 on a non-emergency basis. Comments must be submitted by April 30, 2012.

Comments on the collections of information 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 mailed or hand-delivered to: Director, Office of Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1063B, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AN81.''

Title: VA Homeless Providers Grant and Per Diem Program.

Summary of collection of information: The proposed rule at §§ 61.11, 61.12, 61.15, 61.17, 61.31, 61.41, 61.51, 61.55, 61.62 and 61.80 contains application provisions for capital grants, per diem, special need payment, program changes, and program performance. Collections at §§ 61.11, 61.12, 61.15, 61.31, 61.41, and 61.55 have been previously approved under OMB 2900–0554. Collections at §§ 61.62 and 61.80 are new. However, they may be in any acceptable business format and should not be a burden upon grant recipients as they already collect this information.

Application provisions for capital grants and per diem and special need payment.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for capital grants and per diem and special need payment.

Description of likely respondents: Public or nonprofit private entities requesting a capital grant.

Estimated number of respondents per year: 200.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 7,000 hours.

Estimated annual burden per collection: 35 hours.

Application provisions for per diem for non-capital grant recipients.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for per diem.

Description of likely respondents: Public or nonprofit private entities requesting per diem.

Estimated number of respondents per year: 250.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 35 hours.

Estimated annual burden per collection: 8,750 hours.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the 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 responses 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.

OMB is required to make a decision concerning the collections of information contained in this 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.

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 *et seq.* This proposed rule would only impact those entities that choose to participate in the VA Homeless Providers Grant and Per Diem Program. Small entity applicants would not be affected to a greater extent than large entity applicants. Small entities must elect to participate, and it is considered a benefit to those who choose to apply. To the extent this proposed rule would have any impact on small entities, it would not have an impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 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 approved this document on February 23, 2012, for publication.

List of Subjects in 38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: February 24, 2012.

William F. Russo,

Deputy Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 61 as follows:

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

1. The authority citation for part 61 is revised to read as follows:

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2061, 2064.

2. Part 61 is revised to read as follows:

Sec.

General Provisions

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Capital Grants

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61.41 Special need grants—application packages and threshold requirements.
61.44 Awarding special need grants and payment of special need per diem.

Technical Assistance Grants

61.50 Technical assistance grants—general.
61.51 Technical assistance grants—application packages.
61.52 Technical assistance grant application packages—threshold requirements.
61.53 Technical assistance grant application packages—rating criteria.
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Awards, Monitoring, and Enforcement of Agreements

61.61 Agreement and funding actions.
61.62 Program changes.
61.63 Procedural error.
61.64 Religious organizations.
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61.66 Financial management.
61.67 Recovery provisions.
61.80 General operation requirements for supportive housing and service centers.
61.81 Outreach activities.
61.82 Participant fees for supportive housing.

General Provisions

§ 61.0 Purpose.

This part implements the VA Homeless Providers Grant and Per Diem Program which consists of the following components: capital grants, per diem, special need capital and non-capital grants, and technical assistance grants.

(Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2061, 2064)

§ 61.1 Definitions.

For purposes of this part:

Area or community means a political subdivision or contiguous political subdivisions (such as a precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans.

Capital grant means a grant for construction, renovation, or acquisition of a facility, or a grant for acquisition of a van.

Capital lease is defined by § 61.4.

Chronically mentally ill means a condition of schizophrenia or major affective disorder (including bipolar disorder) or post-traumatic stress disorder (PTSD), based on a diagnosis from a licensed mental health professional, with at least one documented hospitalization for this condition sometime in the last 2 years or with documentation of a formal assessment on a standardized scale of any serious symptomatology or serious impairment in the areas of work, family relations, thinking, or mood.

Default means a determination by VA that an awardee has materially failed to comply with the terms and conditions of an award.

Fixed site means a physical structure that under normal conditions is not capable of readily being moved from one location to another location.

Frail elderly means 65 years of age or older with one or more chronic health problems and limitations in performing one or more activities of daily living (such as bathing, toileting, transferring from bed to chair, etc.).

Homeless has the meaning given that term in section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)).

New construction means building a structure where none existed, or building an addition to an existing structure that increases the floor area by more than 100 percent.

Nonprofit organization means a private organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must be recognized as a section 501(c)(3) or 501(c)(19) nonprofit organization by the United States Internal Revenue Service, and meet all of the following criteria:

(1) Have a voluntary board;

(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity to maintain such a functioning accounting system; and

(3) Practice nondiscrimination in the provision of supportive housing and supportive services assistance.

Notice of Fund Availability (NOFA) means a notice published in the **Federal Register** in accordance with § 61.60.

Operating costs means expenses incurred in operating supportive housing, supportive services or service centers with respect to:

(1) Administration (including staff salaries; costs associated with accounting for the use of grant funds, preparing reports for submission to VA, obtaining program audits, and securing accreditation; and similar costs related to administering the grant after the award), maintenance, repair and security for the supportive housing;

(2) Van costs or building rent (except under capital leases), e.g., fuel, insurance, utilities, furnishings, and equipment;

(3) Conducting on-going assessments of supportive services provided for and needed by participants and the availability of such services; and

(4) Other costs associated with operating the supportive housing.

Operational means a program for which all VA inspection requirements under this part have been met and an activation document has been issued by the VA National GPD Program.

Outpatient health services means outpatient health care, outpatient mental health services, outpatient alcohol and/or substance abuse services, and case management.

Participant means a person receiving services based on a grant or per diem provided under this part.

Participant agreement means any written or implied agreement between a grant recipient agency and a program participant that outlines the requirements for program compliance, participant or service delivery.

Project means all activities that define the parameters of the purpose of the grant.

Public entity means any of the following:

(1) A county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government; or

(2) The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in § 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by the Bureau of Indian Affairs.

Recipient means the entity whose employer or taxpayer identification number is on the Application for Federal Assistance (SF 424) and is consequently responsible to comply with all terms and conditions of the award. For the purpose of this part the terms ''grantee'', ''recipient'', and ''awardee'' are synonymous and interchangeable.

Rehabilitation means the improvement or repair of an existing

structure. Rehabilitation does not include minor or routine repairs.

State means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Supportive housing means housing with supportive services provided for homeless veterans that:

(1) Is not shelter care, other emergent housing, or housing designed to be permanent or long term (more than 24 months), with no requirement to move; and

(2) Is designed to either:

(i) Facilitate the movement of homeless veterans to permanent housing within a period that is not less than 90 days and does not exceed 24 months, subject to § 61.80; or

(ii) Provide specific medical treatment such as detoxification, respite, or hospice treatments that are used as step-up or step-down programs within that specific project's continuum.

Supportive services has the meaning assigned to it under § 61.2.

Terminally ill means a prognosis of 9 months or less to live, based on a written medical diagnosis from a physician.

Total project cost means the sum of all costs incurred by a recipient for the acquisition, rehabilitation, and new construction of a facility, or van(s), identified in a grant application.

VA means the Department of Veterans Affairs.

VA National GPD Program refers to the VA Homeless Providers Grant and Per Diem Program.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064)

§ 61.2 Supportive services—general.

(a) Recipients must design supportive services. Such services must provide appropriate assistance, or aid participants in obtaining appropriate assistance, to address the needs of homeless veterans. The following are examples of supportive services:

(1) Outreach activities;

(2) Providing food, nutritional advice, counseling, health care, mental health treatment, alcohol and other substance abuse services, case management services;

(3) Establishing and operating child care services for dependents of homeless veterans;

(4) Providing supervision and security arrangements necessary for the protection of residents of supportive housing and for homeless veterans using supportive housing or services;

(5) Assistance in obtaining permanent housing;

(6) Education, employment counseling and assistance, and job training;

(7) Assistance in obtaining other Federal, State and local assistance available for such residents including mental health benefits, employment counseling and assistance, veterans' benefits, medical assistance, and income support assistance; and

(8) Providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living.

(b) Supportive services do not include inpatient acute hospital care.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

§ 61.3 Notice of Fund Availability.

When funds are made available for a grant or per diem award under this part, VA will publish a Notice of Fund Availability in the **Federal Register**. The notice will:

(a) Give the location for obtaining application packages;

(b) Specify the date, time, and place for submitting completed applications;

(c) State the estimated amount and type of funding available; and

(d) State any priorities for or exclusions from funding to meet the statutory mandate of 38 U.S.C. 2011, to ensure that awards do not result in the duplication of ongoing services and to reflect the maximum extent practicable appropriate geographic dispersion and an appropriate balance between urban and nonurban locations.

(e) Provide other information necessary for the application process, such as the grant period, where applicable.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

§ 61.4 Definition of capital lease.

A capital lease, for purposes of this part, means a conditional sales contract that either:

(a) Will be in effect for all of the period of recovery listed in § 61.67(b); or

(b) That satisfies one of the following criteria:

(1) The lease transfers ownership to the lessee at the expiration of the lease term.

(2) The lease contains a bargain purchase option.

(3) The present value of lease payments that are applied to the purchase are equal to or greater than 90 percent of the fair market value of the asset.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

Capital Grants

§ 61.10 Capital grants—general.

(a) Subject to the availability of appropriations provided for such purpose, VA will provide capital grants to public or nonprofit private entities so they can assist homeless veterans by helping to ensure the availability of supportive housing and service centers to furnish outreach, rehabilitative services, and vocational counseling and training. Specifically, VA provides capital grants for up to 65 percent of the cost to:

(1) Construct structures and purchase the underlying land to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers;

(2) Acquire structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers; and

(3) Renovate existing structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers.

(4) Procure a van in accordance with § 61.18 Capital grants for vans.

(b) Capital grants may not be used for acquiring buildings located on VA-owned property. However, capital grants may be awarded for construction, expansion, or renovation of buildings located on VA-owned property.

(Authority: 38 U.S.C. 501, 2011)

§ 61.11 Capital grants—application packages.

(a) *General.* To apply for a capital grant, an applicant must obtain from, complete, and submit to VA a capital grant application package within the time period established in the Notice of Fund Availability.

(b) *Content of application.* The capital grant application package will require the following:

(1) Site description, site design, and site cost estimates.

(2) Documentation supporting:

(i) Eligibility to receive a capital grant under this part;

(ii) Matching funds committed to the project;

(iii) A proposed operating budget and cost sharing;

(iv) Supportive services committed to the project;

(v) The applicant's authority to control the site and meet appropriate zoning laws; and

(vi) The boundaries of the area or community that would be served.

(3) If capital grant funds would be used for acquisition or rehabilitation, documentation demonstrating that the costs associated with acquisition or rehabilitation are less than the costs associated with new construction.

(4) If capital grant funds would be used for new construction, documentation demonstrating that the costs associated with new construction are less than the costs associated with rehabilitation of an existing building, that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction, and that new construction is less costly than acquisition of an existing building (for purposes of this cost comparison, costs associated with rehabilitation or new construction may include the cost of real property acquisition).

(5) If proposed construction includes demolition:

(i) A demolition plan that describes the extent and cost of existing site features to be removed, stored, or relocated; and

(ii) Information establishing that the proposed construction is either in the same location as the building to be demolished or that the demolition is inextricably linked to the design of the construction project. Without such information, the cost of demolition cannot be included in the cost of construction.

(6) If the applicant is a state, comments or recommendations by appropriate state (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197).

(7) A statement from the applicant that all of the following are true:

(i) The project will furnish to veterans the level of care for which such application is made, and services provided will meet the requirements of this part.

(ii) The applicant will continue to operate the project until the expiration of the period during which VA could seek full recovery under § 61.67.

(iii) Title to the site will vest solely in the applicant and the applicant will insure the site to the same extent they would insure a site bought with their own funds.

(iv) Adequate financial support will be available for the completion of the project.

(v) The applicant will keep records and submit reports as VA may reasonably require, within the time frames required, and, upon demand, allow VA access to the records upon which such information is based.

(vi) The applicant will state that no more than 25 percent of the grant-awarded beds are occupied by non-veterans.

(c) *Multiple capital grant applications.* Subject to § 61.12(i), applicants may apply for more than one capital grant.

(Authority: 38 U.S.C. 501, 2011)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

§ 61.12 Capital grant application packages—threshold requirements.

The following threshold requirements for a capital grant application must be met, or the application will be rejected before being rated under § 61.13:

(a) The application package must meet all of the following criteria:

(1) Be on the correct application form.

(2) Be completed in all parts, including all information requested in the Notice of Fund Availability and application package.

(3) Include a signed Application for Federal Assistance (SF 424) that contains the Employer Identification Number or Taxpayer Identification Number (EIN/TIN) that corresponds to the applicant's Internal Revenue Service (IRS) 501(c)(3) or (19) determination letter. All applicants must provide such an IRS determination letter, which includes their EIN/TIN. Applicants that apply under a group EIN/TIN, must be identified by the parent EIN/TIN as a member or sub-unit of the parent EIN/TIN, and provide supporting documentation.

(4) Be submitted before the deadline established in the Notice of Fund Availability.

(b) The applicant must be a public or nonprofit private entity at the time of application.

(c) The activities for which assistance is requested must be eligible for funding under this part.

(d) The applicant must demonstrate that adequate financial support will be available to carry out the project for which the capital grant is sought, consistent with the plans, specifications, and schedule submitted by the applicant.

(e) The application must demonstrate compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

(f) The applicant must agree to comply with the requirements of this part and demonstrate the capacity to do so.

(g) The applicant must not have an outstanding obligation to VA that is in arrears, or have an overdue or unsatisfactory response to an audit.

(h) The applicant must not have been notified by VA as being in default.

(i) The applicant, during the 5 years preceding the date of the application, must not have done any of the following:

(1) Had more than two grants awarded under this part that remain in development;

(2) Failed to establish two previous awarded grant projects under this part; or

(3) Had a previous grant or per diem project awarded under this part terminated or transferred to another eligible entity for failure to comply with the terms and conditions of the award.

(Authority: 38 U.S.C. 501, 2011)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

§ 61.13 Capital grant application packages—rating criteria.

(a) *General.* Applicants that meet the threshold requirements in § 61.12 will be rated using the selection criteria listed in this section. To be eligible for a capital grant, an applicant must receive at least 750 points (out of a possible 1000) and must receive points under each of the following paragraphs (b), (c), (d), (e) (f) and (g) of this section.

(b) *Project Plan.* VA will award up to 300 points based on the demonstration and quality of the following:

(1) The selection of the proposed housing in light of the population to be served.

(2) The process used for deciding which veterans are appropriate for admission.

(3) How, when, and by whom the progress of participants toward meeting their individual goals will be monitored, evaluated, and documented.

(4) The role program participants will have in operating and maintaining the housing.

(5) The responsibilities the applicant, sponsors, or contractors will have in operating and maintaining the housing.

(6) The supportive services that will be provided and by whom to help participants achieve residential stability, increase skill level and/or income, and become involved in making life decisions that will increase self-determination.

(7) The measureable objectives that will be used to determine success of the supportive services.

(8) How the success of the program will be evaluated on an ongoing basis.

(9) How the nutritional needs of veterans will be met.

(10) How the agency will ensure a clean and sober environment.

(11) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities, and services.

(12) How the proposed project will be implemented in a timely fashion.

(13) How permanent affordable housing will be identified and made known to participants upon leaving the supportive housing.

(14) How participants will be provided necessary follow-up services.

(15) The description of program policies regarding participant agreements, rent, and fees.

(c) *Outreach to persons on streets and in shelters.* VA will award up to 100 points based on:

(1) The agency's outreach plan to serve homeless veterans living in places not ordinarily meant for human habitation (e.g., streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and

(2) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.

(d) *Ability of applicant to develop and operate a project.* VA will award up to 200 points based on the extent to which the application demonstrates the necessary staff and organizational experience to complete and operate the proposed project, based on the following:

(1) Staffing plan for the project that reflects the appropriate professional staff, both administrative and clinical;

(2) Experience of staff, if staff not yet hired, position descriptions and expectations of time to hire;

(3) Amount of time each staff position is dedicated to the project, and in what capacity;

(4) Applicant's previous experience assessing and providing for the housing needs of homeless veterans;

(5) Applicant's previous experience assessing and providing supportive services for homeless veterans;

(6) Applicant's previous experience assessing supportive service resources and entitlement benefits;

(7) Applicant's previous experience with evaluating the progress of both individual participants and overall program effectiveness using quality and performance data to make changes;

(8) Applicant's previous experience operating housing for homeless individuals;

(9) Overall agency organizational overview (org. chart); and

(10) Historical documentation of past performance both with VA and non-VA projects, including those from other Federal, state and local agencies and audits by private or public entities.

(e) *Need.* VA will award up to 150 points based on the extent to which the applicant demonstrates:

(1) Substantial unmet needs, particularly among the target population living in places not ordinarily meant for human habitation such as the streets, emergency shelters, based on reliable data from surveys of homeless populations or other reports or data gathering mechanisms that directly support claims made; and

(2) An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(f) *Completion confidence.* VA will award up to 50 points based on the review panel's confidence that the applicant has effectively demonstrated the supportive housing or service center project will be completed as described in the application. VA may use historical program documents of past performance both VA and non-VA, including those from other Federal, state and local agencies as well as audits by private or public entities in determining confidence scores.

(g) *Coordination with other programs.* VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, state, local, private and other entities serving homeless persons in the planning and operation of the project. Such entities may include shelter transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other program providers relevant to the needs of homeless veterans in the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and/or VA Regional Office of jurisdiction in their area. VA will award up to 50 points of the 200 points based on the extent to which commitments to provide supportive services are documented at the time of application. Up to 150 points of the 200 points will be given to the extent applicants demonstrate that:

(1) They are part of an ongoing community-wide planning process within the framework described above which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans;

(2) They have consulted directly with the closest VA Medical Center and other providers within the framework described above regarding coordination of services for project participants; and

(3) They have coordinated with the closest VA Medical Center their plan to assure access to health care, case management, and other care services.

(Authority: 38 U.S.C. 501, 2011)

§ 61.14 Capital grants—selection of grantees.

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a capital grant in accordance with their ranked order, as determined under § 61.13. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.13(g) to determine the ranking. If the score from § 61.13(g) is also tied, VA will use the score from § 61.13(d) to determine the ranking.

(c) VA may reject an application where the project is not cost effective based on the cost and number of new supportive housing beds made available—or based on the cost, amount, and types of supportive services made available—when compared to other supportive housing or services projects, and when adjusted for high cost areas. For those applications that VA believes not to be cost-effective VA will:

(1) Reduce the award; or

(2) Not select the application for funding.

(d) In the case of a previously awarded project that can no longer provide services and or housing and the recipient agency has decided to withdraw or the project has been terminated for failure to comply with the terms and conditions of the award; VA may transfer a capital grant or non-capital grant to another eligible entity in the same geographical area without competition, in order to prevent a loss of capacity of services and housing to

homeless veterans. The new entity must meet all of the requirements to which the original grantee was subject. In the case of a capital grant transfer the new grantee will only be entitled to the funding that remains from the original capital obligation and remains responsible for all commitments made by the original grantee.

(Authority: 38 U.S.C. 501, 2011)

§ 61.15 Capital grants—obtaining additional information and awarding capital grants.

(a) Each applicant who has been conditionally selected for a capital grant will be requested by VA to submit additional documentation or information as necessary, including:

(1) Any additional information necessary to show that the project is feasible, including a plan from an architect, contractor, or other building professional that provides estimated costs for the proposed design;

(2) Documentation showing the sources of funding for the project and firm financing commitments for the matching requirements described in § 61.16;

(3) Documentation establishing site control described in § 61.17;

(4) Documentation establishing compliance with the National Historic Preservation Act (16 U.S.C. 470);

(5) Information necessary for VA to ensure compliance both with Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act Accessibility Guidelines;

(6) Documentation establishing compliance with local and state zoning codes;

(7) Documentation in the form of one set of design development (35 percent completion) drawings demonstrating compliance with local codes, state codes, and the current Life Safety Code of the National Fire Protection Association;

(8) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);

(9) A site survey performed by a licensed land surveyor; and

(10) Such other documentation as specified by VA in writing or verbally to the applicant to confirm or clarify information provided in the application.

(b) Items requested under paragraph (a) of this section must be received by VA in acceptable form within the time frame established in accordance with the Notice of Fund Availability.

(c) Following receipt of the additional information in acceptable form, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 and other applicable provisions of this part.

(Authority: 38 U.S.C. 501, 2011)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

§ 61.16 Matching funds for capital grants.

(a) VA cannot award a capital grant for more than 65 percent of the total allowable costs of the project. The grantee must provide funding (''matching funding'') for the remaining 35 percent of the total cost, using non-federal funds. VA requires that applicants provide documentation of all costs related to the project including those that are not allowable under OMB Circular A–122 as codified at 2 CFR part 230. Allowable costs means those related to the portion (percentage) of the property that would be used to provide supportive housing and services under this part.

(b) Capital grants may include application costs, including site surveys, architectural, and engineering fees, but may not include relocation costs or developer's fees.

(c) *Documentation of matching funds.* The matching funds described in paragraph (a) of this section must be documented as follows; no other format will be accepted as evidence of a firm commitment of matching funds:

(1) Donations must be on the donor's letterhead, signed and dated.

(2) The applicant's own cash must be committed on the applicant's letterhead, signed, and dated.

(3) No conditions may be placed on the matching funds other than the organization's receipt of the capital grant.

(4) Funds must be committed to the same activity as the capital grant application (i.e., acquisition, renovation, new construction, or a van), and must not relate to operating costs or services.

(5) The value of matching funds must be for a cost that is included in the calculation of the total project cost, thereby decreasing the total expenditures of the grantee.

(d) *Van applications.* The requirements of this section also apply to applications for a capital grant for a van under § 61.18.

(Authority: 38 U.S.C. 501, 2011)

§ 61.17 Site control for capital grants.

(a) In order to receive a capital grant for supportive housing or a fixed site service center, an applicant must demonstrate site control. Site control must be demonstrated through a deed or an executed contract of sale, or a capital lease, which assigns control or ownership to the entity whose Federal employer or taxpayer identification number is on the Application for Federal Assistance (SF424), unless one of the following apply:

(1) VA gives written permission for an alternate assignment. VA will permit alternate assignments except when:

(i) The alternate assignment is to a for-profit entity which is neither controlled by the applicant or by the applicant's parent organization or the entity is controlled by the applicant's parent organization which is a for-profit entity; or

(ii) VA has a reasonable concern that the assignment may provide an economic or monetary benefit to the assignee other than the benefit that would have inured to the applicant had the applicant not made the alternate assignment.

(2) The site is in a building or on land owned by VA, and the applicant has an agreement with VA for site control.

(b) A capital grant recipient may change the site to a new site meeting the requirements of this part subject to VA approval under § 61.62. However, the recipient is responsible for and must demonstrate ability to provide for any additional costs resulting from the change in site.

(c) If site control is not demonstrated within 1 year after execution of an agreement under § 61.61, the grantee may request a reasonable extension from the VA national GPD office, or the grant may be terminated. VA will authorize an extension request if the grantee was not at fault for being unable to exercise site control and the lack of site control does not affect the grantee's ability to complete the project.

(Authority: 38 U.S.C. 501, 2011)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

§ 61.18 Capital grants for vans.

(a) *General.* A capital grant may be used to procure one or more vans, as stated in a NOFA, to provide transportation or outreach for the purpose of providing supportive services. The grant may cover the purchase price, sales taxes, and title and licensing fees. Title to the van must vest solely in the applicant, and the applicant must insure the van to the same extent they would insure a van bought with their own funds.

(b) *Who can apply for a van.* VA will only award vans to applicants who currently have an operational grant under this part, or in conjunction with a new application.

(c) *Application packages for van(s).* In order to receive a van, the application must demonstrate the following:

(1) Clear need for the van(s);

(2) Specific use of the van(s);

(3) Frequency of use of the van(s);

(4) Qualifications of the van driver(s);

(5) Training of the van driver(s);

(6) Type of van(s) to be obtained; and

(7) Adequate financial support will be available for the completion of the project or for the purchase and maintenance, repair, and operation of the van(s).

(d) *Rating criteria.* Applications will be scored using the selection criteria listed in this section. To be eligible for a van grant, an applicant must receive at least 80 points (out of a possible 100) of this section.

(1) *Need.* VA will award up to 60 points based on the extent to which the applicant demonstrates a substantial unmet need for transportation due to:

(i) Lack of alternative public transportation,

(ii) Project location,

(iii) Expired life use of current van, or

(iv) Special disabled individual transportation.

(2) *Activity.* VA will award up to 20 points based on the extent to which the applicant demonstrates:

(i) Frequency of use,

(ii) Type of use, and

(iii) Type of van, e.g., whether there is a justification for a van with a wheelchair lift or other modifications.

(3) *Operator Qualification.* VA will award up to 20 points based on the extent to which the applicant demonstrates a job description for the van operator that details:

(i) Requirements of the position, and

(ii) Training that will be provided to the driver.

(Authority: 38 U.S.C. 501, 2011)

§ 61.19 Transfer of capital grants.

In the case of a previously awarded project that can no longer provide services and or housing and the recipient agency has decided to withdraw or the project has been terminated for failure to comply with the terms and conditions of the award; VA may transfer a capital grant or non-capital grant to another eligible entity in the same geographical area without competition, in order to prevent a loss of capacity of services and housing to homeless veterans. The new entity must meet all of the requirements to which the original grantee was subject. In the case of a capital grant transfer the new grantee will only be entitled to the funding that remains from the original capital obligation and remains responsible for all commitments made by the original grantee.

(Authority: 38 U.S.C. 501, 2011)

Per Diem Payments

§ 61.30 Per diem—general.

(a) *General.* VA may provide per diem funds to offset operating costs for a program of supportive housing or services. VA may provide:

(1) Per diem funds to capital grant recipients; or

(2) Per diem only (PDO) funds to entities eligible to receive a capital grant, if the entity established a program of supportive housing or services after November 10, 1992.

(b) *Capital grant recipients.* Capital grant recipients may request per diem funds after completion of a project funded by a capital grant and a site inspection under § 61.80 to ensure that the grantee is capable of providing supportive services.

(c) *Per diem only applicants.* PDO awards to entities eligible to receive a capital grant must provide supportive housing or services to the homeless veteran population within 180 days after the date on the notification of award letter, or VA will terminate the PDO payments.

(Authority: 38 U.S.C. 501, 2012)

§ 61.31 Per diem—application packages.

(a) *Capital grant recipient.* To apply for per diem, a capital grant recipient need only indicate the intent to receive per diem on the capital grant application or may separately request per diem by submitting to VA a written statement requesting per diem.

(b) *Non-capital-grant recipient (per diem only).* To apply for per diem only, a non-capital grant applicant must obtain from VA a non-capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability. The application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Documentation on eligibility to receive per diem under this part;

(2) Documentation on operating budget and cost sharing;

(3) Documentation on supportive services committed to the project;

(4) Comments or recommendations by appropriate state (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a state; and

(5) Reasonable assurances with respect to receipt of per diem under this part that:

(i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be non-veterans; and that such services will meet the requirements of this part;

(ii) Adequate financial support will be available for the per diem program; and

(iii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(Authority: 38 U.S.C. 501, 2012)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

§ 61.32 Per diem application packages—rating criteria.

(a) *Conditional selection.* Application packages for per diem only (i.e., from non-capital grant applicants) in response to a Notice of Fund Availability (NOFA) will be reviewed and grouped in categories according to the funding priorities set forth in the NOFA, if any. Such applications will then be ranked within their respective funding category according to scores achieved only if the applicant scores at least 750 cumulative points out of a possible 1000 from each of the following paragraphs: (b), (c), (d), (e), (f), and (g) of § 61.13. The highest-ranked applications for which funding is available, within highest funding priority category if applicable, will be conditionally selected for eligibility to receive per diem payments or special need payment in accordance with their ranked order. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding. Conditionally selectees will be subsequently awarded per diem, if they otherwise meet the requirements of this part, including passing the inspection required by § 61.80.

(b) *Ranking applications.* In the event of a tie between applicants, VA will use the score from § 61.13(g) to determine the ranking. Note: Capital grant recipients are not required to be ranked; however, continuation of per diem payments to capital grant recipients will be subject to limitations set forth in § 61.33.

(c) *Executing per diem agreements.* VA will execute per diem agreements with an applicant whose per diem application was conditionally selected

under this section using the same procedures applicable to a capital grant under § 61.15.

(Authority: 38 U.S.C. 501, 2012)

§ 61.33 Payment of per diem.

(a) *General.* VA will pay per diem to the recipient for those homeless veterans:

(1) Who VA referred to the recipient; or

(2) For whom VA authorized the provision of supportive housing or supportive service.

(b) *Rate of payments for individual veterans.* The rate of per diem for each veteran in supportive housing shall be the lesser of:

(1) The daily cost of care estimated by the per diem recipient minus other sources of payments to the per diem recipient for furnishing services to homeless veterans that the per diem recipient certifies to be correct (other sources include payments and grants from other departments and agencies of the United States, from departments of local and State governments, from private entities or organizations, and from program participants); or

(2) The current VA state home program per diem rate for domiciliary care, as set by the Secretary under title 38 U.S.C. 1741(a)(1).

(c) *Rate of payments for service centers.* The per diem amount for service centers shall be ⅛ of the lesser of the amount in paragraph (b)(1) or (b)(2) of this section, per hour, not to exceed 8 hours in any day.

(d) *Continuing payments.* Recipients may continue to receive per diem only so long as funding is available, they continue to provide the supportive services described in their application, and they continue to meet the applicable ongoing requirements of this part. For non-capital grant recipients of per diem only, funds will be paid to the highest-ranked applicants, within the highest-funding priority category if applicable, in descending order until funds are expended. Generally, payments will continue for the time frame specified in the Notice of Fund Availability. When necessary due to funding limitations, VA will reduce the rate of per diem.

(e) *Retroactive payments.* Per diem may be paid retroactively for services provided not more than 3 days before VA approval is given or where, through no fault of the recipient, per diem payments should have been made but were not made.

(f) *Payments for absent veterans.* VA will pay per diem for up to, and not more than, 72 consecutive hours (scheduled or unscheduled) of absence.

(g) *Supportive housing limitation.* VA will not pay per diem for supportive housing for any homeless veteran who has had three or more episodes (admission and discharge for each episode) of supportive housing services paid for under this part. VA may waive this limitation if the services offered are different from those previously provided and may lead to a successful outcome.

(h) *Veterans receiving supportive housing and services.* VA will not pay per diem for both supportive housing and supportive services provided to the same veteran by the same per diem recipient.

(i) At the time of receipt, a per diem recipient must report to VA all other sources of income for the project for which per diem was awarded. The report provides a basis for adjustments to the per diem payment under paragraph (b)(1) of this section.

(Authority: 38 U.S.C. 501, 2012)

Special Need Grants

§ 61.40 Special need grants—general.

(a) VA provides special need grants to public or nonprofit private entities that will create or provide supportive housing and services, which they would not otherwise create or provide, for the following special need homeless veteran populations:

(1) Women, including women who have care of minor dependents;

(2) Frail elderly;

(3) Terminally ill; or

(4) Chronically mentally ill.

(b) Applicants must submit an application package for a capital or non-capital grant, which will be processed by the VA National GPD Program in accordance with this part; however, to be eligible for a capital special need grant, an applicant must receive at least 800 points (out of a possible 1000) and must receive points under in each of the following paragraphs: (b), (c), (d), (e), (f), and (g) of § 61.13. Non-capital special need grants are rated in the same manner as non-capital grant applications under § 61.32.

(c) The following sections apply to special need grants: §§ 61.61 through 61.67, § 61.80, and § 61.82.

(Authority: 38 U.S.C. 501, 2061)

§ 61.41 Special need grants—application packages and threshold requirements.

(a) *Applications.* To apply for a special need grant, an applicant must obtain, complete, and submit to VA a special need capital grant or special need per diem only application package within the time period established in the Notice of Fund Availability. A special need grant application must meet the same threshold requirements applicable to a capital grant under § 61.12.

(b) In addition to the requirements of § 61.11, applicants must describe how they will address the needs of one or more of the homeless veteran populations identified in paragraphs (c) through (f) of this section.

(c) *Women, including women who have care of minor dependents.* Applications must show how the program design will:

(1) Ensure transportation for women and their children, especially for health care and educational needs;

(2) Provide directly or offer referrals for adequate and safe child care;

(3) Ensure children's health care needs are met, especially age-appropriate wellness visits and immunizations; and

(4) Address safety and security issues including segregation from other program participants if deemed appropriate.

(d) *Frail elderly.* Applications must show how the program design will:

(1) Ensure the safety of the residents in the facility to include preventing harm and exploitation;

(2) Ensure opportunities to keep residents mentally and physically agile to the fullest extent through the incorporation of structured activities, physical activity, and plans for social engagement within the program and in the community;

(3) Provide opportunities for participants to address life transitional issues and separation and/or loss issues;

(4) Provide access to walkers, grippers, or other assistance devices necessary for optimal functioning;

(5) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(6) Provide opportunities for participants either directly or through referral for other services particularly relevant for the frail elderly, including services or programs addressing emotional, social, spiritual, and generative needs.

(e) *Terminally ill.* Applications must show how the program design will:

(1) Help participants address life-transition and life-end issues;

(2) Ensure that participants are afforded timely access to hospice services;

(3) Provide opportunities for participants to engage in ''tasks of dying,'' or activities of ''getting things in order'' or other therapeutic actions that help resolve end of life issues and enable transition and closure;

(4) Ensure adequate supervision including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants either directly or through referral for other services particularly relevant for terminally ill such as legal counsel and pain management.

(f) *Chronically mentally ill.* Applications must show how the program design will:

(1) Help participants join in and engage with the community;

(2) Facilitate reintegration with the community and provide services that may optimize reintegration such as life-skills education, recreational activities, and follow up case management;

(3) Ensure that participants have opportunities and services for re-establishing relationships with family;

(4) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and

(5) Provide opportunities for participants, either directly or through referral, to obtain other services particularly relevant for a chronically mentally ill population, such as vocational development, benefits management, fiduciary or money management services, medication compliance, and medication education.

(Authority: 38 U.S.C. 501, 2061)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

§ 61.44 Awarding special need grants and payment of special need per diem.

(a) For those applicants selected for a special need grant, VA will execute an agreement and make payments to the grantee under § 61.61.

(b) Capital grantee selectees who successfully complete the capital portion of their grant, or non-capital grantee selectees who successfully pass VA inspection, will be eligible for a special need per diem payment to defray the operational cost of the project. Special need per diem payment will be the lesser of:

(1) 100 percent of the daily cost of care estimated by the special need recipient for furnishing services to homeless veterans with special need that the special need recipient certifies to be correct, minus any other sources of income; or

(2) Two times the current VA State Home Program per diem rate for domiciliary care.

(c) Special need awards are subject to funds availability, the recipient meeting the performance goals as stated in the grant application, statutory and regulatory requirements, and annual inspections.

(d) Special need capital grantees are not eligible for per diem payment under § 61.33, as the special need per diem payment covers the cost of care.

(Authority: 38 U.S.C. 501, 2061)

Technical Assistance Grants

§ 61.50 Technical assistance grants—general.

(a) *General.* VA provides technical assistance grants to entities or organizations with expertise in preparing grant applications relating to the provision of assistance for homeless veterans. The recipients must use the grants to provide technical assistance to nonprofit organizations with experience in providing assistance to homeless veterans in order to help such groups apply for grants under this part, or from any other source, for addressing the needs of homeless veterans. Current recipients of any grant under this part (other than a technical assistance grant), or their sub-recipients, are ineligible for technical assistance grants.

(b) *Allowable activities.* Technical assistance grant recipients may use grant funds for the following activities:

(1) Group or individual ''how-to'' grant writing seminars, providing instructions on applying for a grant. Topics must include:

(i) Determining eligibility;

(ii) Matching the awarding agency's grant mission to the applicant agency's strengths;

(iii) Meeting the specific grant outcome requirements;

(iv) Creating measurable goals and objectives for grants;

(v) Relating clear and concise grant project planning;

(vi) Ensuring appropriate grant project staffing; and

(vii) Demonstrating the applicant's abilities.

(2) Creation and dissemination of ''how-to'' grant writing materials, i.e., compact disks, booklets, web pages or other media specifically designed to facilitate and instruct applicants in the completion of grant applications.

(3) Group or individual seminars, providing instructions on the legal obligations associated with grant applications. Topics must include:

(i) Office of Management and Budget (OMB) grant management circulars and forms, 2 CFR parts 215, 225, 230;

(ii) Federal funding match and fund separation requirements; and

(iii) Property and equipment disposition.

(4) Telephone, video conferencing or email with potential grant applicants that specifically address grant application questions.

(c) *Unallowable activities.* Technical assistance grant recipients may not use grant funds for the following activities:

(1) Meetings, consortia, or any similar activity that does not assist community agencies in seeking grants to aid homeless veterans.

(2) Referral of individual veterans to agencies for benefits, housing, medical assistance, or social services.

(3) Lobbying.

(Authority: 38 U.S.C. 501 and 2064)

§ 61.51 Technical assistance grants—application packages.

(a) To apply for a technical assistance grant, an applicant must obtain from, complete, and submit to VA a technical assistance grant application package within the time period established in the Notice of Fund Availability.

(b) The technical assistance grant application package will require the following:

(1) Documentation on eligibility to receive a technical assistance grant under this part;

(2) A description of technical assistance that would be provided (see § 61.50);

(3) Documentation concerning the estimated operating costs and operating budget for the technical assistance program for which the grant is sought;

(4) Documentation concerning expertise in preparing grant applications;

(5) Documentation of resources committed to the provision of technical expertise;

(6) Comments or recommendations by appropriate state (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a state; and

(7) Reasonable assurances that:

(i) The recipient will provide adequate financial and administrative support for providing the services set forth in the technical assistance grant application, and will actually provide such services; and

(ii) The recipient will keep records and timely submit reports as required by VA, and will give VA, on demand, access to the records upon which such reports are based.

(Authority: 38 U.S.C. 501, 2064)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

§ 61.52 Technical assistance grant application packages—threshold requirements.

The following threshold requirements for a technical assistance grant must be

met, or the application will be rejected before being rated under § 61.53:

(a) The application must be complete and submitted on the correct form and in the time period established in the Notice of Fund Availability;

(b) The applicant must establish expertise in preparing grant applications;

(c) The activities for which assistance is requested must be eligible for funding under this part;

(d) The applicant must demonstrate that adequate financial support will be available to carry out the project for which the grant is sought, consistent with the plans, specifications and schedule submitted by the applicant;

(e) The applicant must not have an outstanding obligation to VA that is in arrears, or have an overdue or unsatisfactory response to an audit; and

(f) The applicant must not have been notified by VA as being in default.

(Authority: 38 U.S.C. 501, 2064)

§ 61.53 Technical assistance grant application packages—rating criteria.

(a) *General.* Applicants that meet the threshold requirements in § 61.52 will then be rated using the selection criteria listed in paragraphs (b) and (c) of this section. To be eligible for a technical assistance grant, an applicant must receive at least 600 points (out of a possible 800).

(b) *Quality of the technical assistance.* VA will award up to 400 points based on the following:

(1) How the recipients of technical training will increase their skill level regarding the completion of applications;

(2) How the recipients of technical training will learn to find grant opportunities in a timely manner;

(3) How the technical assistance provided will be monitored and evaluated and changes made, if needed; and

(4) How the proposed technical assistance programs will be implemented in a timely fashion.

(c) *Ability of applicant to demonstrate expertise in preparing grant applications develop and operate a technical assistance program.* VA will award up to 400 points based on the extent to which the application demonstrates all of the following:

(1) Ability to find grants available for addressing the needs of homeless veterans.

(2) Ability to find and offer technical assistance to entities eligible for such assistance.

(3) Ability to administer a technical assistance program.

(4) Ability to provide grant technical assistance.

(5) Ability to evaluate the overall effectiveness of the technical assistance program and to make adjustments, if necessary, based on those evaluations.

(6) Past performance. VA may use historical documents of past performance both VA and non-VA, including those from other Federal, state and local agencies and audits by private or public entities in scoring technical assistance applications.

(Authority: 38 U.S.C. 501, 2064)

§ 61.54 Awarding technical assistance grants.

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked within their respective funding category, if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be selected to receive a technical assistance grant in accordance with their ranked order, as determined under § 61.53. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.53(c) to determine the ranking.

(c) For those applicants selected to receive a technical assistance grant, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61.

(d) The amount of the technical assistance grant will be the estimated total operational cost of the technical assistance over the life of the technical assistance grant award as specified in the technical assistance grant agreement. Payments may be made for no more than the period specified in the Notice of Fund Availability.

(e) VA will not pay for sustenance or lodging for the nonprofit community participants or attendees at training conferences offered by technical assistance grant recipients; however, the grantee may use grant funds to recover such expenses.

(Authority: 38 U.S.C. 501, 2064)

§ 61.55 Technical assistance reports.

Each technical assistance grantee must submit to VA a quarterly report describing the activities for which the technical assistance grant funds were used, including the type and amount of technical assistance provided and the number of nonprofit community-based groups served.

(Authority: 38 U.S.C. 501, 2064)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0554)

Awards, Monitoring, and Enforcement of Agreements

§ 61.61 Agreement and funding actions.

(a) *Agreement.* When VA selects an applicant for grant or per diem award under this part, VA will incorporate the requirements of this part into an agreement to be executed by VA and the applicant. VA will enforce the agreement through such action as may be appropriate, including temporarily withholding cash payments pending correction of a deficiency. Appropriate actions include actions in accordance with the VA common grant rules at 38 CFR parts 43 and 49 and the OMB Circulars, including those cited in § 61.66.

(b) *Obligating funds.* Upon execution of the agreement, VA will obligate funds to cover the amount of the approved grant/per diem, subject to the availability of funding. Payments will be for services rendered, contingent on submission of documentation in the form of invoices or purchase agreements and inspections, as VA deems necessary. VA will make payments on its own schedule to reimburse for amounts expended. Except for increases in the rate of per diem, VA will not increase the amount obligated for assistance under this part after the initial obligation of funds.

(c) *Deobligating funds.* VA may deobligate all or parts of funds obligated under this part:

(1) If the actual total cost for assistance is less than the total cost stated in the application; or

(2) If the recipient fails to comply with the requirements of this part.

(d) *Deobligation procedure.* Before deobligating funds under this section, VA will issue a notice of intent to terminate payments. The recipient will have 30 days to submit documentation demonstrating why payments should not be terminated. After review of any such documentation, VA will issue a final decision concerning termination of payment.

(e) *Other government funds.* No funds provided under this part may be used to replace Federal, state or local funds previously used, or designated for use, to assist homeless veterans.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

§ 61.62 Program changes.

(a) Except as provided in paragraphs (b) through (d) of this section, a recipient may not make any significant changes to a project for which a grant has been awarded without prior written approval from the VA National Grant and Per Diem Program Office. Significant changes include, but are not limited to, a change in the recipient, a change in the project site (including relocating, adding an annex, a branch, or other expansion), additions or deletions of activities, shifts of funds from one approved type of activity to another, and a change in the category of participants to be served.

(b) Recipients of grants involving both construction and non-construction projects must receive prior written approval from the VA National Grant and Per Diem Program Office for cumulative transfers among direct cost categories which exceed or are expected to exceed 10 percent of the current total approved budget.

(c) Recipients of grants for projects involving both construction and non-construction who are state or local governments must receive prior written approval from the VA National Grant and Per Diem Program Office for any budget revision which would transfer funds between non-construction and construction categories.

(d) Approval for changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.

(e) Any changes to an approved program must be fully documented in the recipient's records.

(f) Recipients must inform the VA National Grant and Per Diem Program Office in writing of any key position and address changes in/of their organization within 30 days of the change, i.e., new executive director or chief financial officer, permanent change of address for corporate communications.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

§ 61.63 Procedural error.

If an application would have been selected but for a procedural error committed by VA, VA may reconsider that application in the next funding round. A new application will not be required for this purpose so long as there is no material change in the information.

(Authority: 38 U.S.C. 501)

§ 61.64 Religious organizations.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in VA programs under this part. In the selection of service providers, neither the Federal Government nor a state or local government receiving funds under this part shall discriminate for or against an organization on the basis of the organization's religious character or affiliation.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Inherently religious activities such as, religious worship, instruction, or proselytization; or

(ii) Equipment or supplies to be used for any of those activities.

(2) For purposes of this section, ''indirect financial assistance'' means Federal assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the independent and private choices of individual beneficiaries. ''Direct financial assistance,'' means Federal aid in the form of a grant, contract, or cooperative agreement where the independent choices of individual beneficiaries do not determine which organizations receive program funds.

(c) Organizations that engage in inherently religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA, and participation in any of the organization's inherently religious activities must be voluntary for the beneficiaries of a program or service funded by direct financial assistance from VA.

(d) A religious organization that participates in VA programs under this part will retain its independence from Federal, state, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without removing religious art, icons, scripture, or other religious symbols. In addition, a VA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion or religious belief.

(f) If a state or local government voluntarily contributes its own funds to supplement Federally funded activities, the state or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where VA funds are provided to religious organizations through indirect assistance as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of this part. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

(Authority: 38 U.S.C. 501)

§ 61.65 Inspections.

VA may inspect the facility and records of any applicant or recipient when necessary to determine compliance with this part or an agreement under § 61.61. The authority to inspect does not authorize VA to manage or control the applicant or recipient.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

§ 61.66 Financial management.

(a) All recipients must comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by OMB Circular A–133 and codified at 38 CFR part 41.

(b) All entities receiving assistance under this part must use a financial management system that follows generally accepted accounting principals and meets the requirements set forth under OMB Circular A–102, Subpart C. § 20, codified at 38 CFR

43.20, for state and local government recipients, or under OMB Circular A–110, Subpart C–§ 21, codified at 38 CFR 49.21 for nonprofit recipients. All recipients must implement the requirements of the appropriate OMB Circular for Cost-Principles (A–87 or A–122 codified at 2 CFR parts 225 and part 230, respectively) for determining costs reimbursable under all awards issued under these regulations.

(Authority: 38 U.S.C. 501)

§ 61.67 Recovery provisions.

(a) *Full recovery of capital grants.* VA may recover from the grant recipient all of the grant amounts provided for the project if, after 3 years after the date of an award of a capital grant, the grant recipient has withdrawn from the VA Homeless Providers Grant and Per Diem Program (Program), does not establish the project for which the grant was made, or has established the project for which the grant was made but has not passed final inspection. Where a recipient has no control over causes for delays in implementing a project, VA may extend the three-year period, as appropriate. VA may obligate any recovered funds without fiscal year limitation.

(b) *Prorated (partial) recovery of capital grants.* If a capital grant recipient is not subject to recovery under paragraph (a) of this section, VA will seek recovery of the grant amount on a prorated basis where the grant recipient ceases to provide services for which the grant was made or withdraws from the Program prior to the expiration of the applicable period of operation, which period shall begin on the date shown on the activation document produced by the VA National GPD Program. In cases where capital grant recipients have chosen not to receive per diem payments, the applicable period of operation shall begin on the date the VA Medical Center Director approved placement at the project site as shown on the inspection documents. The amount to be recaptured equals the total amount of the grant, multiplied by the fraction resulting from using the number of years the recipient was not operational as the numerator, and using the number of years of operation required under the following chart as the denominator.

Grant amount (dollars in thousands)	Years of operation
0–1,000	20
1,001–2,000	25
2,001–3,000	30
Over 3,000	40

(c) *Disposition of real property for capital grantees.* In addition to being subject to recovery under paragraphs (a) and (b) of this section, capital grantees are subject to real property disposition as required by 38 CFR 49.32 when the grantee no longer is providing services through a grant awarded under this part.

(d) *Recovery of per diem and non-capital grants.* VA will seek to recover from the recipient of per diem, a special need non-capital grant, or a technical assistance grant any funds that are not used in accordance with the requirements of this part.

(e) *Notice.* Before VA takes action to recover funds, VA will issue to the recipient a notice of intent to recover funds. The recipient will then have 30 days to submit documentation demonstrating why funds should not be recovered. After review of any such documentation, VA will issue a decision regarding whether action will be taken to recover funds.

(f) *Vans.* All recovery provisions will apply to vans with the exception of the period of time for recovery. The period of time for recovery will be 7 years. Disposition provisions of 38 CFR 49.34 apply to vans. Grantees are required to notify the VA National Grant and Per Diem Program Office for disposition of any van funded under this part.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061, 2064)

§ 61.80 General operation requirements for supportive housing and service centers.

(a) Supportive housing and service centers for which assistance is provided under this part must comply with the requirements of the current edition of the Life Safety Code of the National Fire Protection Association and all applicable state and local housing codes, licensing requirements, fire and safety requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the supportive housing or service centers. **Note:** All facilities are to be protected throughout by an approved automatic sprinkler system unless a facility is specifically exempted under the Life Safety Code.

(b) Except for such variations as are proposed by the recipient that would not affect compliance with paragraph (a) of this section and are approved by VA, supportive housing must meet the following requirements:

(1) The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements;

(2) Entry and exit locations to the structure must be capable of being utilized without unauthorized use of other private properties, and must provide alternate means of egress in case of fire;

(3) Buildings constructed or altered with Federal assistance must also be accessible to the disabled, as required by § 502 of the Americans with Disabilities Act, referred to as the Architectural Barriers Act;

(4) Each resident must be afforded appropriate space and security for themselves and their belongings, including an acceptable place to sleep that is in compliance with all applicable local, state, and federal requirements;

(5) Every room or space must be provided with natural or mechanical ventilation and the structures must be free of pollutants in the air at levels that threaten the health of residents;

(6) The water supply must be free from contamination;

(7) Residents must have access to sufficient sanitary facilities that are in proper operating condition, that may be used in privacy, and that are adequate for personal cleanliness and the disposal of human waste;

(8) The housing must have adequate heating and/or cooling facilities in proper operating condition;

(9) The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents and sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire;

(10) All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;

(11) The housing and any equipment must be maintained in a sanitary manner;

(12) The residents with disabilities must be provided meals or meal preparation facilities must be available;

(13) Residential supervision from a paid staff member, volunteer, or senior resident participant must be provided 24 hours per day, 7 days per week and for those times that a volunteer or senior resident participant is providing residential supervision a paid staff member must be on call for emergencies 24 hours a day 7 days a week (all supervision must be provided by individuals with sufficient knowledge for the position); and

(14) Residents must be provided a clean and sober environment that is free from illicit drug use or from alcohol use that: could threaten the health and/or safety of the residents or staff; hinders

the peaceful enjoyment of the premises; or jeopardizes completion of the grantee's project goals and objectives. Those supportive housing or service centers that provide medical or social detox at the same site as the supportive housing or service must ensure that those residents in detox are clearly separated from the general residential population.

(c) Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project and the availability of such services, and make adjustments as appropriate. The recipient will provide evidence of this ongoing assessment to VA regarding the plan described in their grant application to include meeting their performance goals. This information will be incorporated into the annual inspection. Grantees must submit during the grant agreement period to VA, a quarterly technical performance report. A quarterly report must be filed once during each quarter and no later than January 30, April 30, July 30, and October 30. The report may be in any acceptable business format and must include the following information:

(1) A comparison of actual accomplishments to established goals for the reporting period and response to any findings related to monitoring efforts. This comparison will be on the same level of detail as specified in the program approved in the grant document. It will address quantifiable as well as non-quantifiable goals.

(2) If established goals have not been met, provide a detailed narrative explanation and an explanation of the corrective action(s) which will be taken, as well as a timetable for accomplishment of the corrective action(s).

(3) Other pertinent information, including a description of grant-related activities occurring during the report period. This may include personnel activity (hiring-training), community orientation/awareness activity, programmatic activity (job development). Also identify administrative and programmatic problems, which may affect performance and proposed solutions.

(4) The quarterly technical performance report will be submitted to the VA National GPD Program Liaison assigned to the project, with each quarterly report being a cumulative report for the entire calendar year. All pages of the reporting documents should have the appropriate grant number and signature, where appropriate. VA National GPD Program Liaisons will file the report and corrective actions in the administrative file for the grant.

(5) Between scheduled reporting dates, the recipient will also immediately inform the VA National GPD Program Liaison of any significant developments affecting the recipient's ability to accomplish the work. VA National GPD Program Liaisons will provide grantees with necessary technical assistance, when and where appropriate as problems arise.

(6) For each goal or objective listed in the grant application grantees will be allowed a 15 percent deviation of each goal or objective. If the deviation is greater than 15 percent in any one goal or objective a corrective action plan must be submitted to the VA National GPD Program Liaison. Failure to meet goals and objectives may result in withholding of placement, withholding of payment, suspension of payment and termination as outlined in this part or other applicable Federal statutes if the goal or objective would impact the program's ability to provide a successful outcome for veterans.

(7) Corrective Action(s): When necessary, the grantee will automatically initiate a Corrective Action Plan (CAP). A CAP will be required if, on a quarterly basis, actual grant accomplishments vary by a margin of +/−15 percent or more from the planned goals and objectives. Please note that this is a general rule of thumb, in some cases +/−15 percent deviations are beneficial to the program such as more placements into employment or training than planned, less cost per placement than planned, higher average wage at placement than planned, etc.

(8) All +/−15 percent deviations from the planned goals that have a negative impact on the grantee's ability to accomplish planned goals, must be fully explained in the grantee's quarterly technical report and a CAP is to be initiated, developed, and submitted by the grantee to the VA Liaison for approval.

(9) The CAP must identify the activity or expenditure source which has the +/−15 percent deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and a timetable for accomplishment of the corrective action. The plan may include an intent to modify the grant when appropriate.

(10) The CAP will be submitted as an addendum to the quarterly technical report. After receipt of the CAP, the VA National GPD Program Liaison will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA Liaison will make beneficial suggestions to improve the proposed CAP and request resubmission until CAP is satisfactory to both parties.

(d) A homeless veteran may remain in supportive housing for which assistance is provided under this part for a period no longer than 24 months, except that a veteran may stay longer, if permanent housing for the veteran has not been located or if the veteran requires additional time to prepare for independent living. However, at any given time, no more than one-half of the veterans at such supportive housing facility may have resided at the facility for periods longer than 24 months.

(e) Each recipient of assistance under this part must provide for the consultation and participation of not less than one homeless veteran or formerly homeless veteran on the board of directors or an equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project provided under this part. This requirement may be waived if an applicant, despite a good faith effort to comply, is unable to meet it and presents a plan, subject to VA approval, to otherwise consult with homeless or formerly homeless veterans in considering and making such policies and decisions.

(f) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless veterans and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project.

(g) Each recipient of assistance under this part shall establish procedures for fiscal control and fund accounting to ensure proper disbursement and accounting of assistance received under this part.

(h) The recipient of assistance under this part that provides family violence prevention or treatment services must establish and implement procedures to ensure:

(1) The confidentiality of records pertaining to any individual provided services, and

(2) The confidentially of the address or location where the services are provided.

(i) Each recipient of assistance under this part must maintain the confidentiality of records kept on homeless veterans receiving services.

(j) VA may disapprove use of outpatient health services provided through the recipient if VA determines that such services are of unacceptable quality. Further, VA will not pay per diem where the Department concludes

that services furnished by the recipient are unacceptable.

(k) A service center for homeless veterans shall provide services to homeless veterans for a minimum of 40 hours per week over a minimum of 5 days per week, as well as provide services on an as-needed, unscheduled basis. The calculation of average hours shall include travel time for mobile service centers. In addition:

(1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;

(2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;

(3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area; and

(4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.

(l) Fixed site service centers will prominently post at or near the entrance to the service center their hours of operation and contacts in case of emergencies. Mobile service centers must take some action reasonably calculated to provide in advance a tentative schedule of visits, (e.g., newspapers, fliers, public service announcements on television or radio). The schedule should include but is not limited to:

(1) The region of operation;

(2) Times of operation;

(3) Expected services to be provided; and

(4) Contacts for specific information and changes.

(m) Each recipient that provides housing and services must have a written disaster plan that has been coordinated with the emergency management entity responsible for the locality in which the project exists. The plan must encompass natural and man-made disasters.

(n) The recipient will inform within 24 hours, its VA liaison of any sentinel events occurring within the program (i.e., drug overdose, death, injury).

(o) The grantee, or sub-grantee, will provide appropriate orientation and training to staff to enable them to provide quality services that are appropriate to homeless veteran or homeless special need veteran population.

(p) The grantee will maintain systematic participant enrollment information and participant tracking records designed to facilitate the uniform compilation and analysis of programmatic data necessary for verification of veteran status and case management, reporting, monitoring, and evaluation purposes.

(q) The grantee will also document in each participant record at a minimum:

(1) Family status.

(2) Verification of veteran status (DD214, Department of Veterans Affairs confirmation report and/or identification card).

(3) Education, employment history, and marketable skills/licenses/credentials.

(4) An Individual Service Plan (ISP) for each individual participant will be maintained in the participant case management record which contains the following:

(i) An assessment of barriers, service needs, as well as strengths; and

(ii) Specific services and referrals planned and benefits to be achieved as a result of program participation.

(5) Duration and outcome of supportive service.

(6) The grantee must verify service outcomes each calendar year quarter through the participant and provide documentation of this verification in the participant case management files.

(r) The grantee will ensure that no more than 25 percent of the grant awarded beds are occupied by non-veterans, or VA may take actions as appropriate to decrease the beds, grant amounts, or terminate the grant and seek recapture in the case of capital funding. To calculate the occupancy rate, divide the actual number of bed days of care for veterans eligible to reside in the project, by the total number of possible bed days of care (the previous 180 days from the most current 6 month period).

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

§ 61.81 Outreach activities.

Recipients of capital grants and per diem relating to supportive housing or service centers must use their best efforts to ensure that eligible hard-to-reach veterans are found, engaged, and provided assistance. To achieve this goal, recipients may search for homeless veterans at places such as shelters, soup kitchens, parks, bus or train stations, and the streets. Outreach particularly should be directed toward veterans who have a nighttime residence that is an emergency shelter or a public or private place not ordinarily used as a regular sleeping accommodation for human beings (e.g., cars, streets, or parks).

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

§ 61.82 Participant fees for supportive housing.

(a) Each participant of supportive housing may be required to pay a participant fee in an amount determined by the recipient, except that such participant fee may not exceed 30 percent of the participant's monthly income after deducting medical expenses, child care expenses, court ordered child support payments, or other court ordered payments; nor may it exceed the program's set maximum rate or the HUD Fair Market Rent for that type of housing and its location, whichever is less. The participant fee determination and collection process/procedures should be documented in the grant recipient's operating procedures to ensure consistency, fairness, and accuracy of fees collected. The participant's monthly income includes all income earned by or paid to the participant.

(b) Retroactive benefit payments from any source to program participants, for the purpose of this part, may be considered income in the month received and therefore may be used in calculating the participant fee for that month.

(c) Participant fees may be used for costs of operating the supportive housing or to assist supportive housing residents move to permanent housing, and must have a therapeutic benefit.

(d) In addition to a participant fee, recipients may charge residents reasonable fees for extracurricular services and activities (extracurricular fee) that participants are not required to receive under the terms of the grant award, are not paid for by VA per diem, or provided by VA. Extracurricular fees must be voluntary on the part of the participant.

(e) In projects funded under this part where participants sign agreements, VA treat the costs associated with participant eviction to be as unallowable.

(f) Use of participant agreements.

(1) Participant agreements must be between the grant recipient of record and the program participant.

(2) Participant agreements must be part of a therapeutic plan to increase self-determination and responsibility.

(3) Participant agreements must include a clause that allows program participants the ability to break the lease or program agreement without penalty for medical or clinical necessity.

(4) Participant agreements may not be used to exclude homeless veterans with little or no income from the program.

(5) Participant agreements and conditions must be fully disclosed to potential participants and acknowledged in writing by both parties.

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

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H.R. 3630/P.L. 112–96
Middle Class Tax Relief and Job Creation Act of 2012 (Feb. 22, 2012; 126 Stat. 156)

H.R. 1162/P.L. 112–97
To provide the Quileute Indian Tribe Tsunami and Flood Protection, and for other purposes. (Feb. 27, 2012; 126 Stat. 257)

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A new table will be published in the first issue of each month.

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