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DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599–AA14

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: In compliance with the February 21, 2012 Presidential Memorandum ''Driving Innovation and Creating Jobs In Rural America through Biobased and Sustainable Product Procurement,'' the U.S. Department of Agriculture (USDA) is amending the Guidelines for Designating Biobased Products for Federal Procurement, to add 13 sections to designate product categories within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 (referred to in this document as ''section 9002''). USDA is also establishing minimum biobased contents for each of these product categories.

DATES: This rule is effective May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; email: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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II. Background
III. Summary of Changes
IV. Discussion of Public Comments
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G. Executive Order 12372: Intergovernmental Review of Federal Programs
H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. Paperwork Reduction Act
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K. Congressional Review Act

I. Authority

These product categories are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

As part of the BioPreferred Program, USDA published, on September 14, 2011, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of 13 product categories for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this final rule as the ''preferred procurement program''). The proposed rule can be found at 76 FR 56884. This rulemaking is referred to in this preamble as Round 8 (RIN 0599–AA14).

In the proposed rule, USDA proposed designating the following 13 product categories for the preferred procurement program: Air fresheners and deodorizers; asphalt and tar removers; asphalt restorers; blast media; candles and wax melts; electronic components cleaners; floor coverings (non-carpet); foot care products; furniture cleaners and protectors; inks; packaging and insulating materials; pneumatic equipment lubricants; and wood and concrete stains.

Today's final rule designates the proposed product categories within which biobased products will be afforded Federal procurement preference. USDA has determined that each of the product categories being designated under today's rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: To improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

When USDA designates by rulemaking a product category (a generic grouping of products) for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that product category, that meet the requirements to qualify for preferred procurement, can claim that status for their products. To qualify for preferred procurement, a product must be within a designated product category and must contain at least the minimum biobased content established for the designated item. With the designation of these specific product categories, USDA invites the manufacturers and vendors of qualifying products to provide information on the product, contacts, and performance testing for posting on its BioPreferred Web site, *http://www.biopreferred.gov.* Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated product category. Once USDA designates a product category, procuring agencies are required generally to purchase biobased products within the designated product category where the purchase price of the procurement product exceeds $10,000 or where the quantity of such products or of functionally equivalent products purchased over the preceding fiscal year equaled $10,000 or more.

Subcategorization. Within today's final rule, USDA has subcategorized one of the product categories. That product

category is inks and the subcategories are: Specialty inks used to add extra characteristics or features to printed material; inks used for coated paper, paperboard, plastic, and foil (sheetfed—color and sheetfed—black); inks used in photocopying and laser machines (printer toner—<25 pages per minute (ppm) and printer toner—≥25 ppm); and inks used primarily in newsprint (news).

Minimum Biobased Contents. The minimum biobased contents being established with today's rulemaking are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples. In today's final rule, the minimum biobased contents for the ''inks (printer toner—≥25 ppm)'' and the ''inks (news)'' subcategories of the inks product category are based on a single tested product within each subcategory. Based on discussions with industry stakeholders, USDA believes that the tested products are representative of other products within the subcategories. Given that only one manufacturer of products within each subcategory supplied a sample for testing, USDA believes it is reasonable to set minimum biobased contents for these subcategories based on the single data point for each subcategory. USDA will continue to solicit information on these subcategories and if additional data on the biobased contents for products within these designated product subcategories is obtained, USDA will evaluate whether the minimum biobased content should be revised.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. This final rule designates three product categories for Federal preferred procurement for which there may be overlap with an EPA-designated recovered content product. The first is blast media, which may overlap with the EPA-designated recovered content product ''Miscellaneous products—blasting grit.'' The second is floor coverings (non-carpet), which may overlap with the EPA-designated recovered content product ''Floor tiles.'' The third is pneumatic equipment lubricants, which may overlap with the EPA-designated recovered content product ''Re-refined lubricating oils.'' EPA provides recovered materials content recommendations for these recovered content products in Recovered Materials Advisory Notice (RMAN) I. The RMAN recommendations for these CPG products can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: The BioPreferred Program, the Environmental Protection Agency's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Other Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (*www.abilityone.gov*) indicated that four of the items being designated today (air fresheners and deodorizers, blast media, floor coverings, and inks (printer toner—<25 ppm)) are available through the AbilityOne Program. While there is no specific product within these product categories identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other product categories being designated today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the preferred procurement program during the development of the rulemaking packages for the designation of product categories. USDA requests stakeholder input in gathering information used in determining the order of product category designation and in identifying: Manufacturers producing and marketing products that fall within a product category proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

Future Designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within product categories. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing. Based on these results, USDA will then propose new product categories for designation for preferred procurement.

USDA has developed a preliminary list of product categories for future designation and has posted this preliminary list on the BioPreferred Web site. While this list presents an initial prioritization of product categories for designation, USDA cannot identify with certainty which product categories will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those product categories that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, product categories with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list.

III. Summary of Changes

As a result of the public comments received on the proposed rule, USDA has made changes in finalizing the proposed rule. These changes are summarized in the remainder of this section. A summary of each comment received, and USDA's response to the comment, is presented in section IV.

In the final rule, USDA has changed the name of one product category being designated. That product category was proposed as ''packaging and insulating materials,'' but is being changed in the final rule to ''packing and insulating materials.'' After the proposed rule was published, USDA learned of a potential

issue involving the name and description of the proposed product category. It was USDA's intent that the product category would include ''pre-formed or molded materials used to hold package contents in place during shipping'' (76 FR 56894, September 14, 2011). As an example of the types of products intended to be included in the proposed category, USDA referred to the foam ''peanuts'' that are used to protect and prevent the movement of products that are placed in cardboard or other types of containers for shipment. It was not USDA's intent that the product category would include the outside container (e.g., the cardboard box) into which the ''peanuts'' or molded foam packing materials are placed. USDA has concluded that the term ''packaging'' is too broad for the purpose of defining the product category and is likely to be interpreted as including the outside box or container into which ''packing'' material is placed. For this reason, USDA is finalizing the product category with the name ''packing and insulating materials.''

In addition to revising the name of the proposed product category to ''packing and insulating materials,'' USDA has lowered the minimum biobased content for this product category to 74 percent. At proposal, the recommended minimum biobased content was 82 percent and was based on a product with a tested biobased content of 85 percent. After the proposed rule was published, the manufacturer of this particular product re-tested the biobased content of the product as part of the application process to obtain certification to use the USDA Certified Biobased Product label. The results of the re-test showed a biobased content of 77 percent. USDA does not have any additional information to indicate which of the testing results (85 percent biobased or 77 percent biobased) are more accurate. Because of this uncertainty, and because the difference between the two values is not large, USDA decided that it was reasonable to use the lower tested value to establish the minimum biobased content in the final rule. Therefore, the minimum biobased content for the ''packing and insulating materials'' product category in the final rule is 74 percent (the 77 percent tested value minus 3 percentage points to account for variability in the testing procedure).

USDA has also revised the minimum biobased content for the ''furniture cleaners and protectors'' product category from the proposed level of 77 percent to 71 percent in the final rule. At the time the proposed minimum biobased content for this product category was established, USDA had test data on six products. The biobased content of these six furniture cleaners and protectors ranged from 9 percent to 100 percent, as follows: 9, 28, 80, 91, 98, and 100 percent. As explained in the preamble to the proposed rule (76 FR 56897), USDA decided to set the minimum biobased content for the product category at 77 percent, based on the product with the tested biobased content of 80 percent.

After the proposed rule was published, USDA received biobased content data on an additional product within this product category. The biobased content of this product is 74 percent, which is 6 percentage points lower than the product originally selected as the basis for the minimum biobased content. With the new data point included, the data fall into two obvious groups, with a significant gap between them. The two lowest data points are 9 and 28 percent and the five highest data points are 74, 80, 91, 98, and 100 percent. USDA believes it is reasonable to set the minimum biobased content in the final rule based on the product with the 74 percent biobased content. Therefore, the minimum biobased content for the ''furniture cleaners and protectors'' product category in the final rule is 71 percent (the 74 percent tested value minus 3 percentage points to account for variability in the testing procedure). As is the case for all product categories, USDA will continue to gather and consider new biobased content testing data. When found to be necessary, USDA will revise the minimum biobased content of product categories through established notice and comment rulemaking procedures.

IV. Discussion of Public Comments

USDA solicited comments on the proposed rule for 60 days ending on November 14, 2011. USDA received eight comments by that date. Four of the comments were from individual citizens, two were from trade groups, one was from a biobased product manufacturer, and one was from a Federal agency commenter. The comments are presented below, along with USDA's response, and are grouped by the product categories to which they apply.

Blast Media

Comment: One trade group commenter recommended that USDA reconsider designating the blast media product category for Federal procurement. The commenter stated that they do not believe that biobased abrasives are always the best choice when selecting an environmentally friendly abrasive because of performance limitations that can cause decreased coating life expectancies. The commenter explained that the selection of an abrasive for a particular project is based on a life cycle assessment that includes an examination of the economic and environmental health and safety impacts. The commenter presented information on the properties of an abrasive that must be considered, including the shape, hardness, durability, density, and size of the abrasive. The commenter also presented information on the relationship between these properties of the abrasive and the surface profile that is created on the substrate when a variety of abrasive materials are used. The commenter stated that The Society for Protective Coatings recommends biobased abrasives for removing single layers of paint, fine scale and other surface contaminants when there is no technical need to alter the metal substrate. The commenter further stated that when it is necessary to meet a surface preparation standard to remove multiple layers of paint and produce an acceptable surface profile for optimal coating adhesion, harder abrasives need to be specified. According to the commenter, biobased abrasives are environmentally friendly, but are well below the minimum hardness value needed to achieve an acceptable surface profile for protecting industrial structures and typically are not reusable. The commenter concluded by saying that using biobased abrasives in lieu of standard abrasives will result in coating system failure or, at best, will significantly reduce the overall life expectancy and sustainability of the coating due to poor surface profile and coating adhesion.

Response: USDA agrees with the commenter's general position that traditional abrasives are needed in many applications. The commenter mentions industrial structures and the U.S. Navy fleet as examples of applications where, according to the commenter, biobased blast media will not meet surface coating specifications and performance requirements. USDA recognizes that blast media is a product category with wide-ranging performance demands, depending on the type and end use of the substrate to which the blast media is being applied. USDA points out that the intent of designating biobased blast media for Federal procurement preference is not to eliminate the use of traditional blast media in cases such as those mentioned by the commenter. The intent of the designation is, rather, to require that Federal agencies give

preference to biobased blast media in those cases where such blast media meet the agency's performance requirements as well as availability and cost considerations. USDA recognizes that performance is the key factor in making purchasing decisions among the various types of products within most product categories. However, USDA believes that many situations exist where blast media are used to clean or prepare substrates that are less durable than structural steel. In many of these applications, biobased blast media may perform better than the more abrasive metallic types of media described by the commenter. Thus, USDA believes that the designation of biobased blast media is consistent with the goals and objectives of the BioPreferred program and has finalized the designation in today's rulemaking.

Floor Coverings (Non-Carpet)

Comment: One biobased product manufacturer requested that their product be added as a subcategory under the floor coverings product category. The commenter explained that their product is manufactured using an innovative thermal technology that results in wood that has many advantages over traditional chemically treated wood. The commenter stated that their product can be used in any flooring application and is non-toxic, dimensionally stable, and has a 30-year warranty against rot. The commenter also stated that their product is environmentally preferable to most other wood products because it is manufactured without the use of toxic chemicals and is a 100 percent biobased product.

Response: USDA agrees with the commenter that their product has many beneficial attributes. USDA also believes that, in some cases, this manufacturer's product may be a very desirable option for use as a floor covering. However, USDA does not believe that the creation of a separate subcategory under the floor covering (non-carpet) product category is justified.

As explained in the preamble to the proposed rule, USDA intends to establish subcategories based on the existence of ''groups'' of products with different performance requirements or different functional uses. In the case of floor coverings, USDA did not identify specific performance requirements that the commenter's product could meet that could not be met by one or more of the other available biobased products.

Another consideration for establishing subcategories is the presence of a product or group of products with some unique desirable characteristics not found in the other products and whose biobased content differs considerably from other products in the category. The 91 percent minimum biobased content that has been established for the product category is sufficiently high that USDA does not believe it is reasonable to create a subcategory based on biobased content differences. The 91 percent minimum biobased content ensures that products that qualify for the procurement preference are truly legitimate biobased products with only minimal non-biobased ingredients.

In summary, USDA believes that the floor covering (non-carpet) product category is defined such that Federal agencies may select from several different biobased alternative products. The decision on which biobased products to purchase will be based on a range of factors including durability, appearance, required maintenance, and cost. While the commenter's product may be a very competitive product within the floor covering category, USDA does not believe that creating a separate subcategory for it is justified.

Inks

Comment: Four commenters stated that they supported USDA efforts to encourage the use of biobased printing inks and toners. The commenters stated that the use of such products will increase the demand for agricultural products grown domestically, decrease our dependence on foreign oil, positively affect the U.S. economy, and protect our environment for future generations of Americans.

Response: USDA agrees with the commenters and thanks them for their support of the BioPreferred program.

Comment: One commenter representing a coalition of trade groups stated that USDA needs to withdraw the proposed designation of the inks product category and conduct a more detailed and thorough review to insure that the correct biobased contents for inks are recommended, as several critical elements in the review are deficient. The commenter stated that USDA has not completed a thorough investigation into existing Federal requirements and industry standards for biobased printing inks. In addition, the commenter stated that USDA has set limits without a complete understanding of the technical issues associated with biobased content in different types of printing inks. The commenter stated that another concern not adequately addressed is the financial and performance implications of requiring the use of inks with high biobased content. The commenter recommends that USDA become familiar with the existing regulation that sets minimum standards for biobased materials in printing inks used in government agencies. The commenter stated that this regulation, the Vegetable Ink Printing Act of 1994, requires that Federal agencies use lithographic inks with a specified vegetable oil content.

The commenter also stated that USDA should look to existing industry standards for inks with biobased material content. The commenter noted that one such program is SoySeal, developed by the American Soybean Association (ASA), which has set minimum soy oil contents for a variety of different classes of inks. The commenter stated that ASA set these standards based on their research on incorporating soy oil into various types of printing inks, their unique properties, and testing of the formulations. The percentages are expressed as the percentage of soy oil out of the total formula weight of the inks.

The commenter supports the total formula weight approach taken by the SoySeal program and recommends that USDA also adopt this approach. The commenter stated that the approach taken by SoySeal to define soy content limits by weight percent is readily understood in the industry and should be adopted by USDA. The commenter stated that this method allows for straightforward determination of soy or biobased content, based on ink formulation knowledge, instead of requiring expensive testing using the ASTM D6866 standard. The commenter stated that the ASTM test method can only be conducted by one lab and costs $600 per sample. The commenter stated that USDA did not specify in its proposal how the sampling for the test is to be conducted. According to the commenter, it is not clear if a representative formulation can be tested or if each color of each ink is to be tested and, since there are literally thousands of possible ink formulations, testing each and every ink is economically infeasible. The commenter stated that using a total ink formulation approach certified by the ink manufacturer provides a much more economical approach. Also, according to the commenter, it is unclear how the biobased content guidelines set by USDA compare to those set by the SoySeal program because the two systems (percent weight versus percent of carbonaceous material that is biobased) are not easily comparable. The commenter asked, for example, if a black news ink contains 40 percent biobased material by weight, would it meet USDA's recommendations if tested by the ASTM standard? The commenter

stated that, ideally, USDA's biobased content recommendations should mirror those recommended by the SoySeal program, as inks with these soy oil contents have been tested and proven to be effective.

The commenter explained that while the proposed offset ink limits may be achievable for four color process inks (i.e., cyan, yellow, magenta, and black), the limits will certainly have a negative impact on various blending systems used. According to the commenter, many printing inks are specially blended to make unique colors, often referred to as ''spot colors'' or by the trade name ''Pantone Matching System,'' which are required to match exact colors. The commenter stated that the limits set have the potential to impact these inks, as well as Ultraviolet, Electron Beam, and many metallic and florescent inks that have unique properties that may require higher non-biobased content.

The commenter also stated that the category of specialty inks used in the study is far too vaguely defined and the examples given are too diverse to be listed together. In addition, according to the commenter, the imposition of a level of 66 percent biobased material is extremely demanding for some of these applications. For example, a typical scratch and sniff ink might contain 20 percent of encapsulated fragrance, none of which is biobased. This only leaves room for 14 percent of other non-biobased materials such as pigment, binders and additives. The commenter stated that these materials, many of which are carbonaceous, cannot be substituted for biobased materials and their presence in these inks will make it nearly impossible to meet the 66 percent biobased content proposed in this program.

The commenter stated that, for toner ink systems, biobased toners are not commonly available in the U.S. market. Currently, biobased xerographic inks make up less than 1 percent of the U.S. market, and are not available for xerographic colored inks.

The commenter also stated that, in terms of cost and performance, it must be recognized that there are significant issues associated with high levels of biobased materials in printing inks. According to the commenter, these types of ink are almost always significantly more expensive than their non-biobased alternatives and, even with the current high costs of petroleum-based oils, soy oil still commands close to a 50 percent premium. In addition, the commenter stated that it is common knowledge within the graphic arts community that biobased often results inferior technical performance [color reproduction] and reduced press speeds to allow for longer drying times. The commenter explained that solvent based inks cannot be easily replaced with bio-derived oils because the oils do not volatilize quickly enough.

The commenter stated that there is no indication that an assessment of the cost difference between conventional and biobased inks was completed and that, in order to create biobased purchasing preferences, USDA needs to quantify the environmental benefit of using a biobased ink and assure that it is cost effective.

The commenter stated that many of the underlying assumptions used by USDA to determine the specific limits and ink types in the proposal are not transparent or justified. The commenter asked, as an example, of the 148 biobased inks identified by USDA, how was a sample size of 19 selected to be tested for biobased content by the ASTM standard? Also, of the biobased inks identified, how was a sample size of 3 to be analyzed by BEES determined? The commenter stated that, given the large number of inks that are on the market, it is not clear how USDA concluded that its work was representative or statistically significant. The commenter stated that they do not believe that these sample sizes are large enough to show significant findings. The commenter also stated that it is unclear if the sampling was random, as should be the case, or if the inks tested were considered to be state-of-the-art biobased inks. According to the commenter, one of the difficulties in interpreting the results of the study was that the units used to complete the BEES assessment were unclear, as the sample size was identified as 300 square inches, but not if those 300 square inches were actual ink, or if it was 300 square inches of printed material.

Another concern expressed by the commenter is the use of the Building for Environmental and Economic Sustainability (BEES) model for testing the environmental impact of printing ink. The commenter stated that USDA does not indicate how a software program designed to assess the impact of building materials is applicable to an industrial/consumer commodity such as ink. The commenter also stated that the study doesn't indicate that a comparison of the BEES impact of conventional and biobased inks was conducted and that while it is assumed that a material with more biobased content would be better, this needs to actually be confirmed.

The commenter provided a summary of recommendations on the proposed biobased designations for inks, as follows:

1. Refine the categories to better cover the various types of printing inks used from a broad perspective such as process and spot or inks as well as specific applications such as heatset web offset lithographic, gravure (water & solvent), and flexographic (water & solvent). Energy curable (ultraviolet and electron beam), water-based and inkjet inks should have their own, separate categories.

2. Refine the specialty ink category. The current Specialty ink category is much too broad to be able to assign a biobased content across the board. While some specialty inks could be formulated to contain the 66 percent, many others cannot.

3. Utilize the SoySeal limits as the basis for the biobased content guidelines.

4. Revise the standards to indicate the total portion of the ink that is biobased, rather than the total carbonaceous portion of the ink that is biobased. This will allow for more cost effective determination of biobased content based on ink formulation information, and is already the accepted standard for comparing biobased content in printing inks.

5. Allow for the ink manufacturer to certify the biobased content based on formulation and not testing using the ASTM D6866 test.

6. Biobased inks, as proposed, should be evaluated to determine if they can meet basic performance standards and be required to meet the same performance standards as conventional inks. Manufacturers should not be given the opportunity to gain a market advantage based on production of inks with high biobased content but a poor image quality.

7. Conduct a true economic impact analysis comparing the costs of the proposed biobased materials as compared to conventional materials.

8. To better understand the life-cycle cost section, identify the ''usage unit'' for which price is specified.

9. To better understand the BEES results, a functional unit of 300 square inches was identified. Please clarify if this is 300 square inches of ink, or 300 square inches of printed material.

Response: USDA appreciates the interest and concerns expressed by the commenter in the inks product category. Unfortunately, many of the comments and recommendations made by the commenter would require USDA to conduct studies and analyses that are beyond the scope of the BioPreferred program's mandate to designate product categories for federal procurement

preference. Under section 9002, USDA is directed to request from biobased product manufacturers the technical information that is used in the designation process, but is not given the authority to require that such information be supplied. Thus, USDA must rely on the voluntary submittal of technical information from product manufacturers. During the development of the proposed rule, USDA requested information from many soy ink manufacturers but received information from only a few. USDA developed the proposed rule based on the information available from those biobased ink manufacturers who chose to voluntarily supply it. Generally, the procedures employed, and the types and level of detail of the analyses performed, for the inks product category were the same as for the more than 60 product categories designated to date. USDA will, however, welcome the opportunity to meet with this commenter and any other representatives of the inks product category to discuss ways in which today's final rule can be improved.

With regard to the commenter's points dealing with the Vegetable Ink Printing Act, USDA recognizes that many federal agencies' printing operations are covered by this Act. USDA points out that the designation of biobased products under section 9002 is not meant to replace or revise the requirements of the Vegetable Ink Printing Act. Instead, the designation under section 9002 is meant to extend the use of biobased printing inks to those printing operations that are not subject to the Vegetable Ink Printing Act. Under today's final rule, such printing operations must be performed using complying biobased inks to the extent that biobased inks meeting the performance and cost criteria are available.

The commenter also presented numerous points regarding the methodology used to determine biobased content and the levels set as the minimum biobased contents in the proposed rule. USDA acknowledges that the biobased content determined by ASTM D6866 does not directly compare to soy content determinations using the SoySeal procedure. However, the use of ASTM D6866 to determine biobased content has been consistently required for all designated product categories and USDA believes it is appropriate for the inks product category as well. As pointed out by the commenter, inks are typically formulated from solvents, pigments, binders, and other additives. USDA believes that using ASTM D6866 to determine the biobased content of inks will encourage the development of biobased versions of each type of ingredient in the ink. As for the number of inks tested for biobased content and the resulting proposed minimum biobased contents, USDA relied on its standard methodology of requesting that manufacturers submit samples for testing and then evaluating the results of the testing to determine the proposed minimum biobased content (see ''Minimum Biobased Contents'' discussion in the proposal preamble at 76 FR 56885). Additional information regarding the biobased content testing can also be found in the preamble to proposed rule at 76 FR 56896. USDA also notes that the BioPreferred program Guidelines (7 CFR 3201.7) allows that ''products that are essentially the same formulation'' need not be tested individually.

The commenter offered recommendations as to how USDA should redefine the inks subcategories in the final rule. USDA developed the proposed inks subcategories based on discussions with, and information provided by, ink manufacturers. There are, no doubt, many approaches that could be taken in subcategorizing the inks product category. USDA believes that the proposed subcategories will be sufficient for the initial efforts to designate the inks product category. USDA notes that the final rule does not take effect for one year after the publication date and, as mentioned above, welcomes the opportunity to meet with the commenter and others to discuss revising, refining, or expanding the subcategories at the earliest opportunity. Once a consensus has been reached between USDA and participating industry representatives, USDA will develop a rulemaking package to propose changes to the subcategories, if needed.

The commenter also questioned the performance and cost of available biobased inks. USDA recognizes that performance and cost are key factors in selecting the types of inks used in printing/copying operations. As discussed in several other responses in this preamble, federal agencies are required to consider designated biobased products but are not required to purchase and use them if the available products are not capable of meeting reasonable performance expectations or are not priced competitively with non-biobased products. Section 9002 is very specific regarding these exceptions. However, USDA encourages federal agencies to explore available biobased products and communicate with biobased product manufacturers regarding performance and cost issues. Reputable biobased product manufacturers should be willing to work with federal agencies to resolve issues and they should also recognize that, even with the federal procurement preference, they will not be successful if their products do not perform up to expectations. In response to the commenter's question about the BEES functional unit, the 300 square inches used for the BEES analyses is 300 square inches of ink.

In summary, USDA acknowledges that, because of time and budget considerations, today's designation of inks is not based on exhaustive studies and analyses. USDA also recognizes that some elements of the designation rule are subject to change as federal agencies and biobased ink manufacturers gain a better understanding of what is needed to substitute biobased inks for traditional inks. USDA invites the commenter and any other representatives of the ink manufacturing industry to submit information and to meet to discuss in detail future revisions that may be needed to the designation rule.

Packaging and Insulating Materials

Comment: One Federal agency commenter expressed concern regarding the proposed product category ''Packaging and Insulating Materials'' and its potential impact on the agency's hazardous waste contracting and disposal efforts. Specifically, the commenter requested clarification on whether the biobased content requirements in proposed section 3201.85, Packaging and Insulating Materials, would apply to DOT/UN combination shipping packages for Hazardous Material/Hazardous Waste shipments or whether DOT/UN combination shipping packages might be excluded. The commenter further stated that if the proposed biobased requirements were determined to apply to such shipping packages, they would need to know how the implementation would affect such shipping.

Response: As discussed in section III of this preamble, USDA has changed the name of this product category in the final rule to ''packing and insulating materials.'' However, USDA believes that the name change has no bearing on the public comment or on the USDA response to it. The final rule does not provide a specific exemption from the requirements of section 3201.85 based on the types of material being shipped. As proposed, biobased packaging (packing) products receive the procurement preference regardless of the contents to be placed in the shipping packages. USDA considered the possibility of providing a specific

exemption for hazardous material/hazardous waste shipping activities, but did not provide such an exemption in the final rule. USDA decided that such an exemption was not necessary considering the language in the BioPreferred Program Guidelines. As stated in section 3201.3(c) of the Guidelines: ''Procuring agencies may decide not to procure such products if they are not reasonably priced or readily available or do not meet specified or reasonable performance standards.'' With regard to the commenter's concerns related to the shipping of hazardous material/hazardous waste, the DOT requirements for the packaging of such materials are spelled out in 49 CFR part 178. The burden to perform testing to demonstrate that their products are capable of meeting the requirements of part 178 fall on those biobased packaging material manufacturers who wish to sell their products to the Federal government. Only if such a demonstration of acceptable performance can be made are Federal agencies obligated to give a procurement preference to those products and, even then, only if they are available at reasonable costs. USDA believes that with these provisions already in the BioPreferred Program Guidelines, the specific exemption requested by the commenter is unnecessary. If acceptable biobased packing materials are available, they should be given preference. However, if the biobased alternatives are not acceptable (in terms of performance, availability, and cost), the agency may continue to use the packing materials currently in use. Thus, USDA is finalizing the designation of ''packing and insulating materials'' without any specific exemptions.

V. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Order 12866, as supplemented by Executive Order 13563, requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

Today's final rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with today's final rule. As discussed in the preamble to the proposed rulemaking, USDA made extensive efforts to obtain information on the Federal agencies' usage within the 13 designated product categories, including their subcategories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's final rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing biobased products within designated product categories if price is ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's final rule. Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable price.

1. Summary of Impacts

Today's final rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's final rule. The final rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Final Rule

The designation of these 13 product categories provides the benefits outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's final rule can result in expanding and strengthening markets for biobased materials used in these product categories.

3. Costs of the Final Rule

Like the benefits, the costs of today's final rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its designation of these product categories to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal

agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of product categories for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the product categories designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being designated for preferred procurement in this rule are expected to be included under the following NAICS codes: 321918 (other millwork, including flooring), 324191 (petroleum lubricating oil and grease manufacturing), 325411 (medicinal and botanical manufacturing), 325510 (paint and coating manufacturing), 325612 (polish and other sanitation goods manufacturing), 325620 (toilet preparation manufacturing), 325910 (printing ink manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), 326150 (urethane and other foam product manufacturing), and 313113 (thread mill products). USDA obtained information on these 10 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 6,963 companies within these 10 NAICS categories and that these companies own a total of about 8,139 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 8,139 individual establishments, about 8,096 (99.5 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 42, with none of the segments reporting an average of more than 100 employees per company. Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (fewer than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the product categories being designated, but believes that the impact will not be significant. Most of the product categories being designated in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the product categories being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this final rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased products when biobased products do not meet the availability, performance, or reasonable price criteria. This final rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this final rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the final rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This final rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this final rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's final rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and

responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this final rule is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

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, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USDA has submitted 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.**

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXXII as follows:

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT, DEPARTMENT OF AGRICULTURE

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Add §§ 3201.75 through 3201.87 to subpart B to read as follows:

Sec.

3201.75 Air fresheners and deodorizers.
3201.76 Asphalt and tar removers.
3201.77 Asphalt restorers.
3201.78 Blast media.
3201.79 Candles and wax melts.
3201.80 Electronic components cleaners.
3201.81 Floor coverings (non-carpet).
3201.82 Foot care products.
3201.83 Furniture cleaners and protectors.
3201.84 Inks.
3201.85 Packing and insulating materials.
3201.86 Pneumatic equipment lubricants.
3201.87 Wood and concrete stains.

§ 3201.75 Air fresheners and deodorizers.

(a) *Definition.* Products used to alleviate the experience of unpleasant odors by chemical neutralization, absorption, anesthetization, or masking.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 97 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased air fresheners and deodorizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased air fresheners and deodorizers.

§ 3201.76 Asphalt and tar removers.

(a) *Definition.* Cleaning agents designed to remove asphalt or tar from equipment, roads, or other surfaces.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 80 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased asphalt and tar removers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased asphalt and tar removers.

§ 3201.77 Asphalt restorers.

(a) *Definition.* Products designed to seal, protect, or restore poured asphalt and concrete surfaces.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 68 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased asphalt restorers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased asphalt restorers.

§ 3201.78 Blast media.

(a) *Definition.* Abrasive particles sprayed forcefully to clean, remove contaminants, or condition surfaces, often preceding coating.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 94 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased blast media. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased blast media.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Miscellaneous products—blasting grit. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated blasting grit products and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased blast media within this designated product

category can compete with similar blasting grit products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated blasting grit products containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.79 Candles and wax melts.

(a) *Definition.* Products composed of a solid mass and either an embedded wick that is burned to provide light or aroma, or that are wickless and melt when heated to produce an aroma.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 88 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased candles and wax melts. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased candles and wax melts.

§ 3201.80 Electronic components cleaners.

(a) *Definition.* Products that are designed to wash or remove dirt or extraneous matter from electronic parts, devices, circuits, or systems.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 91 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased electronic components cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased electronic components cleaners.

§ 3201.81 Floor coverings (non-carpet).

(a) *Definition.* Products, other than carpet products, that are designed for use as the top layer on a floor. Examples are bamboo, hardwood, and cork tiles.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 91 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor coverings (non-carpet). By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased floor coverings (non-carpet).

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Construction Products—floor tiles. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated floor tile products and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased floor coverings within this designated product category can compete with similar floor tile products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated floor tile products containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.82 Foot care products.

(a) *Definition.* Products formulated to be used in the soothing or cleaning of feet.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 83 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased foot care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased foot care products.

§ 3201.83 Furniture cleaners and protectors.

(a) *Definition.* Products designed to clean and provide protection to the surfaces of household furniture other than the upholstery.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 71 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased furniture cleaners and protectors. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased furniture cleaners and protectors.

§ 3201.84 Inks.

(a) *Definitions.* (1) Inks are liquid or powdered materials that are available in several colors and that are used to create the visual image on a substrate when writing, printing, and copying.

(2) Inks for which Federal preferred procurement applies are:

(i) *Specialty inks.* Inks used by printers to add extra characteristics to their prints for special effects or functions. Specialty inks include, but are not limited to: CD printing, erasable, FDA compliant, invisible, magnetic, scratch and sniff, thermochromic, and tree marking inks.

(ii) *Inks (sheetfed—color).* Pigmented inks (other than black inks) used on coated and uncoated paper, paperboard, some plastic, and foil to print in color on annual reports, brochures, labels, and similar materials.

(iii) *Inks (sheetfed—black).* Black inks used on coated and uncoated paper, paperboard, some plastic, and foil to print in black on annual reports, brochures, labels, and similar materials.

(iv) *Inks (printer toner—<25 pages per minute (ppm)).* Inks that are a powdered

chemical, used in photocopying machines and laser printers, which is transferred onto paper to form the printed image. These inks are formulated to be used in printers with standard fusing mechanisms and print speeds of less than 25 ppm.

(v) *Inks (printer toner—≥25 ppm).* Inks that are a powdered chemical, used in photocopying machines and laser printers, which is transferred onto paper to form the printed image. These inks are formulated to be used in printers with advanced fusing mechanisms and print speeds of 25 ppm or greater.

(vi) *Inks (news).* Inks used primarily to print newspapers.

(b) *Minimum biobased content.* The minimum biobased content for all inks shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the Federal preferred procurement products are:

(1) *Specialty inks*—66 percent.

(2) *Inks (sheetfed—color)*—67 percent.

(3) *Inks (sheetfed—black)*—49 percent.

(4) *Inks (printer toner—<25 ppm)*—34 percent.

(5) *Inks (printer toner—≥25 ppm)*—20 percent.

(6) *Inks (news)*—32 percent.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased inks. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased inks.

§ 3201.85 Packing and insulating materials.

(a) *Definition.* Pre-formed and molded materials that are used to hold package contents in place during shipping or for insulating and sound proofing applications.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 74 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased packing and insulating materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased packing and insulating materials.

§ 3201.86 Pneumatic equipment lubricants.

(a) *Definition.* Lubricants designed specifically for pneumatic equipment, including air compressors, vacuum pumps, in-line lubricators, rock drills, jackhammers, etc.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 67 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased pneumatic equipment lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased pneumatic equipment lubricants.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying products within this item may overlap with the EPA-designated recovered content product: Vehicular Products—re-refined lubricating oils. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated re-refined lubricating oil products and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased pneumatic equipment lubricants within this designated product category can compete with similar re-refined lubricating oil products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated re-refined lubricating oil products containing recovered materials as products for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.17.

§ 3201.87 Wood and concrete stains.

(a) *Definition.* Products that are designed to be applied as a finish for concrete and wood surfaces and that contain dyes or pigments to change the color without concealing the grain pattern or surface texture.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 39 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than April 4, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wood and concrete stains. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased wood and concrete stains.

Dated: March 28, 2012.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2012–8068 Filed 4–3–12; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2010–BT–TP–0021]

RIN 1904–AC08

Energy Conservation Program: Test Procedures for Residential Clothes Washers; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The U.S. Department of Energy (DOE) is correcting a final rule establishing revised test procedures for residential clothes washers, published in the **Federal Register** on March 7, 2012, and applicable as of April 6, 2012. DOE erroneously omitted regulatory language to remove the obsolete parenthetical note from the water factor calculation section of the currently applicable test procedure.

DATES: *Effective:* April 6, 2012.

FOR FURTHER INFORMATION CONTACT: Stephen L. Witkowski, U.S. Department

of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7463. Email: *Stephen.Witkowski@ee.doe.gov*.

Elizabeth Kohl, Esq., U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE published new and amended test procedures for residential clothes washers on March 7, 2012 (hereafter, the ''March 2012 final rule''). 77 FR 13888. The current test procedure is codified at appendix J1 in 10 CFR part 430 subpart B (hereafter, ''appendix J1''). The March 2012 final rule amended certain provisions in appendix J1 and also established new clothes washer test procedures, codified in a new appendix J2. Residential clothes washer manufacturers must continue to use appendix J1 to determine compliance of their products with energy conservation standards until the compliance date of any amended standards.

In the preamble to the March 2012 final rule, DOE described its intention to remove an obsolete parenthetical note in section 4.2 of appendix J1, which states that the water factor calculations need not be performed to determine compliance with the energy conservation standards for clothes washers. The Energy Independence and Security Act of 2007 (EISA 2007) amended the Energy Policy and Conservation Act (42 U.S.C. 6291, et seq.) by establishing a water factor standard for top-loading and front-loading standard-size residential clothes washers manufactured on or after January 1, 2011 (42 U.S.C. 6295(g)(9)(A)(ii)); accordingly, this parenthetical note is now obsolete. The calculations in section 4.2 must be performed to determine compliance with energy conservation standards for these clothes washers. In the March 2012 final rule, DOE erroneously omitted regulatory language to remove the obsolete parenthetical note from the water factor calculation section of appendix J1. This final rule corrects section 4.2 of appendix J1 to remove this obsolete note.

In FR Doc. 2012–4819 appearing on page 13888 in the **Federal Register** of Wednesday, March 7, 2012, the following corrections are made:

Appendix J1 [Corrected]

■ 1. On page 13937, correct amendatory instruction 7.m. to read as follows:
■ m. Revising section 4.2 introductory text;
■ 2. On page 13938, third column, before 4.2.3, add the following text:
■ 4.2 Water consumption of clothes washers.

* * * * *

Issued in Washington, DC, on March 29, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–8073 Filed 4–3–12; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AF56

Small Business Investment Companies—Conflicts of Interest and Investment of Idle Funds

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration is revising a rule which prohibits a small business investment company (SBIC) from providing financing to an Associate, as defined in the rules, unless it first obtains a conflict of interest exemption from SBA. The revision eliminates the requirement for an exemption in the case of a follow-on investment in a small business concern by an SBIC and an Associate investment fund, where both parties invested previously on the same terms and conditions and where the follow-on investment would also be on the same terms and conditions as well as in the same proportions. In addition, this rule implements two provisions of the Small Business Investment Act of 1958, as amended. First, it brings the public notice requirement for conflict of interest transactions into conformity with statutory requirements. Second, it expands the types of investments an SBIC is permitted to make with its ''idle funds'' (cash that is not immediately needed for fund operations or investments in small business concerns). Finally, the rule makes two technical corrections: Removing an outdated cross-reference; and eliminating a section that exactly duplicates a provision found elsewhere in part 107.

DATES: This rule is effective May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Office of Investment, (202) 205–7559 or *sbic@sba.gov*.

SUPPLEMENTARY INFORMATION: On October 14, 2010, SBA published a proposed rule (75 FR 63110) to: (1) Remove the requirement for an SBIC to obtain a conflict of interest exemption from SBA for certain follow-on financings; (2) revise the public notice requirements for conflict of interest financings to conform with statutory requirements under the Small Business Investment Act of 1958, as amended (SBI Act); and (3) expand the types of investments an SBIC is permitted to make with its ''idle funds'', in conformity with the SBI Act. The rule also included two non-substantive technical corrections.

SBA received no relevant comments on the proposed rule, which is being finalized without change. SBA's section-by-section explanation of the proposed regulatory changes, all of which have been implemented in this final rule, is repeated here as a convenience to the reader.

Section 107.730—Financings which constitute conflicts of interest. The SBI Act authorizes SBA to adopt regulations to govern transactions that may constitute a conflict of interest and which may be detrimental to small business concerns, small business investment companies, their investors, or SBA. Accordingly, SBA promulgated 13 CFR 107.730, which generally prohibits financing transactions that involve a conflict of interest, unless the SBIC obtains a prior written exemption from SBA. The most common type of transaction requiring an exemption is ''financing an Associate.'' Associates of an SBIC, as defined in § 107.50, encompass a broad range of related parties based on business, economic and family ties, both direct and indirect.

In addition to identifying transactions requiring a conflict of interest exemption, § 107.730 sets forth the circumstances under which an SBIC is permitted to co-invest with its Associates. The primary purpose of these provisions is to ensure that the terms of such co-investments are ''fair and equitable'' to the SBIC, i.e. that the SBIC is not being disadvantaged relative to an Associate. The co-investment rules include a number of ''safe harbor'' provisions under which the transaction is presumed to be fair and equitable to the SBIC; one of these safe harbors covers financings where the SBIC and its Associate invest at the same time and on the same terms and conditions. SBIC managers frequently seek to rely on this provision because they are involved in

the management of more than one fund and would like to have the funds co-invest in a small business. SBA generally considers such co-investments to be beneficial because risk is spread across more than one entity. The small business may also benefit from having access to multiple investors.

It became apparent after adoption of the current § 107.730 that certain types of transactions could be characterized as both ''co-investment with an Associate'' and ''financing an Associate''. As with all other transactions that involve the financing of an Associate, SBA has required the SBIC to obtain a prior written exemption even if the financing would fall under the safe harbor for co-investments with Associates.

However, SBA believes the exemption requirement is unnecessarily burdensome for one particular type of transaction: The SBIC and an Associate investment fund (most typically a fund under common management) make an initial investment in a small business under the same terms and conditions, which include the acquisition by each fund of at least a 10% equity interest in the small business. This initial round of financing is a ''co-investment with an Associate'' and does not require a conflict of interest exemption. However, when the same two parties want to make a follow-on investment in the same small business, again under the same terms and conditions, the second and subsequent round(s) of financing are considered to be ''financing an Associate'' and do require a prior written exemption. This is because the Associate fund's 10% or greater equity interest causes the small business itself to be defined as an Associate of the SBIC under paragraph (8)(ii) of the definition in § 107.50. While SBA would approve a conflict of interest exemption for a follow-on financing transaction on the same terms and conditions by an SBIC and its Associate fund, the Agency is concerned that the exemption requirement may cause unnecessary delays in making financing available to the small business, and imposes a significant administrative burden on both the SBIC and SBA.

To address this concern, the final rule adds an exception to 13 CFR 107.730(a)(1). This paragraph previously prohibited any financing of an Associate without a prior written conflict of interest exemption. Under the new exception, a prior written exemption is not required for an Associate financing that satisfies all of the following conditions:

1. The small business that will receive the financing is an Associate of the SBIC, pursuant to paragraph (8)(ii) of the Associate definition, only because an Associate investment fund already holds a 10% or greater equity interest in the small business.

2. The SBIC and the Associate fund previously invested in the small business at the same time and on the same terms and conditions.

3. The SBIC and the Associate fund will provide follow-on financing to the small business at the same time and on the same terms and conditions.

4. The SBIC and the Associate fund will provide follow-on financing to the small business in the same proportionate dollar amounts as their respective investments in the previous round of financing (e.g., if the SBIC invested $2 million and the Associate invested $1 million in the previous round, their follow-on investments would be in the same 2:1 ratio).

The revision will allow transactions meeting these specific conditions to be governed only by the co-investment provisions of § 107.730(d) rather than by the ''Associate financing'' provisions of the current § 107.730(a), thereby returning to SBA's original intent when it promulgated the co-investment rules. SBA expects that this change will help to eliminate delays in making follow-on financing available to small businesses while providing appropriate protection for small business concerns, investors in SBICs and the Federal government.

SBA has also revised § 107.730(g), which requires public notice of all requests by SBICs for conflict of interest exemptions. The previous language required public notice by both SBA (via publication in the **Federal Register**) and the requesting SBIC (via publication in a newspaper in the locality most directly affected by the transaction). These disclosure requirements exceeded those required by section 312 of the SBI Act, from which the local publication requirement was removed by section 3 of Public Law 107–100 (December 21, 2001). The final rule brings the regulation into conformity with the statute by eliminating the requirement for public notice in the affected locality; the requirement for public notice in the **Federal Register** is not affected.

Section 107.530—Restrictions on investments of idle funds by leveraged Licensees. An SBIC holding idle funds may invest those funds only as permitted by § 107.530(b). The permitted investments are all relatively short term and bear minimal or no risk of loss, such as direct obligations of the United States that mature within 15 months of the date of investment. The final rule revises this section to reflect an amendment to section 308(b) of the SBI Act (15 U.S.C. 687(b)) made by Public Law 108–447, Division K, section 202 (December 8, 2004) that allows an SBIC to invest ''in mutual funds, securities, or other instruments that consist of, or represent pooled assets of'' the various direct investment vehicles permitted by section 308(b). 15 U.S.C. 687(b)(3). For example, this provision allows an SBIC to invest idle funds in a money market account, as long as the money market fund invests exclusively in permitted instruments.

Section 107.855—Interest rate ceiling and limitations on fees charged to Small Businesses (''Cost of Money''). The final rule corrects an error by removing § 107.855(g)(10). This paragraph provided an exclusion from the Cost of Money calculation in the form of a cross-reference to the non-existent § 107.855(i).

Section 107.505—Facsimile requirement. The final rule eliminates duplication by removing § 107.505, which required an SBIC to have the capability to receive fax messages. This section repeated language already found in § 107.504(b).

Compliance With Executive Orders 12866, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a significant regulatory action under Executive Order 12866. This rule also is not a major rule under the Congressional Review Act (CRA).

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or presumptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial direct effects on the States, or the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this final rule has no federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

For purposes of the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, SBA has determined that this rule

will not impose any new reporting or recordkeeping requirements. The requirement for SBICs to submit requests for conflict of interest exemptions is not an information collection as that term is defined by the PRA because the requests do not involve any standardized or identical reporting, recordkeeping or disclosure requirements. Rather, each request for exemption is unique to the circumstances of the particular SBIC. In any event, to the extent that SBICs have been required to submit conflict of interest exemptions under the circumstances described in this rule, that requirement no longer exists.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency promulgates a final rule following publication of the proposed rule, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires the agency to prepare a final regulatory flexibility analysis (FRFA) which describes the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing a FRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This final rule affects all SBICs, of which there are currently 294, most of which are small entities. Therefore, SBA has determined that this rule will have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule will not be significant. The new conflict of interest exception eliminates the requirement for SBICs to obtain a conflict of interest exemption for a particular type of transaction. This change is expected to reduce the regulatory burden on SBICs and allow them to close such financing transactions with less delay.

SBA asserts that the economic impact of the rule, if any, will be minimal and entirely beneficial to small SBICs. Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.,* 683, 687(c), 687b, 687d, 687g, 687m, Pub. L. 106–554, 114 Stat. 2763; and Pub. L. 111–5, 123 Stat. 115.

§ 107.505 [Removed]

■ 2. Remove § 107.505.

■ 3. Amend § 107.530 by redesignating paragraphs (b)(3) through (b)(6) as (b)(4) through (b)(7), and adding a new paragraph (b)(3) to read as follows:

§ 107.530 Restrictions on investments of idle funds by leveraged Licensees.

* * * * *

(b) *Permitted investments of idle funds.* * * *

(3) Mutual funds, securities, or other instruments that exclusively consist of, or represent pooled assets of, investments described in paragraphs (b)(1) or (b)(2) of this section; or

* * * * *

■ 4. Amend § 107.730 by revising paragraphs (a)(1) and (g) to read as follows:

§ 107.730 Financings which constitute conflicts of interest.

(a) * * *

(1) Provide Financing to any of your Associates, except for a Financing to an Associate that meets all of the following conditions:

(i) The Small Business that receives the Financing is your Associate, pursuant to paragraph (8)(ii) of the Associate definition in § 107.50, only because an investment fund that is your Associate holds a 10% or greater equity interest in the Small Business.

(ii) You and the Associate investment fund previously invested in the Small Business at the same time and on the same terms and conditions.

(iii) You and the Associate investment fund are providing follow-on financing to the Small Business at the same time, on the same terms and conditions, and in the same proportionate dollar amounts as your respective investments in the previous round(s) of financing (for example, if you invested $2 million and your Associate invested $1 million in the previous round, your respective follow-on investments would be in the same 2:1 ratio).

* * * * *

(g) *Public notice.* Before granting an exemption under this § 107.730, SBA will publish notice of the transaction in the **Federal Register**.

§ 107.855 [Amended]

■ 5. Amend § 107.855 by removing paragraph (g)(10) and redesignating current paragraphs (g)(11) through (g)(13) as (g)(10) through (g)(12).

Karen G. Mills,

Administrator.

[FR Doc. 2012–8017 Filed 4–3–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

22 CFR Parts 22 and 42

[Public Notice 7838]

RIN 1400–AD06

Revision to the Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates; Correction

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim Final Rule; Correction.

SUMMARY: This document contains a correction to the Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates published in the **Federal Register** on March 29, 2012 [Public Notice 7835].

DATES: Effective April 13, 2012.

FOR FURTHER INFORMATION CONTACT: Special Assistant, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202–663–1576, telefax: 202–663–2526; email: *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Correction

The interim final rule published on March 29, 2012, 77 FR 18907–18914, is corrected as follows:

1. In the chart on pg. 18912 detailing the proposed fee changes, the total estimated change in annual fees collected amount, at the bottom of the far right column, is corrected so that the decimal places are correct. The correct figure is 94,813,970.

Dated: March 30, 2012.

Alexandra C. Gianinno,

Comptroller, Office of the Comptroller, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 2012–8109 Filed 4–3–12; 8:45 am]

BILLING CODE 4710–06–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act, as Amended

CFR Correction

In Title 29 of the Code of Federal Regulations, Parts 900 to 1899, revised as of July 1, 2011, on page 365, in § 1630.2, in paragraph (o)(1)(ii), remove the words ''a qualified individual with a disability'' and add, in their place, ''an individual with a disability who is qualified''.

[FR Doc. 2012–8181 Filed 4–3–12; 8:45 am]

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

Payment of Premiums

CFR Correction

In Title 29 of the Code of Federal Regulations, Part 1927 to End, revised as of July 1, 2011, on page 933, § 4007.5 is reinstated to read as follows:

§ 4007.5 Date of filing.

The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

[68 FR 61352, Oct. 28, 2003]

[FR Doc. 2012–8185 Filed 4–3–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

Safety Zone, Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 295.7 to Mile Marker 297.0 at various times from May 1, 2012 until June 6, 2012. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the Army Corp of Engineers' barrier testing operations. During these tests, the Army Corp of Engineers' will conduct various safety tests to include barge effects and field strength at depth measurement.

During any of the below listed enforcement periods, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7 a.m. to 11 a.m. and from 1 p.m. to 5 p.m. on May 1–4, 2012, and again on June 5–6, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email CWO Jon Grob, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7188, email address *Jon.K.Grob@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone between Mile Marker 295.7 to Mile Marker 297.0 on all waters of the Chicago Sanitary and Ship Canal. Enforcement will occur from 7 a.m. until 11 a.m. and 1 p.m. until 5 p.m. on:

(1) On May 1–4, 2012.

(2) On June 5–6, 2012.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the Army Corp of Engineers' fish suppression operations to clear all fish between barrier IIA and IIB, in conjunction with the U.S. Army Corps of Engineers scheduled maintenance shutdown of Barrier IIB, poses risks to life and property. The combination of vessel traffic and the fish removal operations in the water makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: March 14 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012–8100 Filed 4–3–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Menominee River, Marinette Marine Corporation Shipyard, Marinette, WI; Corrections

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correcting amendments.

SUMMARY: The U.S. Army Corps of Engineers published a document in the **Federal Register** on May 24, 2011 (76 FR 30024), amending its regulations to establish a restricted area in the waters of the Menominee River at the Marinette Marine Corporation Shipyard in Marinette, Wisconsin. That document inadvertently included latitude and longitude coordinates for the restricted area boundary that resulted in encroachment into a Federal navigation project. This document corrects the final rule by revising the latitude and longitude coordinates listed in § 334.815 (a) to reduce the restricted area so that it does not encroach on the Federal navigation project. The document also listed the Department of the Navy organization responsible for administration and enforcement of the

restricted area as the Supervisor of Shipbuilding, Conversion, and Repair Gulf Coast (SUPSHIP Gulf Coast). After the document was published, the Department of the Navy revised the mission, functions, and tasks of the Supervisors of Shipbuilding, Conversion and Repair organization. This organizational revision changed the administrative and enforcement responsibilities for the subject restricted area from SUPSHIP Gulf Coast to SUPSHIP Bath, Maine. This document corrects the final rule by revising § 334.815 (b) and (c) to reflect the organizational change.

DATES: Effective date: April 4, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or by email at *david.b.olson@usace.army.mil* or Mr. Todd Vesperman, U.S. Army Corps of Engineers, St. Paul District, Regulatory Branch, at 920–448–2824 or by email at *todd.m.vesperman@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers published a final rule in the **Federal Register** on May 24, 2011 (76 FR 30024), and later determined that correcting amendments need to be made to address encroachment into a Federal navigation channel and a change in the enforcing authority that occurred as a result of the Department of the Navy revising the mission, functions, and tasks of the Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPs) organization. That organizational revision changed administrative and enforcement responsibilities for the subject restricted area from SUPSHIP Gulf Coast to SUPSHIP Bath, Maine. This correcting amendment changes the latitude and longitude coordinates in § 334.815(a) so that the restricted area will not encroach into the Federal navigation project. This correcting amendment also changes the administrative and enforcement responsibilities in § 334.815(b) and (c) for the subject restricted area from SUPSHIP Gulf Coast to SUPSHIP Bath, Maine.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, 33 CFR part 334 is corrected by making the following correcting amendments:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.815 to read as follows:

§ 334.815 Menominee River, at the Marinette Marine Corporation Shipyard, Marinette, Wisconsin; Naval Restricted Area.

(a) *The area.* The waters adjacent to Marinette Marine Corporation's pier defined by a rectangular shaped area on the south side of the river beginning on shore at the eastern property line of Marinette Marine Corporation at latitude 45°5′58.7″ N, longitude 087°36′55.9″ W; thence northerly to latitude 45°5′59.2″ N, longitude 087°36′55.8″ W; thence westerly to latitude 45°5′59.6″ N, longitude 087°36′57.5″ W; thence westerly to latitude 45°6′00.0″ N, longitude 087°36′58.7″ W; thence westerly to latitude 45°6′1.7″ N, longitude 087°37′4.9″ W; thence westerly to latitude 45°6′2.8″ N, longitude 087°37′9.8″ W; thence southerly to latitude 45°6′2.2″ N, longitude 087°37′10.0″ W; thence easterly along the Marinette Marine Corporation pier to the point of origin. The restricted area will be marked by a lighted and signed floating buoy line.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to a local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area when marked by a signed floating buoy line without permission from the Supervisor of Shipbuilding, Conversion and Repair, United States Navy, Bath, Maine or his/her authorized representative.

(c) *Enforcement.* The regulation in this section shall be enforced by the Supervisor of Shipbuilding, Conversion and Repair, United States Navy, Bath, Maine and/or such agencies or persons as he/she may designate.

Dated: March 29, 2012.

Richard C. Lockwood,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2012–8120 Filed 4–3–12; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2011–0942; FRL–9333–3]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 17 chemical substances which were the subject of premanufacture notices (PMNs). Two of these chemical substances are subject to TSCA consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process any of these 17 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on June 4, 2012. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on April 18, 2012.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before May 4, 2012 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**).

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0942, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2011–0942. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries

are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0942. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376) (April 24, 1990 SNUR). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 17 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 17 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for non-section 5(e) SNURs (i.e., SNURs without TSCA section 5(e) consent orders), the basis for the SNUR.
- Toxicity concerns.
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (i.e., limits on manufacture and importation volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes two PMN substances (P–10–486 and P–10–487) that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) in which EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''5(e) SNURs'' on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The 5(e) SNURs designate as a ''significant new use'' the absence of the protective measures required in the corresponding consent orders.

This rule also includes SNURs on 15 PMN substances (P–09–248, P–11–33, P–11–34, P–11–188, P–11–316, P–11–333, P–11–424, P–11–511, P–11–546, P–11–578, P–11–580, P–11–591, P–11–608, P–11–637, and P–11–662) that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' These so-called ''non-5(e) SNURs'' are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all non-5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Number P–09–248

Chemical name: Ethyleneamine polyphosphates (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance will be as a flame retardant added to polymers. Based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substance to surface water from uses other than described in the PMN exceed the releases expected from the use described in the PMN. For the described use in the PMN, significant environmental releases are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10282.

PMN Numbers P–10–486 and P–10–487

Chemical names: (P–10–486) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-sulfo-.omega.-hydroxy-, C12–13-branched and linear alkyl ethers, sodium salts and (P–10–487) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-sulfo-.omega.-hydroxy-, C14–15-branched and linear alkyl ethers, sodium salts.

CAS numbers: (P–10–486) 958238–81–8 and (P–10–487) 958238–82–9.

Effective date of TSCA section 5(e) consent order: July 22, 2011.

Basis for TSCA section 5(e) consent order: The PMNs state that the use of the substances will be for downhole injection for enhanced oil recovery. The order was issued under TSCA sections 5(e)(1)(A)(i), (e)(1)(A)(ii)(I), and (e)(1)(A)(ii)(II) based on a finding that these substances may present an unreasonable risk of injury to the environment and will be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities. To protect against the risk, the order requires certain hazard communication requirements, specific disposal requirements for processing and use, and prohibits releases from manufacture of the PMN substances resulting in surface water concentrations exceeding 28 parts per billion (ppb) for P–10–486 and 4 ppb for P–10–487. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Toxicity concern: Based on ecological structure activity relationship (EcoSAR) analysis of test data on analogous anionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 28 ppb for P–10–486 and 4 ppb for P–10–487 in surface waters.

Recommended testing: EPA has determined that the results of a fish acute toxicity test (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) on P–10–487 would help characterize the environmental effects of the PMN substances. The PMN submitter agreed not to exceed the production volume limit in the consent order before conducting these tests.

CFR citations: 40 CFR 721.10283 (P–10–486) and 40 CFR 721.10284 (P–10–487).

PMN Number P–11–33

Chemical name: Formaldehyde, polymer with 4-(1,1-dimethylethyl)phenol, reaction products with 1-piperazineethanamine.

CAS number: 1191244–16–2.

Basis for action: The PMN states that the PMN substance will be used as a hardener for epoxy resin laminating systems. Based on ecological structure activity relationship (EcoSAR) analysis of test data on analogous aliphatic amines and phenol-amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 17 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 17 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10285.

PMN Number P–11–34

Chemical name: Formaldehyde, polymer with .alpha.-(2-aminomethylethyl)-.omega.-(2-aminomethylethoxy)poly[oxy(methyl-1,2-ethanediyl)] and 4-(1,1-dimethylethyl)phenol.

CAS number: 1192146–78–3.

Basis for action: The PMN states that the PMN substance will be used as a hardener for epoxy resin laminating systems. Based on EcoSAR analysis of test data on analogous aliphatic amines and phenol-amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 21 ppb of the PMN substance in surface waters. As described in the PMNs, the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 21 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10286.

PMN Number P–11–188

Chemical name: Infused carbon nanostructures (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as an additive to provide conductive properties to reinforcements used in composites. Based on available information on analogous chemical substances, the PMN substance may cause lung effects. For the use described in the PMN, no significant inhalation exposures are expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable

risk. EPA has determined, however, that a manufacturing process other than as described in the PMN (the manufacturing process described in the PMN includes incorporation of the PMN substance into pellets) may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of the following information would help characterize the health effects of the PMN substance: The dimensions, characteristics, and physical-chemical properties of the carbon nanostructures. These properties should be determined once a year for three consecutive years.

CFR citation: 40 CFR 721.10287.

PMN Number P–11–316

Chemical name: Cyclohexane, oxidized, by-products from, distn. residues.

CAS number: 1014979–92–0.

Basis for action: The PMN states that the generic (non-confidential) uses of the substance are as an industrial solvent in closed and open systems, and as an accelerant in permitted industrial explosives. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 4 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, fresh water daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10288.

PMN Number P–11–333

Chemical name: Hexanedioic acid polymer with aliphatic polyol dihydrogen phosphate aromatic ester (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use will be as a component of industrial coatings. Based on EcoSAR analysis of test data on analogous organic phosphates, EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substance to surface water from uses other than described in the PMN exceed the releases expected from the use described in the PMN. For the described use in the PMN, significant environmental releases are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10289.

PMN Number P–11–424

Chemical name: Alkenoyloxy arylphenone (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance is as a monomer for polymer applications. Based on test data on the PMN substance, and EcoSAR analysis of test data on analogous methacrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 26 ppb of the PMN substance in surface waters. As described in the PMN, releases to surface waters are not expected to exceed 26 ppb. Therefore, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 26 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10290.

PMN Number P–11–511

Chemical name: C15 olefins (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a petroleum substitute base. Based on EcoSAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10291.

PMN Number P–11–546

Chemical name: Silicate (2-), hexafluoro-, cesium (1:2).

CAS number: 16923–87–8.

Basis for action: The PMN states that the PMN substance will be used as a brazing (metal joining) agent. Based on submitted test data for an analogous PMN substance, EPA identified concerns for degeneration of the kidneys, necrosis of the heart muscle, and effects on the male reproductive organs to workers from inhalation exposure to the PMN substance. For the uses described in the PMN, significant dermal or inhalation exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, use of the substance other than as a brazing (metal joining) agent may cause serious health effects. Based on this information, the PMN substance meets

the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a repeated dose 28-day oral toxicity test (OPPTS Test Guideline 870.3050) in rodents would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10292.

PMN Number P–11–578

Chemical name: Benzoic acid, 4-(1,1-dimethylethyl)-, hydrazide.

CAS number: 43100–38–5.

Basis for action: The PMN states that the use of this substance will be as an intermediate. Based on SAR analysis of test data on analogous hydrazines, EPA identified concerns for mutagenicity, oncogenicity, developmental toxicity, dermal sensitization, and respiratory sensitization from exposure to the PMN substance via the inhalation route. In addition, based on EcoSAR analysis of analogous hydrazines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. For the intermediate use described in the PMN, inhalation exposures and environmental releases to surface waters are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as an intermediate, or any use resulting in surface water concentrations exceeding 2 ppb may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a 90-day oral toxicity test in rodents (OPPTS Test Guideline 870.3100) by the inhalation route; a carcinogenicity test (OPPTS Test Guideline 870.4200) by the inhalation route, in two species of rodents; a fish acute toxicity test (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10293.

PMN Number P–11–580

Chemical name: Cyclohexanol, 2,6-bis(1,1-dimethylethyl)-4-methyl-.

CAS number: 163119–16–2.

Basis for action: The PMN states that the use of this substance will be as an intermediate. Based on EcoSAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, releases to surface waters are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10294.

PMN Number P–11–591

Chemical name: IPDI modified isophthalic acid, neopentyl glycol and adipic acid (generic).

*CAS number*s: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a lamination adhesive. Based on test data on analogous substances, EPA identified concerns for oncogenicity, if the PMN substance is inhaled, as well as concerns for irritation to the eyes, skin, mucous membranes, and dermal and respiratory sensitization to workers from dermal and inhalation exposure to the PMN. For the industrial uses described in the PMN, and due to the use of personal protective equipment, significant worker exposure is unlikely, as dermal or inhalation exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of this substance may present an unreasonable risk. EPA has determined, however, that substantial production volume increases, or use of the substance in consumer products may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of a dermal sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10295.

PMN Number P–11–608

Chemical name: 1,3-Benzenediol, 4-[1-[[3-(1H-imidazol-1-yl)propyl]imino]ethyl]-.

CAS number: 1313999–39–1.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an epoxy catalyst. Based on EcoSAR analysis of test data on polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Additionally, EPA recommends that OPPTS Test Guideline 850.1000, ''Special Considerations for Conducting Aquatic Laboratory Studies'' be consulted for materials, such as this PMN substance, that are water insoluble or of low water solubility.

CFR citation: 40 CFR 721.10296.

PMN Number P–11–637

Chemical name: Tin, C16-18 and C18-unsatd. fatty acids castor-oil fatty acids complexes.

CAS number: 1315588–63–6.

Basis for action: The PMN states that the use of the substance will be as a polyurethane foam catalyst. Based on test data on the PMN substance, EPA identified concerns for dermal sensitization and blood and liver toxicity to workers from exposure to the PMN substance. For the industrial use described in the PMN, and due to the use of personal protective equipment,

significant worker exposure is unlikely, as dermal or inhalation exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of this substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the substance or use of the substance in consumer products may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that the results of a 28-day dermal toxicity study (OPPTS Test Guideline 870.3200) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10297.

PMN Number P–11–662

Chemical name: MDI terminated polyester polyurethane polymer (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a liquid moisture cure adhesive. Based on test data on analogous diisocyanates, EPA identified concerns for mutagenicity, irritation to lungs and mucous membranes, and dermal and respiratory sensitization to workers from dermal and inhalation exposure to the PMN substance. For the industrial uses described in the PMN, and due to the use of personal protective equipment, significant worker exposure is unlikely, as dermal or inhalation exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance in consumer products may cause serious health effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a dermal sensitization test (OPPTS Test Guideline 870.2600) and a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10298.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for two of the 17 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160 (see Unit II.).

In the other 15 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is June 4, 2012 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before May 4, 2012.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before May 4, 2012, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Rule

Significant new use designations for a chemical substance are legally established as of the date of publication of this direct final rule, April 4, 2012.

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. TSCA section 5(e) consent orders have been issued for two chemical substances and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA concludes that the uses are not ongoing. However, EPA recognizes that prior to the effective date of the rule, when chemical substances identified in this SNUR are added to the TSCA Inventory, other persons may engage in a significant new use as defined in this rule before the effective date of the rule. However, 7 of the 17 chemical substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-

PMN *bona fide* submissions (per §§ 720.25 and 721.11), the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

As discussed in the April 24, 1990 SNUR, EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of this direct final rule rather than as of the effective date of the rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became effective, and then argue that the use was ongoing before the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person meets the conditions of advance compliance under § 721.45(h), the person is considered exempt from the requirements of the SNUR.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

In the TSCA section 5(e) consent orders for two of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier TSCA section 5(e) consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture, import, or processing.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer, importer, or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer, importer, or processor must show that it has a *bona fide* intent to manufacture, import, or process the chemical substance and must identify the specific use for which it intends to manufacture, import, or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture, import, or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers, importers, and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, i.e., the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture, import, or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 721.25 and 720.40. E-PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2011–0942.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This rule establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

On February 18, 2012, EPA certified pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true: (1) A significant number of SNUNs would not be submitted by small entities in response to the SNUR, and (2) the SNUN submitted by any small entity would not cost significantly more than $8,300. A copy of that certification is available in the docket for this rule.

This rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true: (1) A significant number of SNUNs would not be submitted by small entities in response to the SNUR and (2) submission of the SNUN would not cost any small entity significantly more than $8,300. Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rule. As such, EPA has determined that this rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply,

distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 23, 2012.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by adding the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10282	2070–0012
721.10283	2070–0012
721.10284	2070–0012
721.10285	2070–0012
721.10286	2070–0012
721.10287	2070–0012
721.10288	2070–0012
721.10289	2070–0012
721.10290	2070–0012
721.10291	2070–0012
721.10292	2070–0012
721.10293	2070–0012
721.10294	2070–0012
721.10295	2070–0012
721.10296	2070–0012
721.10297	2070–0012
721.10298	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10282 to subpart E to read as follows:

§ 721.10282 Ethyleneamine polyphosphates (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as ethyleneamine polyphosphates (PMN P–09–248) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 5. Add § 721.10283 to subpart E to read as follows:

§ 721.10283 Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-sulfo-.omega.-hydroxy-, C12-13-branched and linear alkyl ethers, sodium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly[oxy(methyl-1,2-ethanediyl)], .alpha.-sulfo-.omega.-hydroxy-, C12-13-branched and linear alkyl ethers, sodium salts (PMN P–10–486; CAS No. 958238–81–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), (g)(4)(ii), (g)(4)(iii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (330,000 kilograms for this substance and P–10–487 combined).

(iii) *Disposal.* Requirements as specified in § 721.85(b)(1) and (c)(1) solvent rinsate resulting from cleaning of storage and holding tanks, shipboard tanks, iso containers, rail cars, and trucks used to transport the substance may only be disposed of by incineration. Sampling wastes containing the substance may only be disposed of by incineration, and § 721.85(c)(3) for oilfield applications, when the substance will no longer be injected into a well at a particular site for enhanced oil recovery, the water rinsate of the field holding tank and any remaining field water containing the substance must be injected into a designated disposal well, either a class

I hazardous waste disposal well or another class II well.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4) (N = 28).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

■ 6. Add § 721.10284 to subpart E to read as follows:

§ 721.10284 Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-sulfo-.omega.-hydroxy-, C14-15-branched and linear alkyl ethers, sodium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly[oxy(methyl-1,2-ethanediyl)], .alpha.-sulfo-.omega.-hydroxy-, C14-15-branched and linear alkyl ethers, sodium salts (PMN P–10–487; CAS No. 958238–82–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), (g)(4)(ii), (g)(4)(iii), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (330,000 kilograms for this substance and for P–10–486 combined).

(iii) *Disposal.* Requirements as specified in § 721.85(b)(1) and (c)(1) solvent rinsate resulting from cleaning of storage and holding tanks, shipboard tanks, iso containers, rail cars, and trucks used to transport the substance may only be disposed of by incineration. Sampling wastes containing the substance may only be disposed of by incineration, and § 721.85(c)(3) for oilfield applications, when the substance will no longer be injected into a well at a particular site for enhanced oil recovery, the water rinsate of the field holding tank and any remaining field water containing the substance must be injected into a designated disposal well, either a class I hazardous waste disposal well or another class II well.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4) (N = 4).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

* * * * *

■ 7. Add § 721.10285 to subpart E to read as follows:

§ 721.10285 Formaldehyde, polymer with 4-(1,1-dimethylethyl)phenol, reaction products with 1-piperazineethanamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as formaldehyde, polymer with 4-(1,1-dimethylethyl)phenol, reaction products with 1-piperazineethanamine (PMN P–11–33; CAS No. 1191244–16–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 17 parts per billion (ppb)).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. Add § 721.10286 to subpart E to read as follows:

§ 721.10286 Formaldehyde, polymer with .alpha.-(2-aminomethylethyl)-.omega.-(2-aminomethylethoxy)poly[oxy(methyl-1,2-ethanediyl)] and 4-(1,1-dimethylethyl)phenol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as formaldehyde, polymer with .alpha.-(2-aminomethylethyl)-.omega.-(2-aminomethylethoxy)poly[oxy(methyl-1,2-ethanediyl)] and 4-(1,1-dimethylethyl)phenol) (PMN P–11–34; CAS No. 1192146–78–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 21 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 9. Add § 721.10287 to subpart E to read as follows:

§ 721.10287 Infused carbon nanostructures (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as infused carbon nanostructures (PMN P–11–188) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (manufacturing process described in the PMN; the process described in the PMN includes the incorporation of the PMN substance into pellets).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

■ 10. Add § 721.10288 to subpart E to read as follows:

§ 721.10288 Cyclohexane, oxidized, by-products from, distn. residues.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cyclohexane, oxidized, by-products from, distn. residues (PMN P–11–316; CAS No. 1014979–92–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 4 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

■ 11. Add § 721.10289 to subpart E to read as follows:

§ 721.10289 Hexanedioic acid polymer with aliphatic polyol dihydrogen phosphate aromatic ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as hexanedioic acid polymer with aliphatic polyol dihydrogen phosphate aromatic ester (PMN P–11–333) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

■ 12. Add § 721.10290 to subpart E to read as follows:

§ 721.10290 Alkenoyloxy arylphenone (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenoyloxy arylphenone (PMN P–11–424) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 26).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10291 to subpart E to read as follows:

§ 721.10291 C15 olefins (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as C15 olefins (PMN P–11–511) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10292 to subpart E to read as follows:

§ 721.10292 Silicate (2-), hexafluoro-, cesium (1:2).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as silicate (2-) hexafluoro-cesium (1:2) (PMN P–11–546; CAS No. 16923–87–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (use as brazing (metal joining) agent).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. Add § 721.10293 to subpart E to read as follows:

§ 721.10293 Benzoic acid, 4-(1,1-dimethylethyl)-, hydrazide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzoic acid, 4-(1,1-dimethylethyl)-, hydrazide (PMN P–11–578; CAS No. 43100–38–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 2 ppb).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. Add § 721.10294 to subpart E to read as follows:

§ 721.10294 Cyclohexanol, 2,6-bis(1,1-dimethylethyl)-4-methyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cyclohexanol, 2,6-bis(1,1-dimethylethyl)-4-methyl- (PMN P–11–580; CAS No. 163119–16–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 2 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are

applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. Add new § 721.10295 to subpart E to read as follows:

§ 721.10295 IPDI modified isophthalic acid, neopentyl glycol and adipic acid (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as IPDI modified isophthalic acid, neopentyl glycol and adipic acid (PMN P–11–591) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (s) (15,000 kilograms).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. Add new § 721.10296 to subpart E to read as follows:

§ 721.10296 1,3-Benzenediol, 4-[1-[[3-(lH-imidazol-1-yl)propyl]imino] ethyl]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-benzenediol, 4-[1-[[3-(lH-imidazol-1-yl)propyl]imino[ethyl]- (PMN P–11–608; CAS No. 1313999–39–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1 ppb).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. Add new § 721.10297 to subpart E to read as follows:

§ 721.10297 Tin, C16-18 and C18-unsatd. fatty acids castor-oil fatty acids complexes.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as tin, C16-18 and C18-unsatd. fatty acids castor-oil fatty acids complexes (PMN P–11–637; CAS No. 1315588–63–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. Add new § 721.10298 to subpart E to read as follows:

§ 721.10298 MDI terminated polyester polyurethane polymer (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as MDI terminated polyester polyurethane polymer (P–11–662) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2012–8092 Filed 4–3–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0544; FRL–9633–3]

Approval and Promulgation of Implementations Plans; California Air Resources Board—In-Use Heavy-Duty Diesel-Fueled Truck and Bus Regulation, and Drayage Truck Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the California State Implementation Plan (SIP) submitted by the California Air Resources Board (CARB or Board). This revision concerns two regulations that reduce emissions of diesel particulate matter (PM), oxides of nitrogen (NO_X), and other pollutants from in-use, heavy-duty diesel-fueled trucks and buses, and drayage trucks. EPA is approving this SIP revision because the Agency has determined that the regulations are consistent with the relevant Clean Air Act requirements, policies and guidance. Final approval of the two regulations and incorporation of them into the California SIP makes them federally enforceable.

DATES: *Effective Date:* This rule is effective on May 4, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0544 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, EPA Region IX, (415) 947–4150, *johnson.roxanne@epa.gov.*

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

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I. EPA's Proposed Action

On July 11, 2011 (76 FR 40652), EPA proposed to approve title 13, California Code of Regulations (CCR), section 2025 (''Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles'') (referred to herein as the California Air Resources Board's (CARB's) ''Truck and Bus Regulation'' and 13 CCR section 2027 (''In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks'') (referred to herein as CARB's ''Drayage Truck Regulation'') as revisions to the California State Implementation Plan (SIP). We proposed to approve CARB's regulations under section 110(k)(3) of the Clean Air Act (CAA or ''Act''). In today's action, EPA is taking final action to approve CARB's Truck and Bus Regulation and Drayage Truck Regulation.

EPA proposed to approve the Truck and Bus Regulation and Drayage Truck Regulation based on the versions of the amended regulations released for public comment on May 19, 2011 and submitted by CARB to EPA in connection with a request to ''parallel process'' the regulations for SIP approval purposes. Our July 11, 2011 proposed rule provides detailed information on the State's procedural steps culminating in the public release of the proposed Truck and Bus Regulation and Drayage Truck Regulation that formed the basis for EPA's proposed approval, on the amendments to the original versions of the Truck and Bus Regulation and Drayage Truck Regulation (which had been originally adopted by CARB in December 2008 and December 2007, respectively), and on EPA's ''parallel process'' procedure used to evaluate and propose action on proposed SIP revisions prior to final adoption and submittal to EPA. The reader is directed to the July 11, 2011 proposed rule for this detailed information. See 76 FR at 40653–40654.

The regulations were developed by CARB to reduce NO_X, and PM emissions from in-use, heavy-duty diesel-fueled trucks and buses and to meet CAA requirements. NO_X and volatile organic compounds (VOC) are precursors responsible for the formation of ozone; and NO_X, VOC, ammonia, and sulfur dioxide are precursors for fine particulate matter ($PM_{2.5}$). At elevated levels, ozone and $PM_{2.5}$ harm human health and the environment by contributing to premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. California has a number of nonattainment areas for the National Ambient Air Quality Standards (NAAQS) for ozone and $PM_{2.5}$, and the CAA requires states to submit SIP revisions that ensure reasonable further progress (RFP) and that demonstrate attainment of the NAAQS within such areas. See, generally, part D of title I of the CAA. Reductions from the two regulations play a critical role in assuring that areas such as the South Coast Air Basin (which includes the Los Angeles metropolitan area and Orange County) and the San Joaquin Valley meet the NAAQS for ozone and $PM_{2.5}$.[1]

Truck and Bus Regulation

CARB's Truck and Bus Regulation (i.e., 13 CCR section 2025) requires fleet[2] owners to upgrade their vehicles to meet specific performance standards for NO_X and PM. The regulation applies to diesel-fueled trucks and buses that are privately owned, federally owned, and to publicly and privately owned school buses, that have a manufacturer's gross vehicle weight rating (GVWR) greater than 14,000 pounds (lbs). (Local and state government owned diesel-fueled trucks are already subject to other CARB regulations.) Nearly all of the vehicles affected by the regulation are on-road vehicles, but the regulation also applies to yard trucks with off-road engines used for agricultural operations and two-engine street sweepers with such engines. The regulation exempts certain categories of trucks and buses, many of which, such as solid waste collection vehicles, are subject to different CARB regulations. See 13 CCR section 2025(c).

Key concepts used in the Truck and Bus Regulation include ''2010 Model Year (MY) Emissions Equivalent Engine,'' ''PM Best Available Control Technology'' (BACT), and ''Verified Diesel Emission Control Strategy'' (VDECS). These concepts are described in detail in our July 11, 2011 proposed rule on pages 40654 and 40655 and the reader is directed there for more information on these concepts.

As described in our July 11, 2011 proposed rule, the basic requirements of the regulation are set forth in subsections (e), (f), and (g) of the regulation. Under these subsections, different sets of requirements are established for subject vehicles with a GVWR of 26,000 lbs or less [subsection (f)] and subject vehicles with a GVWR greater than 26,000 lbs [subsection (g)]. Under subsection (f), with certain exceptions, subject vehicles with a GVWR of 26,000 lbs or less must, starting January 1, 2015, be equipped with a ''2010 model year emissions equivalent engine'' pursuant to the schedule shown in table 1. School buses, that otherwise would be subject to subsection (f), are subject to a different set of requirements in subsection (k). Under subsection (k), with certain exceptions, all schools buses must comply with PM BACT by 2014.

TABLE 1—COMPLIANCE SCHEDULE UNDER SECTION 2025(f) BY ENGINE MODEL YEAR FOR LIGHTER HEAVY-DUTY TRUCKS

Existing engine model year	Compliance date as of January 1	Requirement
1995 and older	2015	2010 model year emission equivalent.
1996	2016	
1997	2017	
1998	2018	
1999	2019	
2003 and older	2020	
2004–2006	2021	
All engines	2023	

[1] Recently, EPA concurred with the State's determinations that sulfur dioxide, NO_X and VOC are significant $PM_{2.5}$ precursors for attainment planning purposes in the South Coast [76 FR 69928, at 69952 (Nov. 9, 2011)], and that sulfur dioxide and NO_X are significant $PM_{2.5}$ precursors for attainment planning purposes in San Joaquin Valley [76 FR 69896, at 69924 (Nov. 9, 2011)].

[2] In CARB's Truck and Bus Regulation, ''fleet'' is defined as one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to the regulation. See 13 CCR section 2025(d)(28).

Under subsection (g), with certain exceptions, subject vehicles with a GVWR more than 26,000 lbs must, starting January 1, 2012, meet the PM Best Available Control Technology (BACT) requirement and must upgrade to a 2010 MY emissions equivalent engine pursuant to the schedule shown in table 2. Fleets with vehicles otherwise subject to subsection (g) may opt for a different phase-in compliance schedule for PM BACT but must comply with section 2025(g) by 2023. See 13 CCR section 2025, subsections (h) (''Small Fleet Compliance Option'') and (i) (''Phase-in Option'').

TABLE 2—COMPLIANCE SCHEDULE UNDER SECTION 2025(g) BY ENGINE MODEL YEAR FOR HEAVIER HEAVY-DUTY TRUCKS

Engine model year	Compliance date install PM filter by January 1	Compliance date 2010 engine by January 1
1993 and older	No Requirement	2015
1994–1995	No Requirement	2016
1996–1999	2012	2020
2000–2004	2013	2021
2005–2006	2014	2022
2007 or newer	2014 if not OEM equipped	2023

Section 2025(j) allows credits for early PM retrofits, fleets that have downsized, early addition of newer vehicles, hybrid vehicles, alternative fueled vehicles and vehicles with heavy-duty pilot ignition engines that can allow delayed requirements for other heavier trucks in the fleet. Fleet owners are required to meet the reporting and recordkeeping requirements of subsections (r) and (s). Credits are not transferrable except with appropriate documentation of a change of business form approved by the CARB Executive Officer (EO).

Subsection (l) of the Truck and Bus Regulation provides requirements for drayage trucks and utility vehicles. Drayage trucks subject to the Drayage Truck Regulation may be included in the fleet to comply with the requirements of the Truck and Bus Regulation only if all drayage trucks are included. Starting January 1, 2023, all drayage truck owners must comply with the requirements of the Truck and Bus Regulation.

Other provisions in the Truck and Bus Regulation include certain requirements and exemptions for agricultural fleets [13 CCR 2025(m)]; requirements for single-engine and two-engine sweepers [13 CCR 2025(n)]; requirements for a new fleet and changes in an existing fleet [13 CCR 2025(o)]; certain exemptions, delays, and extensions [13 CCR 2025(p)]; special provisions for VDECS and experimental diesel emission control strategies [13 CCR 2025(q)]; detailed reporting requirements [13 CCR 2025(r)]; recordkeeping requirements [13 CCR 2025(s)]; provisions for auditing of records [13 CCR section 2025(t)]; provisions for record retention [13 CCR 2025(u)]; provisions establishing CARB's right of entry [13 CCR 2025(v)]; provisions requiring disclosures by sellers [13 CCR 2025(w)]; compliance requirements [13 CCR 2025(x)]; provisions for CARB issuance of certificates of reported compliance [13 CCR 2025(y)]; and penalties for non-compliance [13 CCR section 2025(z)]. The reader is directed to the proposed rule (pages 40654–40656) for additional information on the content of the Truck and Bus Regulation.

Drayage Truck Regulation

CARB's Drayage Truck Regulation (13 CCR section 2027) applies to owners and operators of certain in-use, on-road, diesel-fueled, heavy-duty drayage vehicles with a GVWR greater than 26,000 pounds defined as ''drayage trucks.'' Drayage trucks are those that are used for transporting cargo, such as containerized, bulk, or break-bulk goods and that operate on or transgress through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo, including transporting empty containers and chassis; or that operate off port or intermodal rail yard property transporting cargo or empty containers or chassis that originated from or is destined to a port or intermodal rail yard property. The regulation also applies to owners and operators of motor carriers that dispatch drayage trucks that operate in California, marine or port terminals, intermodal rail yards, and rail yard and port authorities. Owners and operators are subject to the Drayage Truck Regulation through December 31, 2022. Starting January 1, 2023, drayage trucks will be subject to the Truck and Bus Regulation.

As described in our July 11, 2011 proposed rule, section 2027(d) of the Drayage Truck Regulation establishes the requirements and compliance deadlines, grouped into two phases, for drayage trucks. Phase 1 of the regulation [section 2027(d)(1)] required, by December 31, 2009, all drayage trucks with a GVWR greater than 33,000 pounds to be equipped with a 1994–2003 MY engine certified to California or federal emission standards and a level 3 VDECS for PM emissions; or a 2004 or newer MY engine certified to California or federal emission standards. Drayage trucks with GVWR greater than 33,000 pounds but with 2004–2006 MY engines are allowed extra time to be equipped with a level 3 VDECS (by January 1, 2012 for subject vehicles with MY 2004 engines and by January 1, 2013 for vehicles with MY 2005–2006 engines). Under Phase 1, by January 1, 2012, all drayage trucks with a GVWR of 26,001 lbs to 33,000 pounds must be equipped with a level 3 VDECS for PM emissions while operating in the South Coast Air Basin. Phase 2 [section 2027(d)(2)] requires that, beginning on January 1, 2014, all drayage trucks must be equipped with a 1994 or newer MY engine that meets or exceeds 2007 MY California or federal emissions standards.

Drayage truck owners must register with the CARB Drayage Truck Registry, a database that contains information on all trucks that conduct business at California ports and intermodal rail yards. See section 2027(e). The Drayage Truck Regulation provides for the same types of penalties for non-compliance as described above for the Truck and Bus Regulation. See section 2027(g). Sections 2027(h) (''Right of Entry'') and 2027(i) (''Enforcement'') authorize and support efforts by CARB and other officials to ensure compliance with the regulation. Section 2023(j) is a sunset clause that provides that, starting January 1, 2023, drayage trucks would no longer be subject to the provisions of

the Drayage Truck Regulation but rather would be subject to the provisions of the Truck and Bus Regulation in 13 CCR section 2025. The reader is directed to the July 11, 2011 proposed rule (page 40656) for additional information on the content of the Drayage Truck Regulation.

Summary of EPA's Evaluation of the Regulations in Proposed Rule

In our July 11, 2011 proposed rule, we described the basis for our evaluation of the two regulations. Specifically, we noted that SIPs must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary to meet the requirements of the Act [see CAA section 110(a)(2)(A)]; must provide necessary assurances that the State will have adequate personnel, funding, and authority under State law to carry out such SIP (and is not prohibited by any provision of Federal to State law from carrying out such SIP) [see CAA section 110(a)(2)(E)]; must be adopted by a State after reasonable notice and public hearing [see CAA section 110(l)], and must not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the Act [see CAA section 110(l)].[3]

In our July 11, 2011 proposed rule, we proposed approval of the Truck and Bus Regulation and Drayage Truck Regulation based on our conclusion that the regulation would meet the applicable procedural and substantive requirements of the Clean Air Act for SIPs and SIP revisions described in the previous paragraph. The following paragraphs summarize our findings in this regard from our proposed rule.

First, with respect to the procedural requirements of CAA section 110(l), we noted the extensive public process that CARB conducted prior to the adoption of the original versions of the Truck and Bus Regulation in December 2008 and the Drayage Truck Regulation in December 2007 and the extensive public process that CARB conducted for the recent amendments to the two regulations. We anticipated that we would conclude that CARB had met the applicable procedural requirements for SIP revisions upon submittal by CARB of the final adopted regulations as a SIP revision with the necessary public process documentation.

On September 21, 2011, CARB submitted the final adopted versions of the Truck and Bus Regulation and the Drayage Truck Regulation to EPA as a revision to the California SIP, and on December 9 and 15, 2011, CARB supplemented the September 21, 2011 submittal with evidence of approval of the regulations by the California Office of Administrative Law. CARB's September 21, 2011 submittal, as supplemented on December 9 and 15, 2011, includes the documentation of the adoption and public process for the amendments to the two regulations that we had anticipated in our July 11, 2011 proposed rule. Thus, we conclude that CARB has met the procedural requirements under CAA section 110(l) for reasonable public notice and hearing prior to adoption of SIPs and SIP revisions.

Second, in our July 11, 2011 proposed rule, we described the general and specific authority granted to CARB under the California Health and Safety Code (H&SC) to adopt and implement the two regulations.

Third, in our July 11, 2011 proposed rule, we evaluated the enforceability of both regulations with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting,[4] and concluded that the two regulations would be enforceable for the purposes of CAA section 110(a)(2) for the following reasons:

- The regulations would be sufficiently clear as to which persons and which vehicles or engines are affected by the regulations;
- The regulations would be sufficiently specific so that the persons affected by the regulations would be fairly on notice as to what the requirements and related compliance dates are;
- The sunset clause in the Drayage Truck Regulation would be acceptable because it merely transfers CARB's regulatory authority over drayage trucks from the Drayage Truck Regulation to the Truck and Bus Regulation;
- The ''director's discretion'' provisions in the two regulations would be sufficiently limited in scope and application; and
- The regulations would require use of appropriate test methods and would include adequate recordkeeping and reporting requirements sufficient to ensure compliance with the applicable requirements.

Fourth, in our July 11, 2011 proposed rule, we noted that the State's 2007 State Strategy to attain the 1997 $PM_{2.5}$ and ozone NAAQS in areas like the South Coast Air Basin and the San Joaquin Valley are relying on the Truck and Bus Regulation and Drayage Truck Regulation, among other CARB regulations, to help achieve needed emissions reductions and thereby meet the aggregated State emissions reduction commitments made by CARB in connection with the regional air quality plans. As such, we concluded that the Truck and Bus Regulation and the Drayage Truck Regulation would not interfere with RFP, attainment or any other applicable requirement of the Act in accordance with CAA section 110(l).

Based on the evaluation summarized above, we concluded in our July 11, 2011 proposal that the Truck and Bus Regulation and the Drayage Truck Regulation would be consistent with the relevant CAA requirements, policies and guidance. The reader is directed to our July 11, 2011 proposed rule (pages 40657–40659) for a more detailed discussion of our evaluation of the Truck and Bus Regulation and Drayage Truck Regulation.

Lastly, we indicated in our July 11, 2011 proposed rule that if the State substantially revises the version of the Truck and Bus Regulation or the Drayage Truck Regulation that was released for public comment by the State and that was submitted for ''parallel processing,'' this would result in the need for additional proposed rulemaking on the regulations by EPA. On September 21, 2011, CARB submitted the final versions of the Truck and Bus Regulation and Drayage Truck Regulation, which were adopted by the CARB Executive Officer on September 19, 2011, to EPA as a revision to the California SIP.

The two final adopted regulations essentially mirror the versions of the regulations that had been released for public comment and that had been submitted to EPA for parallel processing, and on which EPA had based the Agency's proposed approval. Because the two final adopted regulations are essentially the same as the versions of the rules on which the proposed approval was based, we can rely on our evaluation of the proposed versions of the Truck and Bus Regulation and Drayage Truck Regulation, as set forth in our July 11,

[3] CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to insure equivalent or greater emission reductions of such air pollutants, does not apply to the Truck and Bus Regulation or the Drayage Truck Regulation because they do not constitute pre-1990 SIP control requirements.

[4] These concepts are discussed in detail in an EPA memorandum from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, *et al.,* titled ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,'' dated September 23, 1987.

2011 proposed rule and summarized above, in taking today's final action to approve the final adopted versions of the regulations.

Under California law, once adopted, a regulation must still be approved by the California Office of Administrative Law (OAL) to take effect. CARB's Truck and Bus Regulation and Drayage Truck Regulation, as amended, were approved by OAL on December 14, 2011 and November 9, 2011, respectively, and became effective under State law on the same days as their OAL approvals. On December 9, 2011 and December 15, 2011, CARB submitted evidence of approval of the final, adopted Drayage Truck Regulation and Truck and Bus Regulation, respectively, by the California OAL to EPA as supplements to CARB's September 21, 2011 SIP revision, and therefore, CARB has now provided EPA with all of the documentation necessary for EPA to take this final action on the two subject regulations.

II. Public Comments and EPA Responses

Our July 11, 2011 proposed rule provided a 30-day comment period. During this period, we did not receive any comments on our proposed action on CARB's Truck and Bus Regulation. However, we received three comment letters in connection with our proposed action on CARB's Drayage Truck Regulation. The comments and our responses are provided below.

Individual Trucking Company: An Individual Trucking Company requests that EPA prevent Phase 2 of CARB's Drayage Truck Regulation from being implemented on the schedule set forth in the regulation due to social and economic impacts that the Individual Trucking Company believes will result, in part due to the absence of a CARB-verified filter available to allow truck owners and operators to comply with Phase 2 requirements. The Individual Trucking Company notes that development of such a filter is unlikely now that the schedule for Phase 2 compliance by non-drayage trucks has been extended to dates later than for drayage trucks.

EPA Response: Under Phase 2 of CARB's Drayage Truck Regulation, beginning January 1, 2014, all drayage trucks must be equipped with a 1994 or newer model year engine that meets or exceeds 2007 MY California or federal emission standards. See 13 CCR 2027(d)(2). In our July 11, 2011 proposed rule, we evaluated the Drayage Truck Regulation against the procedural and substantive requirements of the CAA for SIPs and SIP revisions and determined that the regulation meet all of the applicable requirements. See pages 40657–40659 of the proposed rule.

Under the CAA, EPA is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal requirements. See section 110(k) of the CAA and 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. The above comments from the Individual Trucking Company do not challenge EPA's conclusion that the Drayage Truck Regulation meets all applicable CAA requirements but rather contend, for various reasons, that Phase 2 of CARB's Drayage Truck Regulation is too costly and may not be economically or technologically feasible. However, 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)]. Moreover, EPA disapproval of CARB's regulation would not prevent the implementation of Phase 2 because the Phase 2 requirements would still apply, and would still be enforceable, under State law, regardless of EPA's action to approve or disapprove the regulation as a revision to the California SIP.

Anonymous Oakland Trucker: The Oakland trucker objects to CARB's decision not to delay Phase 2 of the Drayage Truck Regulation consistent with the delay adopted for non-drayage truckers under the Truck and Bus Regulation and contends that, due to the lack of a filter to allow 2004–2006 MY trucks to remain compliant with the regulation through 2020, certain social and economic consequences will result.

EPA Response: As explained above in our response to the Individual Trucking Company, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act, and that objections to a State rule grounded in economic or technological feasibility cannot form the basis for EPA disapproval of the rule submitted by a state as part of a SIP.

West State Alliance: West State Alliance (WSA), an association of truckers and ancillary goods movement industries servicing the Port of Oakland, generally requests that EPA disapprove the Drayage Truck Regulation as a revision of the California SIP based on the contents of seven documents attached to their general comment requesting disapproval. The seven documents include the following:

- A letter from WSA to CARB, dated December 28, 2010, objecting to CARB's December 17, 2010 decision not to delay the Phase 2 requirements under the Drayage Truck Regulation.
- A letter from Horizon Freight System, Inc. to CARB, dated December 29, 2010, objecting to CARB's December 17, 2010 decision not to delay the Phase 2 requirements under the Drayage Truck Regulation.
- A letter from Diesel Emissions Service to WSA, dated December 29, 2010, discussing the lack of an available EPA- or CARB-verified retrofit system that would allow the operator of a 1994–2006 model year engine to meet the requirements of Phase 2 of CARB's Drayage Truck Regulation.
- An undated letter from an Oakland City Councilmember to CARB objecting to CARB's failure to extend the Phase 2 compliance dates in the Drayage Truck Regulation consistent with the compliance date extensions adopted by CARB in the Truck and Bus Regulation.
- An undated WSA fact sheet concerning CARB's Drayage Truck Regulation that was circulated after CARB's December 17, 2010 decision not to delay the Phase 2 requirements under the Drayage Truck Regulation.
- A WSA request to CARB submitted May 16, 2011 requesting that CARB reconsider the Proposed Amendments to the Drayage Truck Regulation of October 2010 that would have aligned scheduled upgrades for drayage trucks with other diesel trucks under CARB's Truck and Bus Regulation.
- A letter to CARB dated August 3, 2011 from an attorney retained by WSA concerning the costs of implementation of Phase 2 of CARB's Drayage Truck Regulation as well as CARB's purported failure to prepare a study on the economic impacts on business under California Government Code 11346, *et seq.,* in connection with CARB's decision not to delay implementation of Phase 2 of the Drayage Truck Regulation.

EPA Response: EPA has reviewed the seven documents and finds that, with one exception, the comments contained therein object to the compliance date for Phase 2 requirements under CARB's Drayage Truck Regulation based on purported economic or technological infeasibility, unfairness relative to non-drayage truckers, and unavailability of funding, and that the comments also denounce the purported adverse social impacts that will result, particularly to the West Oakland community. However, as discussed above in responses to comments from the Individual Trucking Company and the Anonymous Oakland Trucker, such considerations cannot

form the basis for EPA disapproval of the rule submitted by a state as part of a SIP.

The one specific comment that does relate to EPA's action is directed to CARB, rather than EPA, but it challenges CARB's decision not to extend Phase 2 compliance dates on state law grounds. SIP rules must be adopted by states in compliance with their own laws because a state must provide necessary assurances that it has adequate legal authority to carry out the SIP revision and, where a state has not followed its own laws in adopting a rule subsequently submitted as a SIP revision, such assurances generally cannot be provided. See CAA section 110(a)(2)(E).

In this instance, the commenter accuses CARB of failing to follow the mandates of state law proscribed by California Government Code section 11346, *et seq.,* which generally establishes procedures for state departments and agencies for adoption, amendment, or repeal of administrative regulations. Among the requirements are the duty to assess the potential for adverse economic impact on California businesses and individuals and to identify and evaluate alternatives that are less burdensome but equally effective. See Cal. Government Code §§ 11346.2 and 11346.3. However, we note that CARB specifically addressed the issue of adverse economic impacts related to CARB's decision not to extend Phase 2 compliance dates under the Drayage Truck Regulation in CARB's Final Statement of Reasons for Rulemaking (for the Drayage Truck Regulation) (''FSOR''), which was submitted by CARB in its SIP submittal dated September 21, 2011. In the FSOR, CARB explains that CARB staff performed the required economic analysis of the impacts to drayage businesses for compliance with the Phase 2 requirements as part of the rulemaking decision in 2007, and that no new economic analysis is required for CARB's decision to retain those requirements. See CARB's FSOR, page 46. We find that CARB's response adequately addresses this issue and provides us with the necessary assurances that CARB has complied with state law in adopting the Drayage Truck Regulation and will be able to carry out this SIP revision.

III. Final Action

No comments were submitted that change our assessment that the Truck and Bus Regulation and Drayage Truck Regulation comply with the relevant CAA requirements. Therefore, pursuant to section 110(k)(3) of the CAA and for the reasons given above and in our July 11, 2011 proposed rule, EPA is taking final action to approve the Truck and Bus Regulation and Drayage Truck Regulation into the California SIP. The specific rules approved into the SIP in today's action are:

- 13 CCR section 2025 (''Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles''), as adopted by the CARB Executive Officer on September 19, 2011, submitted on September 21, 2011, and made effective under State law on December 14, 2011; and
- 13 CCR section 2027 (''In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks''), as adopted by the CARB Executive Officer on September 19, 2011, submitted on September 21, 2011, and made effective under State law on November 9, 2011.

Final approval of the regulations and incorporation of them into the California SIP makes them federally enforceable.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this 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. section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 4, 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, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: January 26, 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)(409) and (c)(410) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(409) New regulation was submitted on December 9, 2011, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) State of California Office of Administrative Law, ''Notice of Approval of Regulatory Action,'' Title 13, California Code of Regulations (CCR), section 2027, effective on November 9, 2011.

(*2*) Final Regulation Order, 13 CCR section 2027 (''In-Use On-Road Diesel-Fueled Heavy-Duty Drayage Trucks'').

(410) New regulation was submitted on December 15, 2011, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) State of California Office of Administrative Law, ''Notice of Approval of Regulatory Action,'' Title 13, California Code of Regulations (CCR), section 2025, effective on December 14, 2011.

(*2*) Final Regulation Order, 13 CCR section 2025 (''Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles'').

[FR Doc. 2012–7023 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0975; FRL–9339–9]

2-Propenoic Acid, 2-Methyl-, 2-Ethylhexyl Ester, Telomer With 1-Dodecanethiol, Ethenylbenzene and 2-Methyloxirane Polymer With Oxirane Monoether With 1,2-Propanediol Mono(2-Methyl-2-Propenoate), Hydrogen 2-Sulfobutanedioate, Sodium Salt, 2, 2′-(1,2-Diazenediyl)Bis[2-Methylpropanenitrile]-Initiated; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-methyl-, 2-ethylhexyl ester, telomer with 1-dodecanethiol, ethenylbenzene and 2-methyloxirane polymer with oxirane monoether with 1,2-propanediol mono(2-methyl-2-propenoate), hydrogen 2-sulfobutanedioate, sodium salt, 2, 2′-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated, CAS Reg. No. 1283712–50–4; when used as an inert ingredient in a pesticide chemical formulation. Clariant Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-Propenoic acid, 2-methyl-, 2-ethylhexyl ester, telomer with 1-dodecanethiol, ethenylbenzene and 2-methyloxirane polymer with oxirane monoether with 1,2-propanediol mono(2-methyl-2-propenoate), hydrogen 2-sulfobutanedioate, sodium salt, 2, 2′-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated on food or feed commodities.

DATES: This regulation is effective April 4, 2012. Objections and requests for hearings must be received on or before June 4, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0975. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; email address: *debesai.alganesh@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://*

ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0975 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 4, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0975, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of Friday, December 30, 2011 (76 FR 82238) (FRL–9331–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 1E7932) filed by Clariant Corporation, 625 E. Catawba Ave., Mt. Holly, NC 28120. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-methyl-, 2-ethylhexyl ester, telomer with 1-dodecanethiol, ethenylbenzene and 2-methyloxirane polymer with oxirane monoether with 1,2-propanediol mono(2-methyl-2-propenoate), hydrogen 2-sulfobutanedioate, sodium salt, 2, 2′-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated, CAS Reg. No. 1283712–50–4 which is called ''the polymer'' here after . That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). The polymer conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 1,212 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, the polymer meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to the polymer.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that the polymer could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of the polymer is 1,212 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since the polymer conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found the polymer to share a common mechanism of toxicity with any other substances, and does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that the polymer does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of the polymer. EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of the polymer.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for the polymer.

IX. Conclusion

Accordingly, EPA finds that exempting residues of the polymer from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children From Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination With Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement

of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 19, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by adding alphabetically the following polymers to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
2-Propenoic acid, 2-methyl-, 2-ethylhexyl ester, telomer with 1-dodecanethiol, ethenylbenzene and 2-methyloxirane polymer with oxirane monoether with 1,2-propanediol mono(2-methyl-2-propenoate), hydrogen 2-sulfobutanedioate, sodium salt, 2, 2′-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated, minimum number average molecular weight (in amu), 1,200	1283712–50–4
* * * * * * *	

[FR Doc. 2012–7677 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 480

Acquisition, Protection, and Disclosure of Quality Improvement Organization Information

CFR Correction

In Title 42 of the Code of Federal Regulations, Parts 430 to 481, revised as of October 1, 2011, on page 538, the heading for part 480 is revised to read as follows:

PART 480—ACQUISITION, PROTECTION, AND DISCLOSURE OF QUALITY IMPROVEMENT ORGANIZATION INFORMATION

[FR Doc. 2012–8184 Filed 4–3–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XB149

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 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 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2012 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 1, 2012, through 1200 hrs, A.l.t., August 25, 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 B season allowance of the 2012 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 5,797 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the B season pollock allowance by 1,159 mt to reflect the underharvest of the A seasonal apportionment in Statistical Area 610. Therefore, the revised B season allowance of the pollock TAC in Statistical Area 610 is 6,956 mt (5,797 mt plus 1,159 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2012 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,756 mt and is setting aside the remaining 200 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 610 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 directed fishing for pollock in Statistical Area 610 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 March 29, 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: March 30, 2012.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–8104 Filed 3–30–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
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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 AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2008–0010]

RIN 0579–AC68

Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products

Correction

In proposed rule document 2012—6151 beginning on page 15848 in the issue of Friday, March 16, 2012 make the following correction:

§ 93.418 [Corrected]

On page 15902, in the second column, in § 93.418(d)(2)(iv)(A), in the first line ''A ''C∧N'' mark'' should read ''A ''C^N'' mark''.

[FR Doc. C1–2012–6151 Filed 4–3–12; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 16

[Docket No. FAA–2012–0176]

RIN 2120–AJ97

Rules of Practice for Federally-Assisted Airport Enforcement Proceedings (Retrospective Regulatory Review)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: The FAA is correcting a notice of proposed rulemaking that published in the **Federal Register** on March 5, 2012 (77 FR 13027). In that document, the FAA proposed to amend its regulations to update, simplify, and streamline rules of practice and procedure for filing and adjudicating complaints against federally-assisted airports. This correction clarifies that the notice number for that proposed rulemaking is 12–02.

DATES: The comment period will close on May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Loughlin, Office of Rulemaking, ARM–204, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267–4055; facsimile (202) 267–5075; email *melissa.loughlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2012, the FAA published a notice of proposed rulemaking (NPRM) entitled, ''Rules of Practice for Federally-Assisted Airport Enforcement Proceedings (Retrospective Regulatory Review)'' (77 FR 13027).

In that NPRM, the FAA proposed to update, simplify, and streamline rules of practice and procedure for filing and adjudicating complaints against federally-assisted airports. The proposed requirements would improve efficiency by enabling parties to file submissions with the FAA electronically, and by incorporating modern business practices into how the FAA handles complaints. If adopted, the amendment would reflect changes in applicable laws and regulations, and apply lessons learned since the existing rules were implemented in 1996.

Correction

In FR Doc. 2012–4993, beginning on page 13027 in the **Federal Register** of March 5, 2012, make the following correction:

On page 13027, in the second column and fourth line under the NPRM's publication, correct ''Notice No. 12–01'' to read as ''Notice No. 12–02''.

Issued in Washington, DC, on March 26, 2012.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2012–8121 Filed 4–3–12; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0354; Directorate Identifier 2010–SW–104–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Eurocopter France (EC) Model SA–365N, SA–365N1, SA–366G1, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters. This proposed AD was prompted by the discovery of a cracked main rotor mast nut. This condition, if not corrected, could lead to complete failure of the mast nut, resulting in failure of the rotor mast and loss of control of the helicopter. This proposed AD would require replacing the main rotor mast nut with an airworthy main rotor mast nut. We are proposing this AD to prevent failure of the main rotor mast and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by June 4, 2012.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address 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 Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any

comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued AD No.: 2006–0368R1, dated December 2, 2010, and corrected December 8, 2010 (AD 2006–0368R1), to correct an unsafe condition for the EC Model SA 365 N, SA 365 N1, AS 365 N2, AS 365 N3, SA 366 G1, EC 155 B, and EC 155 B1 helicopters. EASA advises that a cracked (partially failed) main rotor mast nut was discovered during a complete overhaul of a main rotor mast. The start of the crack was related to circular scoring found in the nut threads. EASA states that this condition, if not corrected, ''could lead to complete failure of the mast nut, possibly resulting in failure of the rotor mast and consequent loss of control of the helicopter.'' To address this unsafe condition, EASA issued Emergency AD 2006–0368–E, dated December 6, 2006 (AD 2006–0368–E), to require repetitive inspections of the mast nut, and replacement of the nut if cracked. Since issuance of AD 2006–0368–E, EC has developed modification (MOD) 0762C42 to improve the strength of the mast nut by changing its material. Replacing mast nut part number (P/N) 360A31–1020–20 with mast nut P/N 365A31–2060–20 or 365A31–2060–21 (as applicable to helicopter type) ''constitutes an optional terminating action'' for the repetitive inspection requirements. For this reason, EASA issued AD 2006–0368R1 ''to inform which helicopters remain subject to inspections and replacement requirements'' of the AD.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Related Service Information

We reviewed EC Alert Service Bulletin (ASB) No. 62.00.23, Revision 1, for Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters; EC ASB 62.12, Revision 1, for Model SA–366G1 helicopters; and EC ASB 62A014, Revision 1, for Model EC 155B and EC155B1 helicopters, all dated Oct 27, 2010. The ASBs contain procedures for repetitively inspecting the mast nut for a crack or failure. The ASBs remove any helicopter with MOD 0762C42 incorporated from the applicability of the ASB. EASA classified this ASB as mandatory and issued AD 2006–0368R1 to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require, for EC Model SA–365N, SA–365N1, SA366G1, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters, certificated in any category, with a mast nut P/N 360A31–1020–20 installed:

- For EC Models SA–365N, SA–365N1, AS–365N2, and AS 365 N3, prior to accumulating 1,650 hours time-in-service (TIS) or within the next 50 hours TIS, whichever occurs later, remove mast nut P/N 360A31–1020–20 and replace with an airworthy mast nut of a different P/N.
- For EC Model SA–366G1, prior to accumulating 990 hours TIS or within the next 30 hours TIS, whichever occurs later, remove mast nut P/N 360A31–1020–20 and replace with an airworthy mast nut of a different P/N.
- For EC Models EC 155B and EC155B1, prior to accumulating 660 hours TIS or within the next 50 hours TIS, whichever occurs later, remove mast nut P/N 360A31–1020–20 and replace with an airworthy mast nut of a different P/N.

Differences Between This Proposed AD and the EASA AD

The EASA AD allows for either inspecting the mast nut at regular intervals or replacing the mast nut, while the proposed AD requires replacing the mast nut. The EASA AD uses flight hours of the main rotor mast assembly, while the proposed AD uses TIS of the helicopter.

Costs of Compliance

We estimate that this proposed AD affects 30 helicopters of U.S. registry. We estimate that replacing the mast nut with an airworthy mast nut would require 32 work-hours, at an average labor cost of $85 per work-hour. Parts would cost about $3,100. Based on these costs, we estimate a total cost per helicopter of $5,820, and a total cost for the U.S. operator fleet of $174,600.

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, 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 to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. FAA–2012–0354; Directorate Identifier 2010–SW–104–AD.

(a) Applicability

This AD applies to Eurocopter France (EC) Model SA–365N, SA–365N1, SA–366G1, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters with a mast nut, part number (P/N) 360A31–1020–20, installed.

(b) Unsafe Condition

This AD describes the unsafe condition as a cracked main rotor mast nut. This condition could result in failure of the rotor mast and subsequent loss of control of the helicopter.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(d) Required Actions

(1) For EC Models SA–365N, SA–365N1, AS–365N2, and AS 365 N3, prior to accumulating 1,650 hours time-in-service (TIS) or within the next 50 hours TIS, whichever occurs later, remove mast nut P/N 360A31–1020–20 and replace with an airworthy mast nut that has a P/N other than P/N 360A31–1020–20.

(2) For EC Model SA–366G1, prior to accumulating 990 hours TIS or within the next 30 hours TIS, whichever occurs later, remove mast nut P/N 360A31–1020–20 and replace with an airworthy mast nut that has a P/N other than P/N 360A31–1020–20.

(3) For EC Models EC 155B and EC155B1, prior to accumulating 660 hours TIS or within the next 50 hours TIS, whichever occurs later, remove mast nut P/N 360A31–1020–20 and replace with an airworthy mast nut that has a P/N other than P/N 360A31–1020–20.

(e) Alternative Methods of Compliance (AMOC)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(f) Additional Information

(1) Eurocopter Alert Service Bulletin No. 62.00.23, No. 62.12, and No. 62A014, which are not incorporated by reference, contain additional information about the subject of this AD. All of the service bulletins are Revision 1 and all are dated Oct 27, 2010. For service information identified in this AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub.* You may review copies of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in in European Aviation Safety Agency AD No.: 2006–0368R1, dated December 2, 2010, and corrected December 8, 2010.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6300, main rotor drive system.

Issued in Fort Worth, Texas, on March 26, 2012.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–8056 Filed 4–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0356; Directorate Identifier 2011–SW–067–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We are proposing a new airworthiness directive (AD) for all Eurocopter Deutschland GmbH (ECD) MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK B–1, MBB–BK 117 B–2, and MBB–BK C–1 helicopters equipped with a certain external-hoist system (hoist system) by requiring either deactivating the entire hoist system or deactivating the hoist system cable cutter function on the hoist system operator control handle (operator handle). This AD was prompted by an uncommanded activation of the hoist cable cutter function on an MBB–BK117 C–1 helicopter. This AD is intended to prevent uncommanded cutting of the hoist cable and subsequent injury to persons being lifted by the hoist.

DATES: We must receive comments on this proposed AD by May 4, 2012.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address 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 Operations Office

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

You may review copies of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth Texas 76137.

FOR FURTHER INFORMATION CONTACT: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *george.schwab@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, reports that during a recent incident involving an MBB–BK 117 C–1 helicopter, the cable cut-off function of the rescue hoist system was triggered uncommanded, and the hoist cable was cut. The subsequent investigation revealed that this was caused by a malfunction within the rescue hoist system's remote control handle assembly while extending the hoist boom. EASA advises that this condition, if not corrected, ''will lead to detachment of an external load or person from the helicopter hoist, possibly resulting in personal injury, or injury to persons on the ground.''

As a result, EASA issued EASA AD No.: 2011–0126, dated July 1, 2011 (EASA AD 2011–0126), to correct this unsafe condition in the ECD Model MBB–BK117 A–1, MBB–BK117 A–3, MBB–BK117 B–1, MBB–BK117 B–2, and MBB–BK117 C–1 helicopters equipped with a hoist system, Part Number (P/N) 117–80403 or 117–804061. EASA AD 2011–0126 requires deactivation of the affected external hoist system by pulling and securing the related circuit breakers, or by removing the hoist boom.

After EASA AD 2011–0126 was issued, it was discovered that pulling the circuit breaker WARN ANN II degraded the annunciator system's redundant power supply, so that pilots could not be warned of a second helicopter system failure. Prompted by these findings, EASA issued superseding EASA AD No.: 2011–0131, dated July 8, 2011 (EASA AD 2011–0131), to require pulling only three circuit breakers, (CABLE CUTTER, WINCH CONT, and WINCH BOOM,) while circuit breaker WARN ANN II remains inserted.

EASA advises that since EASA AD 2011–0131 was issued ''a corrective action has been developed to establish an adequate safety level, while a terminating action is under investigation but currently not available.'' EASA subsequently issued the current EASA AD No.: 2011–0148, dated August 5, 2011 (EASA AD 2011–0148), which retains the requirements of EASA AD 2011–0131 and requires modification of the helicopter wiring and operator handle P/N 76803, a revision to the Rotorcraft Flight Manual and Supplement, and repetitive inspections of the operator handle. EASA AD 2011–0148 also requires implementing a 10-year time frame for overhaul of the operator handle.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs. The hoist cable that extends from an MBB–BK 117 C–1 helicopter, used typically to pick up people or goods, often during emergencies, was cut with no command or push of the button from anyone aboard the aircraft. The cause was a malfunction in the cable hoist system. This situation could harm anyone being lifted in the rescue hoist.

Related Service Information

ECD has issued Emergency Alert Service Bulletin MBB–BK117–80–166, Revision 1, dated August 4, 2011 (ASB). The ASB specifies the deactivation of the cable cutter function on the operator handle. After the cable cutter function on the operator handle has been deactivated, the rescue winch may be used.

Proposed AD Requirements

This proposed AD would require either deactivation of the entire hoist system or deactivation of the hoist system cable cutter function on the operator handle within 30 days or before the system is used again, whichever comes first. Deactivating the entire hoist system would be accomplished by either pulling and securing three circuit breakers or by removing the hoist boom from the helicopter. Deactivating the external hoist system cable cutter function on the operator handle would be accomplished by modifying the helicopter wiring and the operator handle P/N 76803, repetitively inspecting the operator handle, and replacing the operator handle if damaged. This AD also would prohibit installation of the affected hoist systems on any helicopter, unless the installation complies with this AD's requirements, and would prohibit installation of the operator handle on any helicopter unless it has been modified in accordance with this AD.

Differences Between This Proposed AD and the EASA AD

This AD would also apply to the Eurocopter Deutschland GmbH (ECD) Model MBB–BK 117 A–4 model. The EASA AD makes no mention of this model. The EASA AD also applies to the MBB–BK 117 A–1 model. Eurocopter informs us that the MBB–BK 117 A–1 model no longer exists, so we did not include it in our proposed AD. The EASA AD requires temporary revisions to the Rotorcraft Flight Manual and its supplements; this proposed AD does not. The EASA AD requires overhaul of

the operator handle every ten years; this proposed AD does not.

Interim Action

We consider this proposed AD to be an interim action. The design approval holder is currently developing a terminating action to address the unsafe condition identified in this AD. Once this terminating action is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD would affect about 12 helicopters of U.S. registry.

We estimate the following costs to comply with this AD:

- *Option 1:* Pull and secure three circuit breakers. We estimate that this task would require about one half-hour to complete. At $85 per work-hour, the labor cost would total about $43. No parts would be needed, so we estimate the total cost per helicopter to be $43, or $516 for the fleet.
- *Option 2:* Remove the hoist boom from the helicopter. We estimate that this task would require 1.5 hours to complete at $85 per work-hour for a total labor cost of about $128. No parts would be needed, so we estimate the total cost per helicopter to be $128, or $1,536 for the fleet.
- *Option 3:* We estimate that modifying the hoist operator handle would require four work-hours at $85 per work-hour for a total labor cost of $340 per helicopter. Parts would cost about $92. Inspecting the hoist-operator handle for damage would take about one half-hour for a labor cost of about $43. For 12 monthly inspections per year, the annual cost would total $516. We estimate that replacing the operator handle with a new operator handle would require 0.25 work hour at $85 an hour for a labor cost of about $21 per helicopter. Parts would cost about $18,500 for a total cost of $18,521 per helicopter. Total costs per helicopter would vary, depending on whether repairs are needed.

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, 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 to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter Deutschland GmbH helicopters: Docket No. FAA–2012–0356; Directorate Identifier 2011–SW–67–AD.

(a) Applicability

This AD applies to Model MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK B–1, MBB–BK 117 B–2, and MBB–BK 117 C–1 helicopters with an external hoist system (hoist system) Part Number (P/N) 117–80403 or P/N 117–804061 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as an uncommanded cutting of the hoist cable. This condition could result in loss of the helicopter hoist and load and subsequent injury to persons being lifted by the hoist.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(d) Required Actions

(1) Before the next hoist operation or within 30 days, whichever comes first, comply with either paragraph (1)(i), (1)(ii), or (1)(iii):

(i) Deactivate the hoist system by pulling the CABLE CUTTER, WINCH CONT, and WINCH BOOM circuit breakers and securing each circuit breaker with a cable tie; or

(ii) Deactivate the hoist system by removing the hoist boom from the helicopter; or

(iii) Deactivate the external hoist operator handle cable-cutter function by accomplishing the following:

(A) Modify the helicopter wiring and the operator handle, P/N 76803, in accordance with the Accomplishment Instructions, Paragraph 3.B.1 (b), of Eurocopter Emergency Alert Service Bulletin MBB–BK117–80–166, Revision 1, dated August 4, 2011 (ASB).

(B) Inspect the operator handle P/N 76803 and the coiled cable of the operator handle for damage in accordance with Paragraph 3.B.1.(a)(2) of the ASB. Damage is also defined as any condition that could prevent the part's ability to perform its intended function.

(1) If the operator handle or the coiled cable of the operator handle has damage, replace the operator handle with an airworthy operator handle P/N 76803, before the next hoist operation.

(2) At intervals not to exceed 30 days, repeat the inspection in Paragraph (1)(iii)(B) of the Required Actions section of this AD.

(2) Before installing an affected hoist system on any helicopter, comply with Paragraph (1) of the Required Actions section of this AD.

(3) Before installing an operator handle P/N 76803 on any helicopter, comply with Paragraph (1)(iii)(A) of the Required Actions section of this AD.

(e) Alternative Methods of Compliance (AMOC)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *george.schwab@faa.gov.*

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(f) Subject

Joint Aircraft Service Component (JASC) Code: 2597, Equipment/furnishing system wiring.

Issued in Fort Worth, Texas, on March 26, 2012.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–8064 Filed 4–3–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2012–0111]

RIN 1625–AA00; 1625–AA08

Special Local Regulation and Safety Zones; Marine Events in Captain of the Port Sector Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations and safety zones for marine events on the navigable waters within the Captain of the Port (COTP) Sector Long Island Sound zone for regattas, fireworks displays and swim events. This action is necessary to provide for the safety of life on navigable waters during the events. Entering into, transiting through, remaining, anchoring or mooring within these regulated areas would be prohibited unless authorized by the COTP Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before May 4, 2012.

Requests for public meetings must be received by the Coast Guard on or before April 25, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0111 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer Joseph Graun, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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–2012–0111), 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,* type the docket number USCG–2012–0111 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2012–0111 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. 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 April 25, 2012 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1226, 1231, 1233; 46 U.S.C. Chapters 454, 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 which collectively authorize the Coast Guard to define regulatory special local regulations and safety zones.

This temporary rule proposes to establish special local regulations and safety zones in order to provide for the safety of life on navigable waterways during regattas, fireworks displays and swim events.

Discussion of Proposed Rule

This temporary rule proposes special local regulations for two regattas, and safety zones for thirteen fireworks displays and two swimming events set to take place within the COTP Sector Long Island Sound Zone. These events are scheduled to take place between June and August of 2012.

A safety zone is proposed for each fireworks display listed in TABLE 1 to § 165.T01–0111 including all navigable waters within a 1000 foot radius of the launch platform.

6	June
6.1 Salute to Veterans Fireworks	• Location: Waters of Reynolds Channel West of the loop parkway Bridge in Hempstead, NY.
7	July
7.1 Devon Yacht Club Fireworks	• Location: Waters of Napeague Bay, in Block Island Sound off Amagansett, NY.
7.2 Dolan Family Fourth Fireworks	• Location: Water of Oyster Bay Harbor in Long Island Sound north of the Cove Neck peninsula in Oyster Bay, NY.
7.3 Davis Park Fireworks	• Location: Waters of the Great South Bay north of Davis Park, NY.
7.4 Islip Fireworks	• Location: Waters of the Great South Bay off Bay Shore Manor Park, Islip, NY.
7.5 Madison Fireworks	• Location: Waters of Long Island Sound off Madison Beach in Madison, CT.
7.6 Stratford Fireworks	• Location: Waters of Long Island Sound surrounding Short Beach Park in Stratford, CT in approximate position 41°09′50.82″ N, 073°6′47.13″ W (NAD 83).
7.7 Rowayton Fireworks	• Location: Waters of Long Island Sound south of Bayley Beach Park in Rowayton, CT.
7.8 Quarentello Wedding Fireworks	• Location: Waters of the Great South Bay south east of Brown Point in Sayville, NY.
7.9 Niantic Bay Fireworks	• Location: Waters of Niantic Bay 1500 feet west of the Niantic River Railroad Bridge in Niantic, CT.
8	August
8.1 Shelter Island Yacht Club Fireworks.	• Location: Waters of Dering Harbor north of the Shelter Island yacht Club in Shelter Island, NY.
8.2 Stamford Fireworks	• Location: Waters of Stamford Harbor, South of Kosciuszco Park in Stamford, CT.
11	November
1 Charles W. Morgan Anniversary Fireworks.	• Location: Waters of the Mystic River, north of the Mystic Seaport Light in Mystic, CT.

A safety zone is proposed for each swim event listed in TABLE 2 to § 165.T01.0111 including all navigable waters within the defined swim area.

1 Waves of Hope Swim	• Location: All waters of the Great South Bay off Amityville, NY Bound by Clocks Boulevard to the West, Tanner Park to the East and shoreward of a line 1000 feet offshore.
2 Stonewall Swim	• Location: All navigable waters of the Great South Bay within an three miles long and half mile wide rectangle box connecting the following points. Beginning Snedecor Avenue in Bayport, NY to Porgie Walk in Fire Island, NY.

A special local regulation is proposed for each regatta listed in TABLE 1 to § 100.35T01–0111 including all navigable waters associated with each event's location.

1 Hartford Dragon Boat Regatta	• Regulated area: All waters of the Connecticut River in Hartford, CT between the Bulkeley Bridge and the Wilbur Cross Bridge.
2 Kayak for a Cause Regatta	• Regulated area: All water of Long Island Sound within a nine mile long and half mile wide rectangle shaped regatta course connecting Norwich, CT and Crab Meadow, NY.

Exact locations with coordinates are listed in the regulatory text below List of Subjects.

All fireworks events would be enforced from 8:30 p.m. until 10 p.m. on the date specified in TABLE 1 to § 165.T01–0111. All other regulated areas will be enforced during the dates and times listed with the event details in their respective table. In three cases, the *Davis Park Fireworks, Charles W. Morgan Anniversary Fireworks and Waves of Hope Swim,* the event sponsors have not yet determined specific dates for their events. The event sponsors have provided a range of possible dates that are listed in the respective tables in the regulatory text below List of Subjects. The Coast Guard will publish the specific dates for the events in the final rule.

Because large numbers of spectator vessels are expected to congregate around the location of these events, these regulated areas are necessary to protect both spectators and participants from the safety hazards created by them; including large numbers of swimmers, hard to see and unstable small boats, unexpected pyrotechnics detonation, and burning debris. This proposed rule would temporarily establish regulated areas to restrict vessel movement around the location of each event to reduce the safety risks associated with them.

During the enforcement periods, persons and vessels would be prohibited from entering, transiting through, remaining, anchoring or mooring within the regulated areas unless specifically authorized by the COTP Sector Long Island Sound or designated representative. Persons and vessels would be able to request authorization to enter, transit through, remain, anchor or moor within the regulated areas by contacting the COTP Sector Long Island Sound by telephone at (203) 468–4401, or designated representative via VHF radio on channel 16. If authorization to enter, transit through, remain, anchor or moor within any of the regulated areas is granted, all persons and vessels receiving authorization would be required to comply with the instructions of the COTP or designated representative.

The Coast Guard COTP Sector Long Island Sound or designated representatives will enforce the regulated areas. These designated representatives are comprised of commissioned, warrant, and petty officers of the Coast Guard. The Coast Guard may be assisted by other federal, state and local agencies in the enforcement of these regulated areas.

To aid the public in identifying the launch platforms; fireworks barges used for these displays will have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY.'' This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background. Shore launch sites will display a sign labeled ''FIREWORKS—STAY AWAY'' with the same dimensions.

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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: The regulated areas will be of limited duration and cover only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated areas. Persons or vessels requiring entry into the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative.

Advanced public notifications will also be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on 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 rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during the enforcement periods stated for each event listed below in the List of Subjects.

The temporary special local regulations and safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated areas will be of limited size and of short duration, vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas, and vessels requiring entry into the regulated areas may be authorized to do so by the COTP Sector Long Island Sound or designated representative. Additionally, before the effective period, notifications will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Joseph Graun, Prevention Department, U.S. Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil*. 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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This rule appears to be categorically excluded, under figure 2–1, paragraph (34) (g)&(h), of the Instruction. This rule proposes to establish special local regulations and safety zones. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Add Sec. 100.35T01–0111 to read as follows:

§ 100.35T01–0111 Special Local Regulations; Regattas in the Coast Guard Sector Long Island Sound Captain of the Port Zone.

(a) Regulations. (1) The following regulations apply to the marine events listed in TABLE 1 to § 100.35T01–0111. These regulations will be enforced for the duration of each event, on the dates indicated. Notifications will be made to the local maritime community through all appropriate means such as Local Notice to Mariners or Broadcast Notice to Mariners well in advance of the events. First Coast Guard District Local Notice to Mariners can be found at: *http://www.navcen.uscg.gov/*.

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

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Vessel operators desiring to enter or operate within the regulated areas

shall contact the COTP Sector Long Island Sound at 203–468–4401 (Sector LIS command center) or the designated representative via VHF channel 16.

(d) Vessels may not transit the regulated areas without the COTP Sector Long Island Sound or designated representative approval. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

(e) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Sector Long Island Sound or designated representative.

(f) The COTP Sector Long Island Sound or designated representative may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both. The COTP Sector Long Island Sound or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(g) For all regattas listed, vessels not participating in the event, swimmers, and personal watercraft of any nature are prohibited from entering or moving within the regulated area unless authorized by the COTP Sector Long Island Sound or designated representative. Vessels within the regulated area must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event.

TABLE 1 TO § 100.35T01–0111

1 Hartford Dragon Boat Regatta	• Dates: August 18 and 19, 2012. • Time 8 a.m. until 4:30 p.m. each day. • Regulated area: All waters of the Connecticut River in Hartford, CT between the Bulkeley Bridge 41°46′10.10″ N, 072°39′56.13″ W and the Wilbur Cross Bridge 41°45′11.67″ N, 072°39′13.64″ W North American Datum 1983 (NAD 83).
2 Kayak for a Cause Regatta	• Date: July 21, 2012. • Time: 8 a.m. until 3 p.m. • Regulated area: All water of Long Island Sound within a nine mile long and half mile wide rectangle shaped regatta course connecting Norwich, CT and Crab Meadow, NY. The regulated area beginning in Norwich CT east of Shady Beach at 41°5′32.24″ N, 073°23′11.18″ W then heads south crossing Long Island Sound to a point east of Crab Meadow Beach, Crab Meadow, NY at 40°55′37.21″ N, 073°19′2.14″ W then turns west connecting to a point west of Crab Meadow Beach at 40°55′48.3″ N, 073°19′51.88″ W, then turns north crossing Long Island Sound to the western boundary of Calf Pasture Beach Norwich, CT at 41°4′57.54″ N, 073°23′53.21″ W then turns east back to its starting point at 41°5′32.24″ N, 073°23′11.18″ W North American Datum 1983 (NAD 83). • Additional stipulations: (1) Spectators must maintain a minimum distance of 100 yards from each event participant and support vessel. (2) Vessels that maintain the minimum required distance from event participants and support vessels may transit through the regatta course.

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. 1226, 1231; 46 U.S.C. Chapters 454, 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.T01–0111 to read as follows:

§ 165.T01–0111 Safety Zones; Fireworks Displays and Swim Events in Captain of the Port Long Island Sound Zone.

(a) Regulations. (1) The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the fireworks displays, air shows, and swim events listed in TABLE 1 and TABLE 2 of § 165.T01–0111.

These regulations will be enforced for the duration of each event. Notifications will be made to the local maritime community through all appropriate means such as Local Notice to Mariners or Broadcast Notice to Mariners well in advance of the events. Mariners should consult the **Federal Register** or their Local Notice to Mariners to remain apprised of schedule or event changes. First Coast Guard District Local Notice to Mariners can be found at *http://www.navcen.uscg.gov/.*

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

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP), Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Vessel operators desiring to enter or operate within the regulated areas should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector LIS command center) or the designated

representative via VHF channel 16 to obtain permission to do so.

(d) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP Sector Long Island Sound or designated representative.

(e) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) The COTP Sector Long Island Sound or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(g) The regulated area for all fireworks displays listed in TABLE 1 to § 165.T01–0111 is that area of navigable waters within a 1000 foot radius of the launch platform or launch site for each fireworks display, unless otherwise noted in TABLE 1 to § 165.T01–0111 or modified in USCG First District Local Notice to Mariners at: *http://www.navcen.uscg.gov/.*

(h) Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background. Shore sites used in these locations will display a sign labeled ''FIREWORKS—STAY AWAY'' with the same dimensions. These zones will be enforced from 8:30 p.m. to 10:30 p.m. each day a barge with a ''FIREWORKS—STAY AWAY'' sign on the port and starboard side is on-scene or a ''FIREWORKS—STAY AWAY'' sign is posted in a location listed in TABLE 1 to § 165.T01–0111.

(i) Enforcement period:

1. Each fireworks display will be enforced from 8:30 p.m. until 10 p.m. on the respective dates listed in Table 1 of § 165.T01–0111.

2. Each swim event will be enforced during the date and time listed in Table 2 of § 165.T01–0111.

TABLE 1 TO § 165.T01–0111

6	June
6.2 Salute to Veterans Fireworks	• Date: June 23, 2012. • Rain date: June 30, 2012. • Location: Waters of Reynolds Channel off Hempstead, NY in approximate position 40°35′36.62″ N, 073°35′20.72″ W (NAD 83).
7	July
7.1 Devon Yacht Club Fireworks	• Date: July 7, 2012 • Rain date: July 8, 2012. • Location: Waters of Napeague Bay, in Block Island Sound off Amagansett, NY in approximate position 40°59′41.4″ N, 072°6′8.7″ W (NAD 83).
7.2 Dolan Family Fourth Fireworks	• Date: July 4, 2012. • Rain date: July 5, 2012. • Location: Waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY in approximate position 40°53′42.50″ N, 073°30′04.30″ W (NAD 83).
7.3 Davis Park Fireworks	• Date: A single day between the last weekend of June or first weekend of July 2012 an exact day will be announced in the final rule. • Location: Waters of the Great South Bay north of Davis Park, NY in approximate position, 40°41′38.23″ N, 073°00′21.54″ W (NAD 83).
7.4 Islip Fireworks	• Date: July 4, 2012. • Rain date: July 5, 2012. • Location: Waters of the Great South Bay off Bay Shore Manor Park, Islip, NY in approximate position 40°42′24″ N, 073°14′24″ W (NAD 83).
7.5 Madison Fireworks	• Date: July 4, 2012. • Rain date: July 7, 2012 • Location: Waters of Long Island Sound off Madison Beach in Madison, CT in approximate position 41°16′3.93″ N, 072°36′15.97″ W (NAD 83).
7.6 Stratford Fireworks	• Date: July 3, 2012. • Rain date: July 5, 2012. • Location: Waters of Long Island Sound surrounding Short Beach Park in Stratford, CT in approximate position 41°09′50.82″ N, 073°6′47.13″ W (NAD 83).
7.7 Rowayton Fireworks	• Date: July 4, 2012. • Rain date: July 5, 2012. • Location: Waters of Long Island Sound south of Bayley Beach Park in Rowayton, CT in approximate position 41°03′11″ N, 073°26′41″ W (NAD 83).
7.8 Quarentello Wedding Fireworks	• Date: July 21, 2012. • Rain date: None • Location: Waters of the Great South Bay south east of Brown Point in Sayville, NY in approximate position 40°43′19″ N, 073°03′53″ W (NAD 83).
7.9 Niantic Bay Fireworks	• Date: July 6, 2012. • Rain date: July 7, 2012.

TABLE 1 TO § 165.T01–0111—Continued

	• Location: Waters of Niantic Bay 1500 feet west of the Niantic River Railroad Bridge in Niantic, CT in approximate position 41°19′22.59″ N, 072°11′3.47″ W (NAD 83).
8	August
8.1 Shelter Island Yacht Club Fireworks.	• August 11, 2012. • Rain date: August 12, 2012. • Location: Waters of Dering Harbor north of Shelter Island Yacht Club in Shelter Island, NY in approximate position 41°05′23.47″ N, 072°21′11.18″ W (NAD 83).
8.2 Stamford Fireworks	• Date: August 30, 2012. • Rain date: August 31, 2012. • Location: Waters of Stamford Harbor, off Kosciuszco Park in Stamford, CT in approximate position 41°1′48.46″ N, 073°32′15.32″ W (NAD 83).
11	November
1 Charles W. Morgan Anniversary Fireworks.	• Date: A single day between November 3, and November 10, 2012 an exact day will be announced in the final rule. • Location: Waters of the Mystic River, north of the Mystic Seaport Light, Mystic, CT in approximate position 41°21′56.455″ N, 071°57′58.32″ W (NAD 83).

TABLE 2 TO § 165.T01–0111

	July & August
1 Waves of Hope Swim	• Date: A single weekday during the last week of June or first two weeks of July 2012 an exact day will be announced in the final rule. • Time: 10 a.m. until 12:01 p.m. • Location: All waters of the Great South Bay off Amityville, NY shoreward of a line created by connecting the following points. Beginning at 40°39′22.38″ N, 073°25′31.63″ W then to 40°39′2.18″ N, 073°25′31.63″ W then to 40°39′2.18″ N, 073°24′03.81″ W, ending at 40°39′18.27″ N, 073°24′03.81″ W North American Datum 1983 (NAD 83).
2 Stonewall Swim	• Date: August 4, 2012. • Time: 8:30 a.m. until 12:30 p.m. • Location: All navigable waters of the Great South Bay within an three miles long and half mile wide box connecting Snedecor Avenue in Bayport, NY to Porgie Walk in Fire Island, NY. Formed by connecting the following points. Beginning at 40°43′40.24″ N, 073°03′41.5″ W then to 40°43′40″ N, 073°03′13.4″ W, then to 40°40′4.13 N, 073°03′43.81″ W then to 40°40′8.3″ N, 073°03′17.7″ W and ending at the beginning point 40°43′40.24″ N, 073°03′41.5″ W (NAD 83).

Dated: March 12, 2012.

J.M. Vojvodich,

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

[FR Doc. 2012–7964 Filed 4–3–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Disestablishment of Restricted Area; Rhode Island Sound off Newport, RI

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The U.S. Navy requested that the U.S. Army Corps of Engineers (Corps) disestablish the naval restricted area located in the waters of Rhode Island Sound, 4 nautical miles due south of Lands End in Newport, Rhode Island. The restricted area was established on August 31, 1987. The purpose of the restricted area was to establish a practice minefield and conduct mine detection and mine sweeping exercises. As a result of the discontinued use of this area by Naval Station Newport, the Navy has requested the restricted area be disestablished.

DATES: Written comments must be submitted on or before May 4, 2012.

ADDRESSES: You may submit comments, identified by docket number COE–2012–0001, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: david.b.olson@usace.army.mil. Include the docket number COE–2012–0001 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2012–0001. All comments received will be included in the public docket without change and may be made available on-line at *http://regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or email. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through 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, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922 or Ms. Angela C. Repella, U.S. Army Corps of Engineers, New England District, at 978–318–8639.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to disestablish a restricted area that is no longer needed by Naval Station Newport, because use of the practice minefield and conducting mine detection and mine sweeping exercises in that area has been discontinued.

The Corps authority to disestablish this restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

By letter received on May 5, 2011, the Commander of Naval Station Newport has requested the removal of the restricted area in Rhode Island Sound, 4 nautical miles due south of Lands End in Newport, Rhode Island. The request was made due to the discontinued use of the restricted area. In response to this request by the U.S. Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is proposing to amend the regulations in 33 CFR Part 334 by removing 334.78 to disestablish the restricted area.

Procedural Requirements

a. *Review Under Executive Order 12866.* This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the amendment of this restricted area would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule if adopted, will have no significant economic impact on small entities.

c. *Review Under the National Environmental Policy Act.* Due to the administrative nature of this action, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Act.* The proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate, and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104–4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

§ 334.78 [Removed]

2. Remove § 334.78.

Dated: March 29, 2012.

Richard C. Lockwood,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2012–8115 Filed 4–3–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

33 CFR Part 334

Department of the Army, Corps of Engineers

Felgates Creek and Indian Field Creek along the York River in Yorktown, VA; Restricted Area

AGENCY: U.S. Army Corps of Engineers, Department of Defense, DOD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend an existing permanent restricted area in the waters of Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia. Naval Weapons Station Yorktown is requesting the Corps of Engineers modify the existing restricted area to include areas historically noted on nautical charts as closed to the public and traditionally enforced by the Commander, Naval Weapons Station Yorktown. Naval Weapons Station Yorktown provides ordnance logistics, technical, supply and related services to the Atlantic Fleet. Felgates Creek and Indian Field Creek are within a designated Level Two Restricted Area as defined by the Navy Physical Security and Law Enforcement Program. In addition, Felgates Creek and Indian Field Creek are within explosive arcs from various munitions points on Naval Weapons Station Yorktown. Naval Weapons Station Yorktown is seeking authorization to expand the existing restricted area to enhance safety and security.

DATES: Written comments must be submitted on or before May 4, 2012.

ADDRESSES: You may submit comments, identified by docket number COE–2011–0038, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: david.b.olson@usace.army.mil. Include the docket number, COE–2011–0038, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW–CO–R (David B. Olson), 441 G Street NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2011–0038. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or email. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through 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, we recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757–201–7122.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to amend an existing restricted area to include areas historically noted on nautical charts as closed to the public and traditionally enforced by the Commander, Naval Weapons Station Yorktown.

The Corps authority to amend this restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing amendments to regulations in 33 CFR Part 334 for a permanent restricted area in the waters of Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia. Naval Weapons Station Yorktown provides ordnance logistics, technical, supply and related services to the Atlantic Fleet. Felgates Creek and Indian Field Creek are within a designated Level Two Restricted Area as defined by OPNAVIST 5530.14E, Navy Physical Security and Law Enforcement Program. In addition, Felgates Creek and Indian Field Creek are within explosive arcs from various munitions points on Naval Weapons Station Yorktown. Naval Weapons Station Yorktown is seeking authorization to expand the existing restricted area to enhance safety and security. The Navy has also requested that these waterways shall remain restricted pursuant to authorities granted in 33 U.S.C. 1 during the rulemaking process. The temporary restricted areas were established as a separate action announced by public notice issued by the Norfolk District on September 12, 2011.

Procedural Requirements

a. Review Under Executive Order 12866

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the amendment of this restricted area would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.260 to read as follows:

§ 334.260 York River, Va.; naval restricted areas.

(a) *The areas—(1) Naval mine service-testing area (prohibited).* A rectangular area surrounding Piers 1 and 2, Naval Weapons Station, and extending upstream therefrom, beginning at a point on the shore line at latitude 37°15′25″ N, longitude 76°32′32″ W; thence to latitude 37°15′42″ N, longitude 76°32′06″ W; thence to latitude 37°15′27″ N, longitude 76°31′48″ W; thence to latitude 37°15′05″ N, longitude 76°31′27″ W; thence to a point on the shore line at latitude 37°14′51″ N, longitude 76°31′50″ W; and thence along the shore line to the point of beginning.

(2) *Naval mine service-testing area (restricted).* A rectangular area adjacent to the northeast boundary of the prohibited area described in paragraph (a)(1) of this section, beginning at latitude 37°16′00″ N, longitude 76°32′29″ W; thence to latitude 37°16′23″ N, longitude 76°32′00″ W; thence to latitude 37°15′27″ N, longitude 76°30′54″ W; thence to latitude 37°15′05″ N, longitude 76°31′27″ W; thence to latitude 37°15′27″ N, longitude 76°31′48″ W; thence to latitude 37°15′42″ N, longitude 76°32′06″ W; thence to latitude 37°15′40″ N, longitude 76°32′09″ W; and thence to the point of beginning.

(3) *Explosives-Handling Berth (Naval).* A circular area of 600 yards radius with its center at latitude 37°13′56″ N, longitude 76°28′48″ W.

(4) *Felgates Creek (prohibited).* Navigable waters of the United States as defined at 33 CFR part 329 within Felgates Creek from the boundary fence line at the mouth to the mean high water line of the head and all associated tributaries. The area contains the entirety of Felgates Creek and all associated tributaries south of the line which begins at latitude 37°16′24″ N, longitude 76°35′12″ W and extends east to latitude 37°16′21″ N, longitude 76°35′00″ W.

(5) *Indian Field Creek (prohibited).* Navigable waters of the United States as defined at 33 CFR part 329 within Indian Field Creek from the boundary fence line at the mouth to the mean high water line of the head and all associated tributaries. The area contains the entirety of Indian Field Creek and all associated tributaries south of the line which begins at latitude 37°16′05″ N, longitude 76°33′29″ W and extends east to latitude 37°16′01″ N, longitude 76°33′22″ W.

(b) *The regulations.* (1) All persons and all vessels other than naval craft are forbidden to enter the prohibited area described in paragraph (a)(1) of this section.

(2) Trawling, dragging, and net-fishing are prohibited, and no permanent obstructions may at any time be placed in the area described in paragraph (a)(2) of this section. Upon official notification, any vessel anchored in the area and any person in the area will be required to vacate the area during the actual mine-laying operation. Persons and vessels entering the area during mine-laying operations by aircraft must proceed directly through the area without delay, except in case of emergency. Naval authorities are required to publish advance notice of mine-laying and/or retrieving operations scheduled to be carried on in the area, and during such published periods of operation, fishing or other aquatic activities are forbidden in the area. No vessel will be denied passage through the area at any time during either mine-laying or retrieving operations.

(3) The Explosives-Handling Berth (Naval) described in paragraph (a)(3) of this section is reserved for the exclusive use of naval vessels and except in cases of emergency no other vessel shall anchor therein without the permission of local naval authorities, obtained through the Captain of the Port, U.S. Coast Guard, Norfolk, Virginia. There shall be no restriction on the movement of vessels through the Explosive-Handling Berth.

(4) Vessels shall not be anchored, nor shall persons in the water approach within 300 yards of the perimeter of the Explosives-Handling Berth (Naval) when that berth is occupied by a vessel handling explosives.

(5) All persons and all vessels are forbidden to enter the prohibited areas described in paragraphs (a)(4) and (a)(5) of this section without prior permission of the enforcing agency.

(6) The regulations of this section shall be enforced by the Commander, Naval Weapons Station Yorktown, Virginia, and such agencies as he/she may designate.

Dated: March 29, 2012.

Richard C. Lockwood,

Chief, Operations and Regulatory, Directorate of Civil Works.

[FR Doc. 2012–8113 Filed 4–3–12; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2012–0158; FRL–9656–2]

Approval, Disapproval and Promulgation of Implementation Plans; Nebraska; Regional Haze State Implementation Plan; Federal Implementation Plan for Best Available Retrofit Technology Determination; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period and opportunity for public hearing.

SUMMARY: On March 2, 2012, EPA proposed several related actions regarding a State Implementation Plan (SIP) submitted by Nebraska to address its obligations under the Clean Air Act (CAA) with respect to regional haze for the first implementation period. One such action was EPA's proposal of a Federal Implementation Plan (FIP) relying on the Transport Rule to satisfy Best Available Retrofit Technology (BART) requirements for sulfur dioxide (SO_2) at one source in Nebraska to address deficiencies in the State's implementation plan for regional haze. The original public comments due date was April 2, 2012. EPA is extending the public comment period until May 2, 2012 in order to allow for submission of comments or supplementary information relevant to the proposed action. EPA is also providing notice of opportunity for a public hearing in Kansas City, Kansas, on the proposed FIP, to be held if requested.

DATES: The comment period for the proposed rule published March 2, 2012 (77 FR 12270), is extended. EPA will accept public comments on or before May 2, 2012. If requested by April 9, 2012, a public hearing will be held on April 18, 2012, at the U.S. Environmental Protection Agency, Region 7, Room 2240A, 901 N. 5th Street, Kansas City, Kansas from 3:30 p.m. until 5:30 p.m. Parties interested in the status of the public hearing may contact Ms. Chrissy Wolfersberger by phone using the contact information provided below or they may consult the following link: *http://www.epa.gov/region7/public_notices/.*

ADDRESSES: Instructions for comment submittal. Submit your comments, identified by Docket No. EPA–R07–OAR–2012–0158, by one of the following methods:

1. *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the

online instructions for submitting comments.

2. *Email: wolfersberger.chris@epa.gov*.

3. *Mail:* Ms. Chrissy Wolfersberger, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101.

4. *Hand or Courier Delivery:* U.S. Environmental Protection Agency, Region 7, Air Planning and Development Branch, 901 N. 5th Street, Kansas City, Kansas 66101; attention: Chrissy Wolfersberger. Such deliveries are accepted only between the hours of 8 a.m. and 5 p.m. weekdays, excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

5. *Fax:* (913) 551–7864. Please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you are faxing comments.

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 we 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, we recommend 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 we cannot read your comment due to technical difficulties and cannot contact you for clarification, we 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 *www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 5 p.m. excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Chrissy Wolfersberger, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101, by email at *wolfersberger.chris@epa.gov*, or by telephone at (913) 551–7864.

Dated: March 29, 2012.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2012–8194 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2012–0001; FRL–9340–4]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before May 4, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the

electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and email address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Antimicrobials Division (7510P), or Biopesticides and Pollution Prevention Division (7511P) or Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available online at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 1E7869.* (EPA–HQ–OPP–2012–0048). Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide cyprodinil, 2-pyrimidinamine, 4-cyclopropyl-6-methyl-*N*-phenyl-, in or on leafy petioles subgroup 04B at 30 parts per million (ppm). Syngenta Crop Protection, has developed and validated analytical methodology for enforcement purposes. This method Syngenta Crop Protection Method AG–631B, has passed an Agency petition method validation for several commodities and is currently the enforcement method for cyprodinil. Contact: Lisa Jones, (703) 308–9424, email address: *jones.lisa@epa.gov*.

2. *PP 1E7870.* (EPA–HQ–OPP–2012–0047). Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide fludioxonil, 4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on leafy petioles subgroup 04B at 14 ppm. Syngenta Crop

Protection, has developed and validated the analytical method Syngenta Crop Protection Method AG–597B for enforcement purposes and has also passed an Agency petition method validation (PMV) for several commodities. It is currently the enforcement method for fludioxonil and has also been forwarded to the Food and Drug Administration (FDA) for inclusion into Pesticide Analytical Manual Volume II (PAM II). Contact: Lisa Jones, (703) 308–9424, email address: *jones.lisa@epa.gov*.

3. *PP 1E7924.* (EPA–HQ–OPP–2012–0038). Bayer CropScience, P.O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish import tolerances in 40 CFR part 180 for residues of the insecticide spiromesifen, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate and its enol metabolite; 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one calculated as the parent compound equivalents, in or on imported tea, dried and the processed commodity instant tea at 50 ppm. Adequate analytical methodology using liquid chromatography/mass spectrometry (LC/MS/MS) detection is available for enforcement purposes. Contact: Jennifer Gaines, (703) 305–5967, email address: *gaines.jennifer@epa.gov*.

4. *PP 1E7945.* (EPA–HQ–OPP–2012–0041). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish an import tolerance in 40 CFR part 180 for residues of the fungicide azoxystrobin, methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate and the *Z* isomer of azoxystrobin, methyl (*Z*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]pheny1]-3-methoxyacrylate, in or on ginseng extract (red ginseng extract and ginseng extract) at 0.5 ppm. An adequate analytical method, gas chromatography with nitrogen-phosphorus detection (GC/NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC/UV) is available for enforcement purposes with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. Contact: Erin Malone, (703) 347–0253, email address: *malone.erin@epa.gov*.

5. *PP 1E7951.* (EPA–HQ–OPP–2011–1011). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide *S*-ethyl dipropylthiocarbamate (EPTC), including its metabolites and degradates, determined by measuring only the sum of *S*-ethyl dipropylthiocarbamate, *S*-ethyl (2-hydroxypropyl) propylcarbamothioate, *S*-(2-hydroxyethyl)dipropylcarbamothioate, and *S*-ethyl (3-hydroxypropyl)propylcarbamothioate, calculated as the stoichiometric equivalent of *S*-ethyl dipropylthiocarbamate, in or on fruit, citrus, group 10–10 at 0.1 ppm; sunflower subgroup 20B at 0.08 ppm; and watermelon at 0.08 ppm. Adequate methods are available for the determination of EPTC and three hydroxy metabolites in crops, including watermelon. EPTC is analyzed by extraction of the macerated samples with toluene with subsequent quantification using GC/NPD. The three hydroxy metabolites are extracted from macerated samples with a mixture of acetone and water. The acetone is dispelled and the aqueous fraction is digested with acid. The hydrolyzed metabolites are then extracted with a mixture of hexane and ether, and the extract is purified through a solid phase extraction cartridge. The residues are then derivatized and quantified using a GC equipped with a mass-selective detector (MSD). Contact: Sidney Jackson, (703) 305–7610, email address: *jackson.sidney@epa.gov*.

6. *PP 1E7957.* (EPA–HQ–OPP–2012–0010). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid, including its metabolites and degradates determined by measuring only quinclorac, in or on rhubarb at 0.4 ppm; and berry, low growing, except strawberry, subgroup 13–07H at 1.1 ppm. Adequate analytical methods, utilizing GC with electron capture detection (GC/ECD), are available to enforce the tolerance expression on plant (BASF Method A8902) and animal (BASF Method 268/1) commodities. Both methods have undergone successful Agency method validation trials, and have been submitted to the FDA for publication in PAM II as the tolerance enforcement methods. Contact: Sidney Jackson, (703) 305–7610, email address: *jackson.sidney@epa.gov.*

7. *PP 1E7958.* (EPA–HQ–OPP–2012–0107). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide spirotetramat, cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate and its metabolites BYI 08330-enol cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one, BYI 08330-ketohydroxy cis-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione, BYI 08330-enol-Glc cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside, and BYI 08330-mono-hydroxy cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one, calculated as spirotetramat equivalents, in or on taro, leaves at 9 ppm; watercress at 1.5 ppm; pomegranate at 0.5 ppm; banana at 4 ppm; vegetable, bulb, group 3–07 at 0.6 ppm; berry, low growing, except strawberry, subgroup 13–07H at 0.3 ppm; bushberry, subgroup 13–07B at 3 ppm; artichoke, globe at 2 ppm; vegetable, fruiting, group 8–10 at 2.5 ppm; fruit, pome, group 11–10 at 0.7 ppm; fruit, citrus, group 10–10 at 0.6 ppm; pineapple at 0.3 ppm; pineapple, process residue at 0.36 ppm; coffee, green beans at 0.2 ppm; and coffee, roast beans at 0.32 ppm. Spirotetramat residues are quantified in raw agricultural commodities by HPLC/triple stage quadrupole mass spectrometry (HPLC/MS/MS) using the stable isotopically labeled analytes as internal standards. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

8. *PP 1F7845.* (EPA–HQ–OPP–2011–0458). Bayer CropScience, 2 T. W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide trifloxystrobin, benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl] ethylidene] amino]oxy]methyl]-methyl ester, and the free form of its acid metabolite CGA–321113, (*E,E*)-methoxyimino-[2-[1-(3-trifluoromethyl-phenyl)-ethylideneaminooxymethyl]-phenyl]acetic acid, in or on artichoke, globe at 1.0 ppm. A practical analytical method for detecting and measuring levels of trifloxystrobin, in or on raw agricultural commodities is based on crop specific cleanup procedures and determination by GC/NPD. A newer analytical method is available by LC/MS/MS with electrospray interface, operated in the positive ion mode. Contact: Tawanda Maignan, (703) 308–8050, email address: *maignan.tawanda@epa.gov.*

9. *PP 1F7954.* (EPA–HQ–OPP–2012–0029). E. I. DuPont de Nemours and Company, DuPont Crop Protection, 1007

Market Street, Wilmington, DE 19898, requests to establish a tolerance in 40 CFR part 180 for residues of the chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on oilseed, rapeseed, subgroup 20A at 2.0 ppm; oilseed, sunflower, subgroup 20B at 2.0 ppm; oilseed, cottonseed, subgroup 20C at 0.3 ppm; soybean, aspirated grain fractions at 300 ppm; vegetable, legume, group 6 at 2.0 ppm; vegetable, foliage of legume, group 7 at 30 ppm; and forage, vegetable, foliage of legume, group 7 at 90 ppm. An analytical residue method has been submitted to EPA which permits determination of trace residues of the parent compound on various food and feed commodities. Contact: Jennifer Urbanski, (703) 347–0156, email address: *urbanski.jennifer@epa.gov.*

Amended Tolerances

1. *PP 1E7951.* (EPA–HQ–OPP–2011–1011). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.117 for residues of the herbicide *S* -ethyl dipropylthiocarbamate (EPTC), including its metabolites and degradates, determined by measuring only the sum of *S* -ethyl dipropylthiocarbamate, *S* -ethyl (2-hydroxypropyl) propylcarbamothioate, *S* -(2-hydroxyethyl)dipropylcarbamothioate, and *S* -ethyl (3-hydroxypropyl)propylcarbamothioate, calculated as the stoichiometric equivalent of *S* -ethyl dipropylthiocarbamate, by removing the following established tolerances: Fruit, citrus, group 10 at 0.1 ppm; safflower, seed at 0.08 ppm; and sunflower, seed at 0.08 ppm, as these commodities are included in updated crop groups or subgroups listed under ''New Tolerances'' for PP *1E7951.* Contact: Sidney Jackson, (703) 305–7610, email address: *jackson.sidney@epa.gov.*

2. *PP 1E7958.* (EPA–HQ–OPP–2012–0107). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend 40 CFR 180.641 for residues of the insecticide spirotetramat, cis-3-(2,5-dimethlyphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl-ethyl carbonate and its metabolites BYI 08330-enol cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one, BYI 08330-ketohydroxy cis-3-(2,5-dimethylphenyl)-3-hydroxy-8-methoxy-1-azaspiro[4.5]decane-2,4-dione, BYI 08330-enol-Glc cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl beta-D-glucopyranoside, and BYI 08330-monohydroxy cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]decan-2-one, calculated as spirotetramat equivalents, by removing the established tolerances: Onion, bulb, subgroup 3A–07 at 0.30 ppm; fruit, citrus, group 10 at 0.60 ppm; fruit, pome, group 11 at 0.70 ppm; okra at 2.5 ppm; and vegetable, fruiting, group 8 at 2.5 ppm, as they will be superseded by inclusion in updated crop groups or subgroups listed under ''New Tolerances''. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

New Tolerance Exemptions

1. *PP 1E7912.* (EPA–HQ–OPP–2012–0014). ICR, Inc., 1330 Dillon Heights Ave, Catonsville, MD on behalf of Triton Systems, Inc., 200 Turnpike Road, Chelmsford, MA 01824, requests to establish an exemption from the requirement of a tolerance for residues of 1,2-Ethanediamine, N1-(2-aminoethyl)-, polymer with 2,4-diisocyanato-1-methylbenzene, with number average molecular weight greater than 10,000 daltons, (CAS No. 35297–61–1) under 40 CFR 180.960 when used as a pesticide inert ingredient microencapsulation in pesticide formulations. The petitioner believes no analytical method is needed because this information is generally not required when all criteria for polymer exemption under 40 CFR 723.250 are met. Contact: Anthony Britten, (703) 308–8179, email address: *britten.anthony@epa.gov.*

2. *PP 1E7938.* (EPA–HQ–OPP–2012–0043). Honeywell International, Inc., 101 Columbia Road, Morristown, NJ 07962–1053, requests to establish an exemption from the requirement of a tolerance for residues of trans-1,3,3,3-tetrafluoroprop-1-ene, (CAS No. 29118–24–9) under 40 CFR 180.910, 180.930, and 180.940 when used as a pesticide inert ingredient propellant in pesticide formulations. The petitioner believes no analytical method is needed because this is a petition for exemption from the requirement of a tolerance. Contact: Lisa Austin, (703) 305–7894, email address: *austin.lisa@epa.gov.*

3. *PP 1F7960.* (EPA–HQ–OPP–2012–0152). Enerfab, Inc., 4955 Spring Grove Avenue, Cincinnati, OH 45232, requests to establish an exemption from the requirement of a tolerance for residues of the antimicrobial gaseous chlorine dioxide, on tomato. EPA Method 300, Ion Chromatography, was used for measuring chlorite and chlorate residues rinsed from surface of produce treated with chlorine dioxide gas. Contact: Jaclyn Carl, (703) 347–0213, email address: *carl.jaclyn@epa.gov.*

Amended Tolerance Exemption

PP 1F7857. (EPA–HQ–OPP–2012–0109). Syngenta Seeds, Inc., Field Crops NAFTA, P.O. Box 12257, 3054 E. Cornwallis Road, Research Triangle Park, NC 27709–2257, requests to amend an exemption from the requirement of a tolerance in 40 CFR 174.532 for residues of the plant-incorporated protectant (PIP), *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being sought. However, in response to an Agency request, the Petitioner has submitted an immunoassay method for determination of eCry3.1Ab protein in corn tissues. Contact: Mike Mendelsohn, (703) 308–8715, email address: *mendelsohn.mike@epa.gov.*

List of Subjects in 40 CFR Parts 174 and 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 16, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–8095 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120312181–2228–01]

RIN 0648–BC00 and 0648–BC01

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Advance Notice of Proposed Rulemaking Regarding the Reconsideration of the Allocation of Whiting

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: A court order issued February 21, 2012, remands for agency reconsideration the regulations addressing the initial allocation of whiting for the shorebased individual fishing quota (IFQ) fishery and the at-sea mothership fishery of the Pacific Coast Groundfish Trawl Rationalization Program (Program) and requires that NMFS implement revised regulations before the 2013 Pacific whiting fishing season begins on April 1, 2013. The purpose of this advanced notice of proposed rulemaking (ANPR) is to announce that the Pacific Fishery Management Council (Council) will be reconsidering the initial allocation of whiting at its April, June, and September 2012 meetings, and that NMFS is considering two rulemakings in response to the court order. The affected public should be aware of potential reallocation of whiting, as well as potential reallocation of a portion of the initial allocation of Quota Share (QS) for some incidentally caught, nonwhiting species. Additionally, this ANPR announces that the affected public should review, and if necessary, correct their data, which may be used for reconsideration and any reallocation that may occur.

DATES: Comments on this ANPR must be received no later than 5 p.m., local time on May 4, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0062, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal, at *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0062 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Fax:* 206–526–6736; Attn: Ariel Jacobs.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Ariel Jacobs.

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 (if submitting comments via the Federal e-Rulemaking portal, enter ''N/A'' in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206–526–4491; (fax) 206–526–6736; *Ariel.Jacobs@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 21, 2012, Judge Henderson issued a court order in *Pacific Dawn, LLC* v. *Bryson,* No. C10–4829 TEH (N.D. Cal.). The court order remands the regulations addressing the initial allocation of whiting for the shorebased IFQ fishery and the at-sea mothership fishery ''for further consideration'' consistent with the court's December 22, 2011, summary judgment ruling, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and all other governing law. Further, the court order requires that NMFS implement revised regulations before the 2013 Pacific whiting fishing season begins on April 1, 2013. In the interim, the existing regulations remain in effect, unless suspended or revised by NMFS.

In light of the court order, the Council will be reconsidering the initial allocation of whiting at its April, June, and September 2012 meetings. The Council is scheduled to select a range of alternatives at its April meeting, a preliminary preferred alternative at its June meeting, and a final preferred alternative and recommendation to NMFS at its September meeting. Depending on Council recommendations and NMFS actions, some of the nonwhiting QS issued for the shorebased whiting fishery in proportion to the whiting allocations, could also be affected by the reallocation of whiting. Further information regarding the Council meetings may be found at *http://www.pcouncil.org/council-operations/council-meetings/.*

NMFS plans to publish at least two rulemakings in response to the court order, referred to as Reconsideration of the Allocation of Whiting, Rules 1 and 2 (RAW 1 and RAW 2). The rulemaking for RAW 1 would delay at least two elements of the current regulations until reconsideration of the initial allocation has concluded, including the transfer of QS or Individual Bycatch Quota (IBQ) between QS accounts and the ability to change mothership catcher vessel (MS/CV) endorsement and associated catch history assignment from one limited entry trawl permit to another. In addition, NMFS may need to hold back sufficient quota pounds for whiting and all other incidentally caught species from the annual allocation of quota pounds (QPs) to QS accounts made on or about January 1, 2013 in order to allocate the appropriate final amounts based on recalculation of QS allocations. NMFS may also need to consider whether it is necessary to restrict limited entry trawl permit transfers for a period of time during this reconsideration. For the at-sea mothership fishery, NMFS may need to recalculate the whiting catch history assignments which may have an impact on processor obligations and coop formation, both of which occur before April 1, 2013.

In the proposed rule for RAW I, NMFS will announce further details on the process for data review and corrections. As occurred in 2009–2010, prior to the implementation of the current Program, the affected public will be advised to review, and if necessary, correct their data that may be used for initial allocation, or reallocation. NMFS anticipates publishing the proposed rule for RAW 1 in late April, and the final rule in July 2012.

The rulemaking for RAW 2 would take in to account the Council's September 2012 recommendation and reconsideration of the dates used for initial allocation of whiting for the shorebased IFQ and at-sea mothership fisheries. The proposed rule for RAW 2 is scheduled to publish in November 2012, and the final rule in March 2013. This rule would be effective by April 1, 2013, consistent with the court order.

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

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 29, 2012.

Alan D. Risenhoover,

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

[FR Doc. 2012–8106 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 110620343–2149–01]

RIN 0648–BB18

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 97

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 97 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 97 would allow the owners of trawl catcher/processor vessels authorized to participate in the Amendment 80 catch share program to replace these vessels with vessels that meet certain requirements. This proposed action includes management measures that would establish the requirements for replacement vessels, such as a limit on the overall length of replacement vessels, measures to prevent replaced vessels from participating in Federal groundfish fisheries off Alaska that are not Amendment 80 fisheries, and specific catch limits known as Amendment 80 sideboards for replacement vessels. This action is necessary to promote safety-at-sea, by allowing Amendment 80 vessel owners to replace their vessels for any reason at any time and by requiring replacement vessels to meet certain U.S. Coast Guard vessel safety standards, and is intended to facilitate an increase in the processing capabilities of the fleet to improve the retention and utilization of groundfish catch by these vessels. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Written comments must be received no later than 5 p.m. Alaska local time (A.l.t.) May 4, 2012.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by NOAA–NMFS–2011–0147, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0147 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov*. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address; emailed to *OIRA_Submission@omb.eop.gov* or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the BSAI in the Exclusive Economic Zone (EEZ) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background on the Amendment 80 Program

The proposed action would amend Federal regulations related to the Amendment 80 Program. In June 2006, the Council adopted Amendment 80 to the FMP, which was implemented with a final rule published in 2007 and was fully effective starting with the 2008 fishing year (72 FR 52668, September 14, 2007). Among other measures, Amendment 80 authorized the allocation of specified groundfish species to harvesting cooperatives and established a catch share program for trawl catcher/processors (C/Ps) that are not authorized to conduct directed fishing for pollock under the American Fisheries Act of 1998 (AFA) (Pub. L. 105–227, Title II of Division C). These non-AFA trawl C/Ps also are referred to as Amendment 80 vessels, or the Amendment 80 sector. Amendment 80 was intended to meet a number of policy objectives that included reducing potential bycatch reduction costs, encouraging fishing practices with lower discard rates, and promoting opportunities for the sector to increase the value of harvested species.

Several aspects of the Amendment 80 program as originally implemented would be modified by this proposed rule. The following provides some background on these aspects in order to provide the context for the modifications being proposed. Other aspects of the Amendment 80 program not affected by this proposed rule are described in detail in the final rule for the Amendment 80 program (72 FR 52668, September 14, 2007).

The Amendment 80 Program is a limited access privilege program (LAPP) that allocates a quota share (QS) permit to a person, based on a vessel's catch history of six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod,

rock sole, and yellowfin sole) in the BSAI, from 1998 through 2004. This criteria is consistent with criteria for participation in the non-AFA trawl C/P subsector set forth in section 219(a)(7) of the BSAI Catcher Processor Capacity Reduction Program (CRP), which is contained within the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law No. 108–447). Based on these criteria, NMFS determined that 28 non-AFA trawl C/Ps originally qualified for the Amendment 80 Program.

In order to participate in the Amendment 80 program, the regulations require a person who owns the catch history of an original qualifying non-AFA trawl C/P to apply to NMFS for an Amendment 80 QS permit. Each of the 28 originally qualifying vessels may be assigned an Amendment 80 QS permit, if that vessel owner applies to receive an Amendment 80 QS permit. In developing the regulations for Amendment 80, NMFS determined that the language of the CRP prohibited vessels that did not meet the criteria from participating in the Amendment 80 sector. Therefore, only the 28 listed vessels were qualified to fish in the Amendment 80 sector and replacement vessels were not permitted unless the replacement vessel was one of the qualifying vessels listed in Table 31 to part 679.

To ensure that no more than the 28 originally qualifying vessels participate in the Amendment 80 fisheries, NMFS implemented regulations, at § 679.4(o)(v), requiring that Amendment 80 QS units assigned to an Amendment 80 QS permit are non-severable from that Amendment 80 QS permit and if transferred, then the Amendment 80 QS permit must be transferred in its entirety to another person. Moreover, regulations prevent the subdivision of an Amendment 80 QS permit and QS allocations of specific Amendment 80 species may not be transferred or otherwise reassigned. Of the 28 originally qualifying vessels, several vessels are no longer active in the Amendment 80 fleet due to an actual or constructive total loss (i.e., F/V *Alaska Ranger,* F/V *Arctic Sole,* F/V *Prosperity*), or because those vessels have been reflagged under foreign ownership and are no longer eligible to re-enter U.S. fisheries under the provisions of 46 U.S.C. 12113 (i.e., F/V *Bering Enterprise*).

In cases where an original qualifying vessel has suffered a total or constructive loss, or is no longer eligible to receive a fishery endorsement (i.e., the vessel has been removed through a vessel buyback program, or has been reflagged as a foreign vessel), the regulations currently require that an Amendment 80 QS permit must be permanently assigned to the License Limitation Program (LLP) license, described in detail below, initially assigned to that original qualifying vessel, thus creating an Amendment 80 LLP/QS license. Three Amendment 80 QS permits are permanently assigned to LLP licenses.

Once issued, Amendment 80 QS permits, and the Amendment 80 vessels or LLP licenses associated with those Amendment 80 QS permits, may be assigned annually to either an Amendment 80 cooperative or to the Amendment 80 limited access fishery. Amendment 80 QS permit holders assigning their permit to an Amendment 80 cooperative are eligible to receive an exclusive harvest privilege for a portion of the total allowable catch (TAC) for the six defined Amendment 80 species, as well as a portion of the BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab prohibited species catch (PSC) assigned to the Amendment 80 sector. Those Amendment 80 QS permit holders who assign their permits to the Amendment 80 limited access fishery do not receive an exclusive harvest privilege. NMFS apportions a specific percentage of the Amendment 80 species and PSC allowances among Amendment 80 cooperatives and the Amendment 80 limited access fishery based on the aggregate Amendment 80 QS held by all of the QS permits assigned to Amendment 80 cooperatives or the Amendment 80 limited access fishery.

NMFS also requires participants in Amendment 80 fisheries to meet the requirements of the LLP program. The Council recommended and NMFS implemented the LLP as part of a comprehensive and rational management program for the fisheries in and off Alaska (63 FR 52642, October 1, 1998). The LLP program limited the number, size, and specific operation type of vessels that may be used in fisheries for groundfish other than demersal shelf rockfish east of 140° W .long. and sablefish managed under the individual fishing quota program for Pacific halibut and sablefish in the EEZ off Alaska. The LLP program was intended to place an upper limit on the amount of capitalization that could occur in specific fisheries and prevent overcapitalization in those fisheries.

LLP licenses were issued based on fishing activity during specific qualification periods. Once issued, transferable LLP licenses authorize holders to conduct directed fishing for LLP groundfish species in the management areas endorsed on each LLP license. All licenses for groundfish species were designated for use by either CV or C/P operational type designation. This designation prescribed the authorized behavior of the LLP license holder on the vessel on which the license would be used. LLP licenses were issued with a specific vessel length category based on the size of the eligible vessel at the time of qualification for the LLP. LLP licenses specify the maximum length overall (MLOA) of the vessel to which that LLP license may be assigned. The average MLOA of an Amendment 80 LLP license is 170 feet (51.8 m) MLOA with 19 of the 28 Amendment 80 LLP licenses having a MLOA less than 200 feet (61 m), including one license with an MLOA of less than 100 feet (30.5 m). The longest MLOA on an Amendment 80 LLP license is 295 foot (89.9 m) MLOA. Additional detail on the MLOAs of Amendment 80 LLP licenses is provided in Table 1 in Section 2.3.5 of the analysis for this proposed action. Participants in Amendment 80 fisheries, and other LLP groundfish fisheries, are prohibited from using a vessel to fish for LLP groundfish that has a length overall (LOA) that is greater than the MLOA specified on the LLP license (see § 679.7(i)(6)).

As with other North Pacific LAPPs, the Council and NMFS have attempted to mitigate potentially adverse effects of the Amendment 80 program on non-LAPP fisheries that could be caused by the increased economic and operational efficiencies that LAPPs can provide participants. Specifically, once a harvest privilege is allocated, Amendment 80 QS permit holders may consolidate their operations through cooperative management and use Amendment 80 vessels in other fisheries. This could increase competition and the race for fish in non-Amendment 80 fisheries. To prevent this, the Amendment 80 program established a suite of measures, commonly called sideboard limits, to protect participants in other federally managed fisheries from increased participation by Amendment 80 vessel owners.

The Council identified Gulf of Alaska (GOA) groundfish fisheries as the fisheries most likely to be at risk of increased harvest pressures with the implementation of the Amendment 80 program. The Council determined that without sideboards limiting Amendment 80 vessel harvests, GOA groundfish fisheries could be subject to increased fishing pressure from Amendment 80 vessels because of (1) the harvest patterns of the Amendment 80 sector, (2) the lack of other fisheries in the BSAI that can be targeted by

Amendment 80 vessels (i.e., pollock is managed under the AFA, crab is managed under the BSAI Crab Rationalization Program, and Pacific cod is allocated to the Amendment 80 sector), and (3) the lack of specific gear or sector allocations for many species in the GOA. Therefore, the Amendment 80 program includes sideboard limit protections for certain GOA groundfish fisheries that the Council and NMFS determined were at risk from increased participation by Amendment 80 vessels owners. The Amendment 80 program established three types of GOA sideboard limits for Amendment 80 vessels other than the F/V *Golden Fleece.* The Amendment 80 Program also established specific management measures applicable to the F/V *Golden Fleece.*

First, Amendment 80 limits catch of specific GOA groundfish species by Amendment 80 vessels other than the F/V *Golden Fleece* to an amount not greater than the sideboard limits shown in Table 37 to part 679. Once a sideboard limit for one of these groundfish species is reached, or projected to be reached, NMFS prohibits directed fishing for that species by Amendment 80 vessels. Amendment 80 vessels can retain incidental catch of that sideboard species subject to existing maximum retainable amount regulations while targeting other GOA groundfish species that are not closed to directed fishing. If the rate of incidental catch of a GOA groundfish sideboard species is expected to be high relative to the sideboard limit, NMFS prohibits directed fishing for that species by Amendment 80 vessels to accommodate this incidental catch.

The GOA groundfish sideboard limits restrict the maximum amount of pollock, Pacific cod, and rockfish that Amendment 80 vessels can harvest. The GOA groundfish sideboard limits restrict the catch of Amendment 80 vessels to their average aggregate catch from 1998 through 2004. Catch of a GOA sideboard species during a directed fishery, as well as incidental catch of a GOA sideboarded species, such as Pacific cod caught during a rex sole fishery, accrues against the GOA sideboard limit for that species. In addition, any catch of a GOA sideboard species within State waters during the State parallel fishery accrues against the sideboard limit. State parallel fisheries occur in State waters, are opened at the same time as Federal fisheries in Federal waters, and catch accrues against the Federal TAC. Accounting for catch in the State parallel fishery ensures that all catch is debited against a sideboard limit whether that harvest occurs in State or Federal waters.

Second, Amendment 80 limits catch of GOA halibut PSC by Amendment 80 vessels, other than the F/V *Golden Fleece.* The GOA halibut PSC sideboard limits implemented under Amendment 80 are based on the historic use of halibut PSC of Amendment 80 vessels, in each season, and by fishery complex. The GOA halibut PSC sideboard limits restrict the maximum amount of halibut caught by Amendment 80 vessels. NMFS apportions the Amendment 80 halibut PSC sideboard limits through the annual specification process.

The GOA halibut PSC sideboard limits established under Amendment 80 are slightly lower than historic catch of halibut PSC by Amendment 80 vessels in the GOA, during the period from 1998 through 2004, to accommodate two factors: an exemption from the Amendment 80 GOA halibut PSC sideboard limits for the F/V *Golden Fleece,* and the allocation of halibut PSC Cooperative Quota under the Rockfish Program. Both exceptions to the Amendment 80 GOA halibut PSC sideboard limits are described in more detail in Section 2.3 of the EA/RIR/IRFA prepared for this proposed action and summarized below in this preamble.

NMFS subdivides the GOA halibut PSC sideboard limit by the number of seasons, and into two species complexes: the shallow-water and the deep-water fishery species complexes. A shallow-water halibut PSC sideboard limit restricts the catch of halibut PSC in the shallow-water fishery complex, which includes pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.'' A deep-water halibut PSC sideboard limit restricts the catch of halibut PSC in the deep-water fishery complex, which includes all species not in the shallow-water complex: all rockfish species, rex sole, deep-water flatfish, sablefish, and arrowtooth flounder. If the shallow-water halibut PSC sideboard limit is reached, all directed fishing for all species in the shallow-water complex is closed in the GOA for that season. Similarly, if the deep-water halibut PSC sideboard limit is reached, all directed fishing for all species in the deep-water complex is closed in the GOA for that season. NMFS can reopen a fishery complex in the following season with the halibut PSC sideboard limit applicable for that season.

Third, regulations implementing Amendment 80 restrict the number of Amendment 80 vessels and Amendment 80 LLP licenses that can be used to conduct directed fishing for flatfish in the GOA. The Council and NMFS reviewed historic harvest patterns during the 1998 through 2004 qualifying years and recognized a specific group of Amendment 80 vessels that were substantially more dependent on the GOA flatfish fisheries than other Amendment 80 vessels with more sporadic participation. NMFS authorized a subset of Amendment 80 vessels to be used to conduct directed fishing for flatfish in the GOA. Each qualifying Amendment 80 vessel conducted more than 10 weeks of directed fishing for GOA flatfish fisheries during 1998 through 2004 and are designated on an Amendment 80 LLP license that was originally assigned to one of the Amendment 80 vessels meeting that 10-week minimum requirement.

Table 39 to part 679 identifies the eleven Amendment 80 vessels and eleven Amendment 80 LLP licenses eligible for use in the GOA flatfish fishery. If an Amendment 80 vessel listed in Table 39 to part 679 is not designated on an Amendment 80 LLP license also listed in Table 39 to part 679, the regulations prohibit that vessel from conducting directed fishing in GOA flatfish fisheries. Similarly, if an Amendment 80 vessel not listed in Table 39 to part 679 is designated on an Amendment 80 LLP license also listed in Table 39 to part 679, the regulations prohibit that vessel from directed fishing in GOA flatfish fisheries.

The Amendment 80 program established GOA sideboard limits specifically for the F/V *Golden Fleece.* As part of Amendment 80, the Council recognized that any Amendment 80 vessel that fished in GOA flatfish fisheries for at least 80 percent of all weeks during the 2000 through 2003 time period was an Amendment 80 vessel primarily dependent on GOA flatfish fisheries. NMFS identified one Amendment 80 vessel, the F/V *Golden Fleece,* with this distinctive harvest pattern in the GOA flatfish fisheries. The Council recommended, and NMFS implemented, an exemption from the GOA halibut PSC sideboard limits for the F/V *Golden Fleece* to reduce the potential adverse effects that the Amendment 80 GOA halibut PSC sideboard limits could have on the F/V *Golden Fleece.*

The Council recommended, and NMFS implemented, regulations that further recognized the unique catch history of the F/V *Golden Fleece.* The F/V *Golden Fleece* is not subject to certain monitoring and enforcement (M&E) requirements applicable to other Amendment 80 vessels while fishing in the GOA. Many of the M&E requirements established for

Amendment 80 vessels are necessary to properly track GOA groundfish catch and halibut PSC. Because the F/V *Golden Fleece* is exempt from the GOA halibut PSC sideboard limits and is prohibited from conducting directed fishing for Pacific cod, pollock, or in any rockfish fishery in the GOA, the Council determined, and NMFS concurred, that the same degree of precision for monitoring catch was not required for the F/V *Golden Fleece* as with other Amendment 80 vessels. The regulations implementing Amendment 80 established sideboard restrictions specifically applicable to the F/V *Golden Fleece* at § 679.92(d).

Shortly after NMFS published the final rule implementing Amendment 80, Arctic Sole Seafoods, the owner of an original qualifying Amendment 80 vessel that was lost, challenged NMFS's statutory interpretation of section 219(a)(7) of the CRP and contended that the lack of replacement vessel language in the Amendment 80 Program was arbitrary and capricious. On May 19, 2008, the U.S. District Court for the Western District of Washington (Court) issued a decision invalidating those regulatory provisions that limit the vessels used in the Amendment 80 Program to only those vessels meeting the qualification criteria in section 219(a)(7) of the CRP. In *Arctic Sole Seafoods, Inc.* v. *Gutierrez,* 622 F. Supp. 2d 1050 (W.D. Wash. 2008), the Court found the statutory language of the CRP ambiguous as to whether replacement of qualifying vessels with non-qualifying vessels was permissible, and found the agency's interpretation of the statute to be arbitrary and capricious. The Court concluded that the inability to replace qualifying vessels with non-qualifying vessels would ultimately result in the elimination of the sector through vessel attrition, and that Congress had not intended such an outcome in the CRP. The court ordered that ''[t]o the extent that [regulations] restrict access to the BSAI non-pollock groundfish fishery to qualifying vessels without allowing a qualified owner to replace a lost qualifying vessel with a single substitute vessel, the regulations must be set aside. * * *''

After receiving the Court's decision, NMFS immediately developed an interim policy for vessel replacement consistent with the Court's decision. In October 2008, NMFS asked the Council to clarify the conditions under which an Amendment 80 vessel may be replaced consistent with the Court's decision, the CRP, and the Magnuson-Stevens Act. In response, the Council developed Amendment 97.

Proposed Action

This proposed rule would allow the owner of an Amendment 80 vessel to replace that vessel with up to one other vessel for any reason and at any time. Regulations proposed by this action are intended to facilitate improved retention and utilization of catch by the Amendment 80 sector through vessel upgrades that would provide Amendment 80 vessel owners with the flexibility to incorporate a broad range of processing opportunities that are not currently available on all vessels. This proposed action also is intended to address the regulatory deficiencies that were identified by, and addressed by, the court order resulting from *Arctic Sole Seafoods, Inc.* v. *Gutierrez.* As part of the proposed action, the Council considered a range of alternatives and options. After reviewing the analysis prepared for Amendment 97 and receiving public testimony on the action, the Council recommended: (1) Allowing Amendment 80 vessels to be replaced for any reason at any time, up to a one-for-one vessel replacement; (2) establishing maximum vessel length limits for Amendment 80 replacement vessels; (3) modifying the MLOA on LLP licenses assigned to Amendment 80 replacement vessels; (4) clarifying the methods for assigning an Amendment 80 QS permit to either an Amendment 80 replacement vessel or an Amendment 80 LLP license; (5) imposing sideboard limitations on replaced vessels; (6) applying GOA sideboard measures that apply to all qualifying Amendment 80 vessels, except the F/V *Golden Fleece,* to continue to apply to their replacement vessels; (7) allowing vessels that subsequently replace Amendment 80 vessels authorized to fish in GOA flatfish fisheries to be eligible to conduct directed fishing for GOA flatfish; (8) establishing specific regulatory restrictions and requirements that would apply to any vessel that replaces the *F/V Golden Fleece;* (9) requiring owners of replacement vessels to demonstrate to NMFS the vessel's compliance with U.S. Coast Guard safety requirements; and (10) establishing the process by which vessel owners would apply to NMFS for approval to use an Amendment 80 replacement vessel in the Amendment 80 sector. Finally, if approved, this action is intended to demonstrate to the U.S. Maritime Administration (MARAD) that the Council recommended, and NMFS approved, conservation and management measures allowing vessels that exceed specific limits set forth in the AFA to participate in certain North Pacific fisheries under the Council's jurisdiction and therefore are eligible to receive a certificate of documentation consistent with 46 U.S.C. 12113 and MARAD regulations at 46 CFR 356.47.

Replacement for Any Reason and at Any Time, Up to One-for-One Vessel Replacement

The proposed regulations would allow owners of Amendment 80 vessels to replace their vessels for any reason and at any time up to a one-for-one vessel replacement. The Council determined, and NMFS agrees, that vessel owners are best-suited to determine the appropriate time to replace a vessel, and that vessel owners should be afforded broad discretion as to the reasons supporting vessel replacement. The Council's recommendation under Amendment 97 is intended to ensure that vessel owners would be able to initiate rebuilding or new construction of a vessel while the vessel to be replaced is still active (i.e., before it is lost), providing an opportunity for a potentially seamless replacement process and thereby reducing potential costs associated with foregone harvests. After reviewing the analysis for this action and receiving public testimony, the Council determined that this provision would provide vessel owners with opportunities for financial preparation for the investment, a more considered review of alternative design and construction options, and the optimization of delivery schedules.

Although Amendment 80 vessel owners would be able to replace their vessels at any time for any reason, the proposed rule would limit the number of replacement vessels an owner may have, requiring that each Amendment 80 vessel be replaced by no more than one vessel at any given time. Under the Amendment 80 Program, NMFS determined that 28 vessels met the criteria for participation in the non-AFA trawl catcher/processor sector established under the CRP and therefore were eligible to participate in the Amendment 80 Program. In considering vessel replacement, the Council determined that limiting the number of vessels eligible to participate in the Amendment 80 program at any given time to 28 vessels was consistent with the CRP and the Court's decision. The CRP is legislation aimed at facilitating a reduction in fishing capacity through a buyback program. The Court interpreted the CRP as authorizing vessel replacement to prevent the eventual elimination of the sector, but recognized that vessel replacement provisions that would increase the capacity in the

sector were not authorized, stating that any ''regulation that allowed an otherwise qualified owner to replace his or her Amendment 80 vessel with multiple vessels would also be impermissible.'' Although regulations proposed by this action maintain the upper limit on the number of vessels eligible to participate in the Amendment 80 fisheries, this action also would allow for a reduction in the number of vessels participating in the Amendment 80 fisheries. As described later, a vessel owner would have the option of foregoing replacement of the owner's Amendment 80 vessel and instead assigning the owner's Amendment 80 QS permit to another Amendment 80 vessel, provided that the non-severable Amendment 80 QS permit is transferred in its entirety. Under this proposed rule, in no case could more than 28 vessels participate in the Amendment 80 fisheries at any given time.

As an alternative to new vessel construction, the Council recommended, and NMFS proposes, regulations that would allow some vessels currently participating in the Amendment 80 program to replace other Amendment 80 vessels. As proposed, this action would enable the owners of Amendment 80 vessels to replace aging or underperforming vessels with other vessels currently prosecuting Amendment 80 fisheries, without requiring new construction. NMFS would require that all replacement vessels, including replacement vessels that are currently participating in an Amendment 80 fishery, meet contemporary vessel construction standards that are intended to improve safety-at-sea. A detailed review of the Amendment 80 fleet safety regulations proposed by this action can be found in Section 2.3.9.1 of the analysis for this action and below in this preamble.

Maximum Replacement Vessel Length Limits

The proposed rule would limit the length overall (LOA) of Amendment 80 replacement vessels to 295 feet (89.9 m) LOA. The Council considered several size limits, including no size limit, and various variable rate and fixed length increases to vessel size prior to recommending a 295 feet (89.9 m) vessel length limit. As described in Section 2.4.5.12 of the analysis for this action, the Council determined that a 295 feet (89.9 m) vessel length limit would allow each vessel in the fleet to reach the same LOA. The Council noted that the LOA of the longest Amendment 80 vessel is 295 feet (89.9 m). Thus this action would promote an equal standard for all vessels while allowing the largest vessel in the fleet to be replaced with one of equal size.

The Council also considered the operational parameters of the AFA catcher/processor fleet in recommending the 295 feet (89.9 m) LOA limit for the Amendment 80 fleet. Operations from the AFA catcher/processor fleet provided the Council with some perspective on the relative size of vessels that undertake fillet and fish meal operations in the BSAI. Although the AFA catcher/processor fleet primarily targets pollock, they do target and process yellowfin sole and Pacific cod with trawl gear in the same regions as many of the Amendment 80 vessels. The Council noted that vessels measuring 295 feet (89.9 m) participating in the AFA pollock fleet are large enough to incorporate additional processing infrastructure, such as onboard fish meal plants that can substantially improve the ability of vessel operators to produce valuable products from their harvest. AFA vessels that are at least 295 feet have met U.S. Coast Guard vessel class and load line safety requirements, and NMFS anticipates that Amendment 80 vessels of a similar size would likewise be able to meet these requirements. The Council determined that the 295 feet (89.9 m) vessel length limit was not likely to constrain the type of fishing operations possible on an Amendment 80 replacement vessel, or the economic viability of a replacement vessel.

The Council's primary rationale for establishing a limit on the size of replacement vessels is to address the potentially adverse competitive effects of new fishing capacity entering the fishery relative to the existing fleet. As described in detail in Section 2.4.5 of the analysis for this action, the proposed restriction of 295 feet (89.9 m) on the length of replacement vessels is intended to limit overall harvesting capacity of the fleet, reduce the potential for a race for fish, and encourage general improvements in harvesting capacity that any newly constructed vessel would provide over the vessel being replaced, while providing an upper boundary on total fleet capacity.

As described in the analysis for this action, the Council has frequently recommended limits on vessel length as a proxy for controlling fishery effort. Although length is only one measure of a vessel's fishing capacity, it is a metric that is commonly used, considered to be a reasonable indicator of total harvest capacity, and is relatively easily measured and enforced compared to other vessel measurements (*e.g.,* vessel hold capacity). As proposed, the 295 feet (89.9 m) LOA limit for Amendment 80 replacement vessels would improve the Council's and NMFS' ability to analyze and predict the maximum fishery impacts of the Amendment 80 fleet in future actions.

The proposed vessel length restrictions in concert with cooperative quota and sideboard restrictions are intended to reduce the potential for a race for fish in the Amendment 80 limited access fishery. As noted in the section 2.4.5.2 of the EA/RIR/IRFA for this action, Amendment 80 vessels are constrained by quotas in most fisheries in the BSAI and sideboards limits in the GOA. These quotas and sideboard limits reduce the incentive for vessel operators to expand their vessel length in order to be more competitive in a race for fish. Specifically, vessels participating in an Amendment 80 cooperative are not competing in a race for fish and would not have an incentive to lengthen a replacement vessel in order to increase harvests of Amendment 80 species sideboard limits. These restrictions will remain in place and will continue to constrain the fleet in most fisheries.

However, vessels participating in the Amendment 80 limited access fishery continue to compete in a race for Amendment 80 species catch so vessel size could provide a competitive advantage to larger replacement vessels. Under Amendment 97, a vessel owner could choose to enter the Amendment 80 limited access fishery with a larger vessel and out-compete other participants. It is not possible to predict the likelihood that a vessel owner would choose to enter a longer vessel in the Amendment 80 limited access fishery for this purpose, but the incentives would increase as the difference becomes greater between potential harvests in the Amendment 80 limited access fishery and the amount of catch that the vessel may receive if participating in a cooperative.

The proposed maximum vessel length is intended to provide the opportunity for a vessel owner to increase the length of the vessel to improve the range of processed products and hold capacity onboard the vessel while establishing a maximum capacity for the fleet. The Council recognized that in many cases vessel length is less important for increasing harvest rates than for providing a large enough vessel to provide adequate hold capacity. Depending on the nature of an Amendment 80 fishery, a vessel may be constrained primarily by the rate of throughput and vessel hold capacity. The sizes of vessels that can incorporate

these features will vary, depending on the specifics of vessel construction.

Although the owner of an Amendment 80 vessel can apply to use an existing Amendment 80 vessel as an Amendment 80 replacement vessel, as described in more detail below, the Council and NMFS anticipate that most replacement vessels would be newly constructed. Many of the existing vessels in the Amendment 80 fleet were originally constructed for purposes other than fishing; therefore, these vessels are less well-designed for fishing than a new, purposefully constructed fishing vessel would be. A vessel built to contemporary standards would likely have improved hold capacity, fuel efficiency, and harvest capacity relative to existing similarly sized vessels in the Amendment 80 fleet. Larger vessels can incorporate improved hold design, processing plant construction, engines, and other advancements in marine design that improve a vessel's efficiency. Such modifications can enable vessel operators to store large quantities of fish and create or make value added products like surimi, fillets, and fishmeal in onboard fishmeal plants. Smaller vessels lack the capacity to incorporate such facilities. Thus smaller vessels require more trips to travel to and from fishing grounds to offload product. As noted earlier in this preamble, the average MLOA on an Amendment 80 LLP license is currently 170 feet (51.8 m). Under this action, the average LOA of all Amendment 80 vessels could increase up to 295 feet (89.9 m) LOA. Replacing a smaller vessel with a larger vessel could allow participants to fish for longer periods of time and reduce the number of trips required to offload products. Fewer trips would reduce fuel consumption and would allow vessel owners to minimize the time required to harvest their quota.

American Fisheries Act Vessels and Amendment 80 Vessel Replacement

The Council's motion for Amendment 97 does not recommend that NMFS prohibit or otherwise establish regulations to limit the use of AFA vessels as Amendment 80 replacement vessels. Additionally, as explained in the court's decision, the CRP does not prevent non-qualifying vessels from being used as replacement vessels in the Amendment 80 sector. Therefore, this proposed rule does not prohibit the use of an AFA vessel as an Amendment 80 replacement vessel. However, the Council's recommendation for Amendment 97 does not address potential statutory or regulatory conflicts that may limit the ability of an AFA vessel from actively participating in both AFA and Amendment 80 fisheries. NMFS notes that should a listed AFA vessel be approved by NMFS for use as an Amendment 80 replacement vessel, then that vessel would not be released from the monitoring and enforcement requirements, sideboard restrictions, and the PSC limits that may be applicable to that AFA vessel. Any vessel eligible to participate in both fisheries would be required to meet the statutory and regulatory requirements for both fisheries, possibly impacting that vessel's ability to participate in either fishery. For example, a listed AFA C/P that replaces an Amendment 80 vessel would be subject to existing directed fishing and halibut PSC sideboard limits applicable to listed AFA C/Ps. Under section 213(c) of the AFA, the Council and NMFS may supersede the sideboard provisions established by the AFA to mitigate adverse effects in fisheries caused by the AFA. AFA C/P vessel owners may ask the Council and NMFS to examine changes to existing sideboard limits for AFA C/Ps that would accommodate the use of an AFA C/P as an Amendment 80 replacement vessel.

NMFS notes that replaced AFA vessels are prohibited by statute from participation in fisheries other than AFA fisheries. Under section 602 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281, Title VI, Sec. 602), replaced AFA vessels are not eligible for a fishery endorsement in any fishery other than an AFA fishery and are prohibited from fishing other Federal fisheries, including Amendment 80 fisheries. As described in more detail in the Council's ''AFA Vessel Replacement on GOA Sideboard'' discussion paper (February 2012; see **ADDRESSES**), the U.S. Coast Guard Authorization Act stipulates that, once replaced, a vessel loses not only its AFA fishing privileges but also any fishery privileges in other fisheries, including sideboard fisheries.

Maximum Length Overall on License Limitation Program Licenses

The proposed rule would modify the MLOA on Amendment 80 LLP licenses to reflect the 295 feet (89.9 m) proposed limit on the length overall (LOA) for Amendment 80 vessels. Under regulations at §§ 679.4(o) and 679.7(i)(2), an Amendment 80 vessel is required to use an Amendment 80 LLP while fishing in the BSAI or GOA. The number of Amendment 80 LLP licenses is limited to those 28 LLP licenses originally issued for an Amendment 80 vessel as shown in Table 31 to part 679, and the seven non-AFA trawl C/P LLP licenses with a Bering Sea or Aleutian Islands endorsement that are eligible to be assigned to the Amendment 80 sector but have not yet been assigned to an Amendment 80 vessel (see Table 25 of Section 2.4.5.8 of the analysis for this action). Section 2.3.5 of the analysis for this action identifies the 28 LLP licenses that are currently assigned, or may be eligible to be assigned, to Amendment 80 vessels. Currently, each LLP license designated as an Amendment 80 LLP cannot be used on any vessel other than an Amendment 80 vessel. Under the LLP program, each LLP license (including those derived from a qualifying Amendment 80 vessel) upon initial issuance was assigned a MLOA based on the length of the qualifying vessel on a specific date. Additional detail on the methods for assigning MLOAs to specific LLP licenses is addressed in the final rule for the LLP program (63 FR 52642 October 1, 1998) and is not repeated here.

This proposed rule would remove the prohibition on using an Amendment 80 LLP license on a non-qualifying vessel and allow Amendment 80 LLP licenses to be used on approved Amendment 80 replacement vessels. In most cases, the MLOA on an Amendment 80 LLP license is below 295 feet (89.9 m); therefore, NMFS must increase the MLOA on Amendment 80 LLP licenses to ensure that replacement vessels are not constrained by the MLOA on an Amendment 80 LLP license. To ensure that the maximum size limit recommended by the Council can be implemented, NMFS proposes to establish a 295 feet (89.9 m) MLOA for all Amendment 80 LLP licenses that are assigned to an Amendment 80 replacement vessel. This provision would ensure that Amendment 80 LLP licenses accurately reflect the MLOA of the replacement vessel. NMFS would not adjust the MLOA of an Amendment 80 LLP license until it is transferred to a replacement vessel. For those LLP licenses eligible to be assigned but not yet assigned to an Amendment 80 vessel, NMFS would adjust the MLOA of those LLP licenses if one of these licenses is assigned to an Amendment 80 replacement vessel. Furthermore, NMFS would not approve any Amendment 80 replacement vessel that was greater than 295 feet (89.9 m) LOA.

Assignment of Amendment 80 Quota Share Permits

This proposed rule would make three modifications to existing regulations concerning the assignment of Amendment 80 QS permits. First, the proposed regulations would provide an Amendment 80 vessel owner with the choice of either assigning the

Amendment 80 QS permit to an Amendment 80 replacement vessel or permanently assigning the Amendment 80 QS permit to the LLP license derived from the originally qualifying vessel. Second, the proposed regulations would prohibit replaced or replacement vessels from participating in an Amendment 80 fishery unless an Amendment 80 QS permit is assigned to that vessel or to the LLP license naming that vessel. Third, the proposed regulations would allow a person holding an Amendment 80 QS permit associated with an Amendment 80 vessel that is permanently ineligible to re-enter U.S. fisheries to replace the vessel associated with its Amendment 80 QS permit. Each of these proposed modifications is discussed in detail below.

The proposed regulations would provide an Amendment 80 vessel owner with the choice of either assigning the Amendment 80 QS permit to an Amendment 80 replacement vessel or permanently assigning the Amendment 80 QS permit to the LLP license derived from the originally qualifying vessel. Existing regulations at § 679.90(f) require the permanent coupling of an Amendment 80 QS permit and an LLP license for Amendment 80 vessels that are lost or permanently ineligible to participate in the Amendment 80 fisheries. This action would no longer require this permanent coupling if a vessel is lost or permanently ineligible to participate in the Amendment 80 fisheries. Instead, the proposed rule would provide Amendment 80 vessel owners with a choice of either assigning the Amendment 80 QS permit to an Amendment 80 replacement vessel or permanently affixing the Amendment 80 QS permit to the LLP license derived from the originally qualifying Amendment 80 vessel, as specified in Table 31 to part 679. Under this second option, the holder of an Amendment 80 LLP/QS license could then assign the license to a vessel authorized to participate in the Amendment 80 sector. Existing regulations prohibit Amendment 80 QS permits that have been assigned to an LLP license (e.g. Amendment 80 LLP/QS license) from being uncoupled at a later date. Under this proposed rule, NMFS would maintain the existing practice of permanently affixing the Amendment 80 QS permit to the LLP license.

The proposed regulations would not require that a replacement vessel be limited to only one Amendment 80 QS permit or an Amendment 80 LLP/QS license. As proposed, one replacement vessel could have several Amendment 80 QS permits assigned to that vessel in any fishing year. In making this recommendation, the Council considered that smaller vessel owners may wish to replace one, or more, of their smaller vessels with a single, longer vessel that can be used to fish the entire allocation assigned to the replaced vessels. A larger vessel with greater hold capacity could reduce travel times and operational costs associated with operating two or more vessels instead of one.

Amendment 97 would address two situations where the owner of an original qualifying Amendment 80 vessel and the person holding the Amendment 80 QS permit derived from that vessel differ. First, the proposed regulations prohibit replaced or replacement vessels from participating in an Amendment 80 fishery unless an Amendment 80 QS permit is assigned to that vessel or to the LLP license naming that vessel. This provision is intended to eliminate the risk that a person, who is not linked to the Amendment 80 fishery other than through holding title to a lost Amendment 80 vessel, could replace that vessel and enter the replacement vessel into the Amendment 80 limited access fishery. In making this recommendation, the Council recognized vessel owners could have an incentive to enter a replacement vessel into the Amendment 80 sector without having any underlying Amendment 80 QS permits being assigned to that vessel.

One example of this situation exists with the Amendment 80 QS permit derived from the F/V *Prosperity.* The F/V *Prosperity* is an originally qualifying vessel but the vessel was lost prior to the implementation of Amendment 80. The Amendment 80 QS permit derived from the F/V *Prosperity* is held by U.S. Seafoods, Inc., but U.S. Coast Guard documentation indicates that the owner of the F/V *Prosperity* is undetermined at this time. The Council and NMFS recognized that a person other than U.S. Seafoods, Inc. could become the documented owner of the F/V *Prosperity* and choose to replace it in order to participate in the Amendment 80 sector. In that case, a vessel without associated QS could become active in the fishery. Without a regulation that requires assignment of an Amendment 80 QS permit to the participating vessel or the Amendment 80 LLP license, a replacement vessel for the F/V *Prosperity* could become active in the fishery and increase the number of vessels qualified to participate in the Amendment 80 sector. Not only would such a situation be inconsistent with the CRP and the Court's decision, this would also likely pose a risk of increased competition for participants in the Amendment 80 limited access fishery because a cooperative would establish contractual obligations that would limit the ability of a vessel to fish more than the amount specified in the cooperative contract—typically, the amount derived from the QS held by the vessel owner. A vessel owner may have an incentive to enter that replacement vessel into the Amendment 80 limited access fishery, if it is perceived that such a vessel would be able to out-compete other participants in the limited access fishery. Therefore, in order to be consistent with the CRP and to prevent unintended negative incentives, NMFS is proposing regulatory provisions that would require a vessel participating in the Amendment 80 sector to have an Amendment 80 QS permit assigned to that vessel or permanently assigned to the LLP license derived from the original qualifying vessel.

Second, this proposed rule would permit a person holding an Amendment 80 QS permit associated with an Amendment 80 vessel that is permanently ineligible to re-enter U.S. fisheries to replace the vessel associated with its QS permit. In making this recommendation, the Council determined that an Amendment 80 QS permit holder who does not hold documentation to a vessel should be eligible to replace a vessel because it would provide these QS holders with the same opportunities as other QS holders who own vessels; that is, the ability to actively participate in the Amendment 80 fisheries with a replacement vessel. This provision is consistent with the CRP because the maximum number of vessels participating in the Amendment 80 sector would not increase given that the replaced vessel cannot re-enter U.S. fisheries. As an example, the holder of the F/V *Bering Enterprise* Amendment 80 QS permit does not hold documentation of title to the F/V *Bering Enterprise.* The F/V *Bering Enterprise* is in service overseas and is permanently ineligible to receive documentation as a U.S. fishing vessel. Therefore, without a change to the regulations, the F/V *Bering Enterprise* Amendment 80 QS holder could never replace the vessel associated with its QS history. Based on this concern, the Council recommended that NMFS allow persons holding an Amendment 80 QS permit associated with a vessel that is permanently ineligible to re-enter U.S. fisheries to replace the vessel associated with its QS permit.

To implement the Council's recommendations for this provision, NMFS would verify which vessels are

permanently ineligible to re-enter U.S. fisheries. NMFS would make this determination based on the best available information provided by the U.S. Coast Guard or MARAD, as applicable, at the time the final rule implementing Amendment 97 becomes effective. NMFS would permit the holder of the original Amendment 80 QS permit to enter an approved Amendment 80 replacement vessel into the Amendment 80 fisheries. If a vessel subsequently becomes ineligible to receive documentation, then the person holding the Amendment 80 QS permit derived from that vessel would become eligible to replace that vessel, once ineligibility is established through a determination by the U.S. Coast Guard or MARAD. The person holding the Amendment 80 QS permit would be responsible for supplying NMFS with that determination when applying to replace the ineligible vessel.

Sideboard Limitations for Replaced Vessels

Amendment 97 would limit effort in non-Amendment 80 fisheries by replaced vessels. Therefore, this proposed rule would establish restrictions on the ability of replaced Amendment 80 vessels to participate in Federal groundfish fisheries within the BSAI and GOA. NMFS would allocate to any replaced vessel (*e.g.,* an Amendment 80 vessel not assigned to an Amendment 80 fishery) a catch limit of zero metric tons in all BSAI or GOA groundfish fisheries. Catch limits of zero metric tons would effectively prohibit these vessels from conducting directed fishing for groundfish in the BSAI and GOA.

The Council made this recommendation after considering an option that would remove the associated Federal fishing permit (FFP) and the associated LLP license from the replaced vessel. The Council and NMFS determined that assigning replaced vessels a catch limit of zero metric tons was the most direct way to limit participation by replaced vessels. The proposed regulations are intended to prevent replaced Amendment 80 vessels from increasing fishing effort in non-catch share fisheries. Additionally, the Council noted the potential for consolidation of capital among longtime participants in groundfish fisheries that might disadvantage or have negative impacts on other participants in those fisheries. The Council's recommendation is consistent with other LAPP provisions for BSAI fisheries recommended by the Council and proposed in this action. NMFS notes that Amendment 97 would not restrict replaced Amendment 80 vessels from participating in the BSAI and GOA fisheries as motherships, Community Quota Entity floating processors, or stationary floating processors that only receive deliveries from other vessels for processing. Similarly, this action would not restrict replaced Amendment 80 vessels from operating in fisheries managed under the jurisdiction of other regional fishery management councils.

Management Applicable to Replacement Vessels

Monitoring and enforcement, permitting, recordkeeping and reporting, prohibitions, and general GOA sideboard measures that apply to all original Amendment 80 vessels, except the F/V *Golden Fleece,* would continue to apply to all replacement vessels. As noted elsewhere in the preamble, if the MLOA of the vessel replacing the F/V *Golden Fleece* is greater than the MLOA of the license that was originally assigned to the F/V *Golden Fleece,* then that vessel would be subject to the sideboard restrictions applicable to the rest of the Amendment 80 fleet. As noted in the analysis, the Council intended that Amendment 97 would extend existing management practices and limitations to any replacement vessel and would treat any replacement vessel the same as any similarly situated original qualifying vessel. The regulations that apply to Amendment 80 vessels are best described in the final rule implementing Amendment 80 (September 14, 2007; 72 FR 52668).

Directed Fishing in GOA Flatfish Fisheries

Under Amendment 97, any vessel that replaces an Amendment 80 vessel that is eligible to conduct directed fishing for flatfish in the GOA would continue to be allowed to conduct directed fishing in the GOA flatfish fishery. There are 11 Amendment 80 vessels currently authorized to conduct directed fishing in the GOA flatfish fisheries. Although the Council considered measures to limit access or to limit the size of replacement vessels for these 11 Amendment 80 vessels, the Council did not recommend that NMFS prohibit or limit GOA flatfish harvest by these replacement vessels. The Council determined, in part, that eligible Amendment 80 vessel owners should not have to choose between vessel safety improvements and the ability to continue to harvest GOA flatfish. Moreover, the harvest of GOA flatfish by these vessels is constrained by halibut PSC limits specified for GOA flatfish fisheries. Finally, the Council acknowledged that the GOA TACs for some species of GOA flatfish are typically not fully harvested, thus indicating that increased harvest would not likely affect other participants in these fisheries.

The Council made this recommendation after considering that there is no conservation or management issue for those fisheries at this time. The Council and NMFS recognize the potential for fishing effort to move the Amendment 80 fisheries in the BSAI to other non-AFA fisheries, including the GOA flatfish fishery. However, NMFS and the Council do not anticipate a rapid increase in fishing effort due to the impact of replacement vessels and could address the issue at a later date should a conservation or management problem be predicted. As described in Section 2.3.8 of the EA/RIR/IRFA for this action, construction times can vary substantially for vessels, but new construction would probably require a minimum of 2 years from the beginning of construction to final delivery based on the vessel characteristics desired by vessel owners. Additional time would be required to develop blueprints, undertake computer-aided testing, and source materials.

Regulatory Requirements Specific to the F/V *Golden Fleece*

The proposed regulations implementing Amendment 97 recognize the special standing that the F/V *Golden Fleece* has under the Amendment 80 program. As noted earlier in this preamble, the Council recognized the F/V *Golden Fleece* as having a unique harvest pattern in the GOA that warranted specific GOA sideboard measures. Under current regulations, the exemption to the GOA halibut PSC sideboard limit only applies if the F/V *Golden Fleece* uses the LLP license originally issued for the F/V *Golden Fleece* (LLP license number LLG 2524). This provision ensures that only the F/V *Golden Fleece* is exempted from the GOA halibut PSC sideboard limits. Exempting the F/V *Golden Fleece* from the GOA halibut PSC sideboard has not increased the overall amount of GOA halibut PSC taken by Amendment 80 vessels. As described in Section 2.4.7 of EA/RIR/IRFA for this action, the F/V *Golden Fleece* has maintained its historic fishing patterns, including its halibut PSC rates. By exempting the F/V *Golden Fleece* from the GOA halibut PSC sideboard limits, the Council and NMFS maintained the F/V *Golden Fleece's* ability to continue to harvest its traditional amounts of GOA flatfish protected from any adverse impacts resulting from other

Amendment 80 vessels that could choose to fish in the GOA and use halibut PSC.

NMFS is proposing regulations under Amendment 97 that would ensure that any replacement vessel for the F/V *Golden Fleece* that is less than or equal to the MLOA of the LLP license that was originally assigned to the F/V *Golden Fleece* (124 feet, 37.8 m) would continue to benefit from the F/V *Golden Fleece* sideboard limits and GOA halibut PSC exemption implemented under Amendment 80. However, if the replacement vessel for the F/V *Golden Fleece* is greater than 124 feet (37.8 m) LOA, then that replacement vessel will be subject to all sideboards that apply to other Amendment 80 vessels. In the latter case, NMFS would recalculate the sideboards implemented under Amendment 80 so that they would include the catch history of the F/V *Golden Fleece* from 1998 through 2004. Under the latter scenario, the replacement vessel would not retain the specific F/V *Golden Fleece* sideboard restrictions and GOA halibut PSC use of the F/V *Golden Fleece* would be added to the existing GOA sideboards. Section 2.7.4.3 of the analysis for this action describes the methods that NMFS would use to modify GOA sideboard limits if the F/V *Golden Fleece* is replaced with a vessel greater than 124 feet (37.8 m) LOA. The Council made this recommendation to accommodate the historic fishing patterns of this vessel while limiting the potential for the vessel to expand its effort into other groundfish fisheries in which it has not traditionally participated. NMFS notes that the MLOA for any vessel replacing the F/V *Golden Fleece* would be 295 feet.

Safety Requirements

The Council and NMFS have long sought to improve safety-at-sea and have recognized the safety concerns within the Amendment 80 fleet. Since 2000, vessel losses and individual fatalities have made the Amendment 80 fleet one of the highest-risk Federal fisheries within the jurisdiction of the Council. Amendment 80 vessels are considered by the U.S. Coast Guard as high risk primarily due to the area in which they operate, the large number of crew they carry, and their high-consequence of marine casualty history. Since 2000, there have been two major vessel losses in this fleet. The sinking of the F/V *Arctic Rose* in 2001 resulted in 15 fatalities, the highest number of fishermen killed in a single event in Alaska since 1990. The sinking of the F/V *Alaska Ranger,* in which 5 died and 42 were rescued, resulted in one of the largest at-sea rescues in Alaskan history.

Prior to 2006, the Amendment 80 sector had been regulated by the U.S. Coast Guard for safety regulations as ''fishing vessels'' that conducted head and gut (H&G) operations (46 U.S.C. 2101). This meant that vessels in the Amendment 80 fleet only had to meet minimal standards for the carriage of primary lifesaving equipment. However, in 2005, formal U.S. Coast Guard investigations into the loss of the F/V *Arctic Rose* (2001) and F/V *Galaxy* (2002) found most Amendment 80 vessels were actually operating (and had been operating for some time) as ''fish processing vessels,'' based on the products they produced. As fish processing vessels, these Amendment 80 vessels are required by law to be classed or load lined.

Under current law, any fish processing vessel which is built or undergoes a major conversion after July 27, 1990, is required by 46 U.S.C. 4503 to meet all survey and classification requirements prescribed by the American Bureau of Shipping or another similarly qualified classification society. A classification society is a non-governmental organization that establishes and maintains technical standards and rules for the construction (hull, machinery and other vital systems) and operation of ships and offshore structures. The classification society will also validate that construction is according to these standards and carry out regular surveys in service to ensure compliance with the standards. Similarly, all fish processing vessels 79 feet or greater that are built or converted for use as a fish processing vessel after January 1, 1983, are required by 46 U.S.C. 5102 to have a load line. A load line establishes the maximum draft of the ship and the legal limit to which a ship may be loaded for specific water types and temperatures. A load line is intended to ensure that a ship has sufficient freeboard so that the vessel has the necessary stability to operate safely.

However, the vast majority of the Amendment 80 sector is not load lined or classed. Due to a variety of concerns, classification societies have not recently classed or load lined vessels greater than 20 years old, and do not appear likely to do so in the foreseeable future. Based upon this limitation, 22 of 24 Amendment 80 vessels cannot meet the requirements of class and loadline. The U.S. Coast Guard and owners of Amendment 80 vessels collaborated to develop an alternative program to address the safety risks of this fleet. This collaborative effort is known as the Alternative Compliance and Safety Agreement (ACSA). Program development began in June 2005, and implementation was achieved between June 2006 and January 2009. The ACSA program is designed to achieve numerous safety, economic, and fishery management goals, both directly and indirectly.

ACSA is both a preventative safety regime, as well as a reactive one. Preventative safety components of the ACSA program focus primarily on maintaining hull condition and watertight integrity, preventing down flooding, ensuring adequate vessel stability, requiring enhanced fire detection and suppression, and establishing preventative maintenance for machinery and critical piping systems. Reactive safety components of ACSA include enhanced emergency training, improved lifesaving equipment, and additional firefighting capabilities of the vessel and crew. These standards are achieved through mandatory annual inspections and regular drydock examinations.

While the U.S. Coast Guard and Amendment 80 vessel owners have seen significant improvements in vessel safety as a result of the ACSA program, there are limitations to its long-term effectiveness for the Amendment 80 fleet. The Council and NMFS recognize that no Amendment 80 vessels were constructed to meet the requirements of class and loadline; therefore, there are some inherent limitations in achieving a total safety equivalency. Moreover, the National Transportation and Safety Board's (NTSB) investigation into the sinking of the F/V *Alaska Ranger* found that ''while the NTSB finds that ACSA has improved the safety of the vessels enrolled in the program, the effectiveness of ACSA is limited because it is a voluntary program.'' Another key limitation to the ACSA program is vessel age. The average age of an Amendment 80 vessel is 32 years. U.S. Coast Guard marine inspectors in charge of implementing the ACSA program continue to express serious concern over the material condition of this aging fleet; in part, because some studies have shown that an increase in vessel age increases the probability of a total loss due to a collision, fire/explosion, material/equipment failure, capsizing, and sinking.

If Amendment 80 vessel operators wish to undertake a major modification of a vessel to increase its size, address safety concerns, or otherwise improve its efficiency, those vessel operators would need to recertify that vessel under ACSA, which is an extensive and expensive process. It is highly unlikely

a converted Amendment 80 vessel could be classed, and it may have difficulty meeting the requirements of the ACSA program. NMFS and the Council note that newly constructed fish processing vessels would have to meet the full suite of modern safety standards—including all construction, stability, and manning requirements—intended to ensure such a vessel is inherently safer. Any newly constructed Amendment 80 replacement vessel would be required to be classed and load lined.

If Amendment 97 is implemented, NMFS would require Amendment 80 vessel owners applying to NMFS to replace their vessel to submit documentation demonstrating that their replacement vessel meets U.S. Coast Guard requirements applicable to processing vessels operating in the Amendment 80 sector or, if unable to meet these requirements, demonstrate that the vessel is enrolled in the ACSA program. These provisions are intended to improve safety at sea by requiring Amendment 80 replacement vessels to meet safety requirements established for fishing vessels in recent years. NMFS notes that it would likely take decades for all vessels to receive safety upgrades; however, the proposed management measures requiring minimum safety certifications would promote long-term safety improvements for the Amendment 80 fleet.

Amendment 80 Replacement Vessel Applications

The proposed rule would add regulations at § 679.4(o)(4) to establish the process for eligible participants to request that a vessel be approved as an Amendment 80 replacement vessel. The proposed regulations require all eligible participants to submit a completed application before NMFS would approve a replacement vessel for use in the Amendment 80 fisheries. For NMFS to consider an application for approval, the applicant must identify the Amendment 80 vessel being replaced. The applicant would need to specify vessels that have been lost at sea or are permanently ineligible to participate, identify the replacement vessel, provide documentation demonstrating that the replacement vessel is classed and load lined or if incapable of being classed and load lined, and that it meets the requirements of ACSA. The applicant must sign and date an affidavit affirming that all information provided on the application is true, correct, and complete to the best of his or her knowledge and belief. Persons holding an Amendment 80 QS permit for a vessel that has been deemed ineligible for use and are applying to replace that vessel would have to provide evidence to NMFS that ineligibility has been established through a U.S. Coast Guard or MARAD determination. Written documentation would need to be provided to establish that an ineligible vessel cannot reenter the fishery and that the replacement vessel should be permitted to replace the ineligible vessel.

Approval of Application

If NMFS receives a completed application submitted under one of the approved methods described in the proposed regulations at § 679.4(o)(4)(ii)(D), then NMFS will process that application as soon as possible. Once received by NMFS, a replacement vessel will be approved by the Regional Administrator as an Amendment 80 vessel provided that:

- The replacement vessel does not exceed 295 feet LOA;
- The replacement vessel was built in the United States and, if ever rebuilt, rebuilt in the United States;
- The replacement vessel is classed and load lined or, if the vessel cannot be classed and load lined, the vessel meets the requirements of the U.S. Coast Guard ACSA program; and
- Only one replacement vessel is used as a replacement for any one replaced vessel at a given time.

Based on experience with similar actions, NMFS would likely complete the review of an application within 10 calendar days. Applicants should consider the potential time lag between submission of a completed application and the effective date of NMFS' approval of an Amendment 80 replacement vessel. A list of NMFS-approved Amendment 80 vessels, including replacement vessels, would be made publicly available at the NMFS Web site at *http://alaskafisheries.noaa.gov.*

The evaluation of an application for an Amendment 80 replacement vessel would require a decision-making process that would be subject to administrative appeal. Applications not meeting the requirements will not be approved, and NMFS would issue an initial administrative determination (IAD) to indicate the deficiencies and discrepancies in the information (or the evidence submitted in support of the application) and provide information on how an applicant could appeal an IAD. The appeals process is described under § 679.43. However, if an application is denied, eligible contract signatories could reapply at any time. This program is designed to be flexible and includes no deadlines for submission or limit on the number of times applications could be submitted to NMFS.

Amendment 80 QS Transfer Application

In order to implement the Council's recommendations under Amendment 97, NMFS proposes to modify existing regulations at § 679.90(d), (e), and (f) regarding the allocation, use, and transfer of Amendment 80 QS permits. Specifically, NMFS would add provisions to the Application to Transfer Amendment 80 Quota Share (QS) that would allow QS holders to transfer an Amendment 80 QS permit to an Amendment 80 replacement vessel, transfer an Amendment 80 QS permit to a new person, transfer an Amendment 80 QS permit to the Amendment 80 LLP license assigned to the originally qualifying Amendment 80 LLP license as noted in Table 31 to part 679, or transfer an Amendment 80 QS permit affixed to an Amendment 80 QS/LLP license to an Amendment 80 replacement vessel. In order to transfer an Amendment 80 QS permit to another person, or to a vessel approved as an Amendment 80 replacement vessel, to an Amendment 80 LLP license defined in Table 31 to part 679, a person would have to submit an application to transfer an Amendment 80 QS permit that is approved by NMFS under the provisions proposed at § 679.90(f). A person holding an Amendment 80 LLP/QS license would be able to transfer that Amendment 80 LLP/QS license to another person under the provisions of § 679.4(k)(7).

United States Maritime Administration (MARAD) Vessel Documentation

In order to participate in a U.S. fishery, a vessel must obtain a certificate of documentation with a fishery endorsement either from the U.S. Coast Guard or MARAD (See, *e.g.,* 46 U.S.C. 12102(a), 12113(b)(1), 12151(b)). Vessels greater than 100 feet in length must receive this documentation through MARAD. Federal law prohibits larger vessels from obtaining a fishery endorsement unless specific conditions are met. These prohibitions are currently codified at 46 U.S.C. 12113(d).

Unless an exemption applies, a vessel is not eligible for a fishery endorsement if it is greater than 165 feet in registered length; is more than 750 gross registered tons (as measured pursuant to 46 U.S.C. chapter 145) or 1900 gross registered tons (as measured pursuant to 46 U.S.C. chapter 143); or possesses a main propulsion engine or engines rated to produce a total of more than 3,000 shaft horsepower, excluding auxiliary engines for hydraulic power, electrical generation, bow or stern thrusters, or

similar purposes. One exemption states that a vessel that is prohibited from receiving a fishery endorsement because it exceeds one or more of the three size limits will be eligible for a fishery endorsement if the owner of such vessel demonstrates to MARAD that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Act has recommended after October 21, 1998, and the Secretary has approved, conservation and management measures to allow such vessel to be used in fisheries under such council's authority.

As described earlier, the Council determined and NMFS agrees that any Amendment 80 replacement vessel should be permitted to be up to 295 feet (89.9 m) LOA and have the tonnage and horsepower deemed necessary by the vessel's owner. Because several of the options considered by the Council for length of replacement vessel would permit an Amendment 80 vessel to be longer than 165 feet registered length and may require greater tonnage or horsepower than permitted by the 46 U.S.C. 12113(d) for a fishery endorsement, NOAA General Counsel and MARAD General Counsel consulted to determine what action on the part of the Council and NMFS would satisfy this exemption. NOAA General Counsel and MARAD General Counsel determined that the Council would need to recommend, and the Secretary would need to approve, conservation and management measures that would allow such a vessel to be used in the Amendment 80 fisheries. The Council recommended Amendment 97 and this proposed rule, which contain conservation and management measures that would permit an Amendment 80 replacement vessel to exceed the specific length (*i.e.,* the 165 foot (59.4 m) limit), tonnage, and horsepower limits specified at 46 U.S.C. 12113(d).

If the Secretary approves Amendment 97 and issues a final rule to implement Amendment 97, the Secretary will have approved conservation and management measures that would permit an Amendment 80 replacement vessel to exceed the specific length (*i.e.,* the 165 foot (59.4 m) limit), tonnage, and horsepower limits specified at 46 U.S.C. 12113(d). Secretarial approval of Amendment 97 and publication of implementing regulations is intended to provide MARAD with a clear indication that the Council and NMFS have recommended that Amendment 80 replacement vessels meeting or exceeding the specific length, tonnage, or horsepower limits set forth at 46 U.S.C. 12133(d)(1) are eligible to receive a fishery endorsement consistent with 46 U.S.C. 12113(d)(2)(B) and MARAD regulations at 46 CFR 356.47(c). MARAD has stated that it would request documentation from NMFS demonstrating the Secretary's approval of measures that permit Amendment 80 replacement vessels to exceed these limits, prior to issuing a fishery endorsement to an Amendment 80 replacement vessel.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained at the beginning of this section and in the **SUMMARY** section of the preamble and are not repeated here. A summary of the analysis follows. A copy of the complete analysis is available from NMFS (see **ADDRESSES**).

Number and Description of Small Entities Regulated by the Proposed Action

Information concerning ownership of non-AFA trawl C/Ps and QS holdings that would be used to estimate the number of small entities that are directly regulated by this action is limited. Information about the ownership patterns of non-AFA trawl C/Ps and QS holdings is not required by NFMS. To estimate the number of small versus large entities, gross earnings from all fisheries of record for 2009 were matched with the vessels, the known ownership of those vessels, and the known affiliations of those vessels in the BSAI or GOA groundfish fisheries for that year. NMFS has specific information on the ownership of vessels and the affiliations that exist based on data provided by the Amendment 80 sector, as well as a review of ownership data independently available to NMFS on FFP and LLP applications. The vessels with a common ownership linkage, and therefore affiliation, are reported in Table 2 in Section 2 of the analysis. In addition, those vessels that are assigned to a cooperative and receive an exclusive harvest privilege would be categorized as large entities for the purpose of the RFA, under the principles of affiliation, due to their participation in a harvesting cooperative.

NMFS knows that up to 28 non-AFA trawl C/Ps could be active in the Amendment 80 fishery. Those persons who apply for and receive Amendment 80 QS are eligible to fish in the Amendment 80 sector, and those QS holders would be directly regulated by the proposed action. Vessels that are assigned Amendment 80 QS and that are eligible to fish in the Amendment 80 sector are commonly known as Amendment 80 vessels. Currently, there are 27 Amendment 80 vessels that would be directly regulated based on this action. One vessel owner who could be eligible for the Amendment 80 Program and could apply for Amendment 80 QS has not done so, and would not be directly regulated by the proposed action unless and until the owner is approved to do so. Based on the known affiliations and ownership of the Amendment 80 vessels, all but one of the Amendment 80 vessel owners would be categorized as large entities for the purpose of the RFA. Thus, this analysis estimates that only one small entity would be directly regulated by the proposed action. It is possible that this one small entity could be linked by company affiliation to a large entity, which may then qualify that entity as large entity, but complete information is not available to determine any such linkages.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The suite of potential actions includes three alternatives. A detailed description of these alternatives is provided in Section 2 of the analysis. Alternative 1 is the ''no action'' alternative. This alternative would not address the Federal Court Order to provide for replacement of Amendment 80 vessels and would not be consistent with the purpose and need of this action. Alternative 2 would allow an Amendment 80 vessel owner to replace a vessel under conditions of loss or permanent ineligibility. This alternative would meet the minimum requirements of the court order but was not selected

because it may limit a vessel's ability to add modern safety upgrades. It also carried a substantially higher economic cost to achieve the same regulatory outcome for the fishing sector, causing it to fail the requirement that it minimize the adverse economic impacts on directly regulated small entities. Alternative 3, the preferred alternative of the Council and NMFS, would allow a vessel owner to replace a vessel for any purpose. Based on the best available scientific data and information, none of the alternatives to the preferred alternative appear to have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in the proposed action), while minimizing any significant adverse economic impact on small entities beyond those achieved under the proposed action. The proposed action would improve the safety and efficiency of vessels owned by at least one small entity, and enhance its participation in the Amendment 80 fisheries.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden estimates per response for these requirements are listed by OMB control number.

OMB Control No. 0648–0334

Public reporting burden is estimated to average per response: 1 hour for Application for Transfer, License Limitation Program Groundfish/Crab License.

OMB Control No. 0648–0565

Public reporting burden is estimated to average per response: 2 hours for Amendment 80 Quota Share (QS) permit application; 2 hours for Amendment 80 QS permit transfer application; and 2 hours for Amendment 80 Vessel Replacement application.

Public reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

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 PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 28, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

2. In § 679.2,

a. Revise the definition of ''Amendment 80 LLP/QS license'' and introductory paragraphs (1) and (2) of the definition for ''Amendment 80 vessel'', and add paragraph (2)(iv) to the definition of ''Maximum LOA (MLOA)''; and

b. Add a new definition of ''Amendment 80 replacement vessel''.

The revisions and additions read as follows:

§ 679.2 Definitions.

* * * * *

Amendment 80 LLP/QS license means an LLP license originally assigned to an originally qualifying Amendment 80 vessel with an Amendment 80 QS permit assigned to that LLP license.

* * * * *

Amendment 80 replacement vessel means a vessel approved by NMFS in accordance with § 679.4(o)(4).

* * * * *

Amendment 80 vessel means any vessel that:

(1) Is listed in Column A of Table 31 to this part with the corresponding USCG Documentation Number listed in Column B of Table 31 to this part; or

(2) Is designated on an Amendment 80 QS permit, Amendment 80 QS/LLP license, or Amendment 80 LLP license and is approved by NMFS in accordance with § 679.4(o)(4) as an Amendment 80 replacement vessel.

* * * * *

Maximum LOA (MLOA) means:

(2) * * *

(iv) The MLOA of an Amendment 80 LLP license or Amendment 80 LLP/QS license will be permanently changed to 295 ft (89.9 m) when an Amendment 80 replacement vessel is listed on the license following the approval of a license transfer application described at § 679.4(k)(7).

* * * * *

3. In § 679.4,

a. Revise paragraphs (k)(7)(vii), (o)(1)(ii), (o)(1)(v); and

b. Add paragraphs (k)(3)(i)(C), (o)(1)(vii), (o)(4), and (o)(5).

The revisions and additions read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(3) * * *

(i) * * *

(C) *Modification of the MLOA on an Amendment 80 LLP license or an Amendment 80 LLP/QS license.* The MLOA designated on an Amendment 80 LLP license or an Amendment 80 LLP/QS license will be 295 ft (89.9 m) if an Amendment 80 replacement vessel is designated on the license following the approval of a license transfer request under paragraph (k)(7) of this section.

* * * * *

(7) * * *

(vii) *Request to change the designated vessel.* (A) A request to change the vessel designated on an LLP groundfish or crab species license must be made on a transfer application. If this request is approved and made separately from a license transfer, it will count towards the annual limit on voluntary transfers specified in paragraph (k)(7)(vi) of this section.

(B) A request to change the vessel designated on an Amendment 80 LLP license or an Amendment 80 LLP/QS license must be made on an Application for Amendment 80 Replacement Vessel in accordance with § 679.4(o)(4)(ii). The MLOA modification specified at paragraph (k)(3)(i)(C) of this section will be effective when a complete application is submitted to NMFS in accordance with paragraph (k)(7) of this

section, and the application is approved by the Regional Administrator.

* * * * *

(o) * * *

(1) * * *

(ii) An Amendment 80 QS permit is assigned to the owner of an Amendment 80 vessel that gave rise to that permit under the provisions of § 679.90(b), or its replacement under § 679.4(o)(4), unless the Amendment 80 QS permit is assigned to the holder of an LLP license originally assigned to an Amendment 80 vessel under the provisions of § 679.90(d) or § 679.90(e).

* * * * *

(v) Amendment 80 QS units assigned to an Amendment 80 QS permit are non-severable from that Amendment 80 QS permit and if transferred, the Amendment 80 QS permit must be transferred in its entirety to another person under the provisions of § 679.90(d) or § 679.90(e).

* * * * *

(vii) The owner of an Amendment 80 vessel must designate the Amendment 80 vessel on an Amendment 80 QS permit and on an Amendment 80 LLP license, or designate the Amendment 80 vessel on the Amendment 80 LLP/QS license to use that Amendment 80 vessel in an Amendment 80 fishery.

* * * * *

(4) *Amendment 80 Replacement Vessel.* (i) The owner of an Amendment 80 vessel may replace such vessel for any purpose. All Federal fishery regulations applicable to the replaced vessel apply to the replacement vessel, except as described at § 679.92(d)(2)(ii) if applicable. A vessel that replaces an Amendment 80 vessel will be approved by the Regional Administrator as an Amendment 80 vessel following the submission and approval of a completed application for an Amendment 80 Replacement Vessel, provided that:

(A) The replacement vessel does not exceed 295 ft (89.9 m) LOA;

(B) The replacement vessel was built in the United States and, if ever rebuilt, rebuilt in the United States; and

(C) The applicant provides documentation demonstrating that the vessel complies with U.S. Coast Guard safety requirements applicable to processing vessels operating in the Amendment 80 sector or if unable to provide such documentation, the applicant provides documentation that the vessel meets the requirements of the U.S. Coast Guard's Alternative Compliance and Safety Agreement.

(ii) *Application for Amendment 80 Replacement Vessel.* A person who wishes to replace an Amendment 80 vessel must submit to NMFS a complete Application for Amendment 80 Replacement Vessel. An application must contain the information specified on the form, with all applicable fields accurately completed and all required documentation attached. This application must be submitted to NMFS using the methods described on the application.

(5) *Application evaluations and appeals.*—(i) *Initial evaluation.* The Regional Administrator will evaluate an application for an Amendment 80 replacement vessel submitted in accordance with paragraph (o)(4) of this section. If the vessel listed in the application does not meet the requirements for an Amendment 80 replacement vessel at § 679.4(o)(4), NMFS will not approve the application. An applicant who submits claims based on inconsistent information or fails to submit the information specified in the application for an Amendment 80 replacement vessel will be provided a single 30-day evidentiary period to submit evidence to establish that the vessel meets the requirements to be an Amendment 80 replacement vessel. The burden is on the applicant to establish that the vessel meets the criteria to become a replacement vessel.

(ii) *Additional information and evidence.* The Regional Administrator will evaluate the additional information or evidence to support an application for Amendment 80 replacement vessel submitted within the 30-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the vessel meets the requirements to become an Amendment 80 Replacement Vessel, the application will be approved. However, if the Regional Administrator determines that the vessel does not meet the requirements to become an Amendment 80 Replacement Vessel, the applicant will be notified by an initial administrative determination (IAD) that the application for replacement vessel is denied.

(iii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to establish that the vessel meets the requirements for an Amendment 80 replacement vessel or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

* * * * *

5. In § 679.7, add paragraph (o)(3)(iv) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(o) * * *

(3) * * *

(iv) A vessel to fish in an Amendment 80 fishery without an Amendment 80 QS permit or Amendment 80 QS/LLP license assigned to that vessel.

* * * * *

5. In § 679.90, revise paragraphs (d)(2)(ii), (e)(ii), (e)(3), and (f) to read as follows:

§ 679.90 Allocation, use, and transfer of Amendment 80 QS permits.

* * * * *

(d) * * *

(2) * * *

(ii) *Amendment 80 LLP/QS license.* NMFS will issue an Amendment 80 QS permit as an endorsement on an Amendment 80 LLP license to the holder of an LLP license originally assigned to an Amendment 80 vessel listed in Column A of Table 31 to this part, under the provisions of § 679.4(k)(7), if that person submitted a timely and complete Application for Amendment 80 QS that was approved by NMFS under paragraph (a)(2)(ii) of this section.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(ii) If an Amendment 80 QS permit is assigned to an Amendment 80 LLP license originally assigned to an Amendment 80 vessel, that Amendment 80 LLP license is designated as an Amendment 80 LLP/QS license. A person may not separate the Amendment 80 QS permit from that Amendment 80 LLP/QS license.

* * * * *

(3) *Transfers of Amendment 80 QS permits.* (i) A person holding an Amendment 80 QS permit assigned to an Amendment 80 vessel may transfer that Amendment 80 QS permit to another person, to the LLP license originally assigned to an Amendment 80 vessel, or to a vessel approved as an Amendment 80 replacement vessel approved by NMFS in accordance with

§ 679.4(o)(4) by submitting an application to transfer Amendment 80 QS permit that is approved by NMFS under the provisions of paragraph (f) of this section.

(ii) A person holding an Amendment 80 LLP license that is designated as an Amendment 80 LLP/QS license may designate a vessel approved as an Amendment 80 replacement vessel by submitting an Application For Transfer License Limitation Program Groundfish/Crab License that is approved by NMFS under the provisions of paragraph (f) of this section.

* * * * *

(f) *Application to Transfer Amendment 80 QS.* A person holding an Amendment 80 QS permit who wishes to transfer the Amendment 80 QS permit to the LLP license originally assigned to the Amendment 80 vessel, or transfer the Amendment 80 QS permit to another person, or transfer the Amendment 80 QS permit to an Amendment 80 replacement vessel must submit to NMFS a complete Application to Transfer an Amendment 80 QS permit. The holder of an Amendment 80 LLP/QS license may designate the replacement vessel on the LLP license by using the Application for Transfer License Limitation Program Groundfish/Crab License. An application must contain the information specified on the form, with all applicable fields accurately completed and all required documentation attached. This application must be submitted to NMFS using the methods described on the application.

6. In § 679.92,

a. Revise paragraph (c); and

b. Add paragraphs (d)(2) and (e).

The additions and revisions read as follows:

§ 679.92 Amendment 80 Program use caps and sideboard limits.

* * * * *

(c) *Sideboard restrictions applicable to Amendment 80 vessels directed fishing for flatfish in the GOA.* (1) *Originally Qualifying Amendment 80 Vessels.* An Amendment 80 vessel listed in column A of Table 39 to this part may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(2) *Amendment 80 Replacement Vessels.* (i) Any vessel that NMFS approves to replace an Amendment 80 vessel listed in column A of Table 39 to this part may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(ii) Any vessel that NMFS subsequently approves to replace an Amendment 80 replacement vessel that replaced an Amendment 80 vessel listed in column A or Table 39 to this part may be used to fish in the directed arrowtooth flounder, deep-water flatfish, flathead sole, rex sole, and shallow-water flatfish fisheries in the GOA and in adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.

(d) * * *

(2) *Sideboard restrictions applicable to any vessel replacing the GOLDEN FLEECE.* (i) If the vessel replacing the GOLDEN FLEECE is of an LOA less than or equal to 124 ft (38.1 m) (the MLOA of the LLP license that was originally assigned to the GOLDEN FLEECE, LLG 2524), then the sideboard provisions at § 679.92(c) and (d)(1) apply.

(ii) If the vessel replacing the GOLDEN FLEECE is greater than 124 ft (38.1 m) (the MLOA of the LLP license that was originally assigned to the GOLDEN FLEECE, LLG 2524), then the sideboard provisions at § 679.92(b) and (c) apply.

(e) *Sideboard restrictions applicable to Amendment 80 vessel not assigned an Amendment 80 QS permit, Amendment 80 LLP license, or Amendment 80 QS/LLP license.* All Amendment 80 vessels not designated on:

(1) An Amendment 80 QS permit and an Amendment 80 LLP license; or

(2) An Amendment 80 QS/LLP license will be allocated a catch limit of 0 mt of groundfish in the BSAI and GOA.

[FR Doc. 2012–7867 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 65
Wednesday, April 4, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

United States Warehouse Act; Export Food Aid Commodities Licensing Agreement

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Licensing Agreement Fee Schedule.

SUMMARY: This notice specifies the fee schedule for the new Export Food Aid Commodities (EFAC) licensing agreement offered by the Farm Service Agency (FSA) under the United States Warehouse Act (USWA). Agricultural products that may be stored under an EFAC licensing agreement include, but are not limited to, corn soy blend, vegetable oil, and pulses such as peas, beans, and lentils. USWA licensing is a voluntary program. Warehouse operators that apply for USWA licensing agree to be licensed, comply with the licensing agreement, and pay associated user fees. The fees announced in this notice are intended to cover the costs of administering the licensing program, including the costs of inspections.

DATES: *Effective date:* April 4, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett, Warehouse Operations Program Manager; phone: (202) 720–3877, email: *FSA–USWA@wdc.usda.gov*. Persons with disabilities who require alternative means for communication of information for this notice (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: USWA (7 U.S.C. 241–256) authorizes the Secretary of Agriculture to license warehouse operators who store agricultural products and to assess warehouse operator fees. FSA administers this authority for USDA. The USWA licensing program is intended to protect depositors of agricultural products by ensuring that licensed warehouses meet specified requirements for sanitation, physical security, equipment maintenance, recordkeeping, insurance, and financial soundness. The licensing agreement specifies the terms and conditions for a warehouse operator to qualify for licensing and to operate the warehouse in compliance with the USWA and with federal regulations in 7 CFR part 735.

The USWA requires the Secretary to assess fees to cover the cost of implementing the program. FSA has different types of USWA licensing agreements, with storage and inspection requirements and fees that are specific to the purpose of the license and the commodities to be stored.

On March 15, 2011 (76 FR 13972–13973), FSA published a notice in the **Federal Register** proposing a licensing agreement for EFAC warehouse operators. The notice requested comments on the licensing requirements and fee structures that would be appropriate for EFAC licensing agreements. Three comments were received; two did not address the fee structure. One comment stated that there should be no fees. In response to this comment, FSA notes that USWA requires the assessment of fees to cover the cost of implementing the program.

This notice announces the fee schedule for the EFAC licensing agreement. Both the fee schedule and the licensing agreement will be posted on the FSA Web site at *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=was-ua*.

The EFAC licensing agreement will be available to port and transload facility operators storing or handling EFAC. This licensing agreement was developed in response to concerns of export food aid providers; specifically, the sanitation and security of agricultural commodities temporarily stored and handled in preparation for export under various food aid programs. In many existing USWA licensed warehouses, commodities such as grain or rice are stored in bulk form and commingled. In contrast, EFAC are typically packaged products that are stored on an ''identity preserved'' basis, meaning that specific quantities must be stored and handled separately from all other commodities to allow for the subsequent delivery of the actual commodity delivered for warehouse storage. The fee structure for EFAC reflects that requirement. For example, USWA warehouse fees typically include a separate ''service license'' fee to license individuals to inspect and weigh commodities, but this is not an applicable fee category for EFAC.

The fees provided in this notice are intended to cover the costs of the EFAC warehouse examination and inspection program. The warehouse examination and inspection program is designed to ensure the warehouse operator's initial qualification for licensing and continuing compliance with the regulations and the licensing agreement. FSA will conduct examinations and inspections of licensed facilities as specified in the EFAC licensing agreement. Inspections will be conducted to determine the suitability of a facility for proper storage and handling of EFAC. Examinations will include, but are not limited to, review of warehouse records, pest management and control, housekeeping, safety, and security of goods in the care and custody of the licensee. The personnel conducting the examinations will verify that all commodities are properly marked and recorded in the warehouse records, and that commodities are stored in licensed space. Facilities must be kept and maintained in sound physical condition.

USWA fees vary by type of warehouse, and are based on estimates of FSA costs for warehouse examinations and inspections for that type of warehouse. The fee schedule for EFAC was developed based on the anticipated time needed to review license applications and amendments, and to conduct inspections and subsequent examinations. FSA will review the fee schedule periodically to ensure that fees collected will cover associated FSA operational costs, and may revise the schedule accordingly. Any changes to the fee schedule will be posted on the FSA Web site and announced in the **Federal Register**. The fee schedule will also be included as an attachment to the licensing agreement. The initial EFAC fee schedule includes the following licensing, annual, and inspection fees.

Licensing Fees

Section 4(a) of the USWA states, ''The Secretary shall assess persons covered

by this Act fees to cover the costs of administering the Act.'' The application fee for original issuance, reissuance, or duplication of a license for EFAC is $100 for each license issued. A license, and the corresponding licensing agreement, may cover multiple locations under one license, subject the approval of the FSA Deputy Administrator for Commodity Operations (DACO).

Annual User Fees

Annual user fees are assessed based on the cost for site visits to conduct warehouse examinations to determine continued compliance with the terms of the licensing agreement and the USWA. Annual user fees will be assessed independently of application fees and inspection fees. The annual user fee will be $1500 for 1 to 3 locations, plus $300 for each additional location operated under the same licensing agreement.

Inspection Fees

Inspection fees are assessed to recover the costs of administering the USWA. The inspection fees are assessed for site visits to determine initial suitability for storage of EFAC. Fees will be assessed for each original examination or inspection and for amendment examinations to modify an existing license. The inspection fee will be $1000 for 1 to 3 locations, plus $300 for each additional location operated under the same licensing agreement. Fees for additional or special examination services, including requested examinations or examinations due to adverse conditions, will be assessed at an hourly rate as determined by FSA.

USWA fees for EFAC are provided in the following table:

UNITED STATES WAREHOUSE ACT

[Fee Schedule—Export Food Aid Commodities (EFAC)]

Licensing Fee	$100
Inspection Fee, 1 to 3 Locations	1,000
Inspection Fee, each additional location over 3	300
Annual User Fee, 1 to 3 Locations	1,500
Annual User Fee, each additional location over 3	300

General information about FSA administration of its responsibilities related to the USWA is available on FSA's Web site, at the following link: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=was-ua.* In addition to useful information such as policy and procedural details, the Web site includes a listing of licensed warehouses.

Signed on December 7, 2011.

Carolyn B. Cooksie,

Acting Administrator, Farm Service Agency.

[FR Doc. 2012–8079 Filed 4–3–12; 8:45 am]

BILLING CODE 3410–05–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Meetings; Sunshine Act

The U.S. Chemical Safety and Hazard Investigation Board (CSB) announces that it will hold a public meeting on April 19, 2012, in Buffalo, New York, to present the findings from its investigation of a flammable vapor explosion on November 9, 2010, at the E.I DuPont de Nemours and Co. Inc. chemical plant in Buffalo, New York. The incident involved a contract welder and foreman who were repairing an agitator support atop an atmospheric storage tank containing flammable vinyl fluoride (VF). The VF vapor from interconnected, in-service process tanks flowed undetected into the tank and ignited when the welder was repairing the agitator support assembly. The welder died instantly and the foreman was burned.

The meeting will begin at 6 p.m. at the Embassy Suites Buffalo Downtown, Room: Encore I, II, and III, 200 Delaware Ave., Buffalo, NY 14202 (716–842–1000). The meeting is free and open to the public. Pre-registration is not required, but to assure adequate seating, attendees are encouraged to pre-register by emailing their names and affiliations to *publicmeeting@csb.gov* by April 14, 2012.

At the meeting CSB staff will present to the Board the results of their investigation into this incident. Key issues involved in the investigation concern flammable gas monitoring, tank isolation and hot work permits and sign-offs. Following the presentation of the CSB's findings and safety recommendations, the Board will hear comments from the public.

At the conclusion of the public comment period, the Board will consider whether to approve the final case study and recommendations. All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings presented by staff should be considered final. Only after the Board has considered the final staff presentation, listened to the public comments and approved the staff case study will there be an approved final record of this incident.

The Board will also consider whether to approve the CSB's draft 2012–2016 Strategic Plan, which includes strategic goals, objectives, and associated measures for managing and evaluating agency operations. The draft plan is available for public comment until April 12, 2012 at *www.csb.gov.* All comments can be submitted via email to *strategicplan@csb.gov.*

Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the U.S. Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit our Web site at: *www.csb.gov.*

Daniel Horowitz,

Managing Director.

[FR Doc. 2012–8142 Filed 4–2–12; 11:15 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Quarterly Survey of Plant Capacity Utilization

AGENCY: U.S. Census Bureau, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 4, 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(s) and instructions should be directed to Mary C. Potter, U.S. Census Bureau, Manufacturing and Construction Division, Room 7K157, Washington, DC 20233, (301) 763–4207 (or via the Internet at *mary.catherine.potter@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to continue the current OMB clearance for the Quarterly Survey of Plant Capacity Utilization (QPC). The QPC is conducted quarterly, collecting from manufacturing plants and publishers, the value of actual production, the value of production that could have been achieved if operating at ''full production'' levels, and the value of production that could have been achieved if operating at ''national emergency'' levels. The survey also collects data on work patterns by shift. These data include hours in operation, production workers, and plant hours worked.

The primary users of these data will be the Federal Reserve Board (FRB) and the Defense Logistics Agency (DLA). The FRB will use these data in several ways. First, the capital workweek data will be used as an indicator of capital use in the estimation of monthly output (industrial production). Second, the workweek data will be used to improve the projections of labor productivity that are used to align industrial production (IP) with comprehensive benchmark information in the Economic Census, Manufacturing and Annual Survey of Manufactures. Third, the utilization rate data will assist in the assessment of recent changes in IP, as most of the high-frequency movement in utilization rates reflect production changes rather than capacity changes. The DLA will use these data to assess readiness to meet demand for goods under selected national emergency scenarios.

II. Method of Collection

The Census Bureau will use the mail out/mail back survey forms to collect the data. We also offer an electronic version of the form for reporting via the Internet. Companies will be asked to respond within 20 days of the initial mailing. This due date will be imprinted at the top of the form. Letters encouraging participation will be mailed to companies that have not responded by the designated time. Subsequent to the letter, we will conduct a telephone follow-up.

III. Data

OMB Control Number: 0607–0175.
Form Number: MQ–C2.
Type of Review: Regular submission.
Affected Public: Manufacturing and publishing plants.
Estimated Number of Respondents: 7,500 per quarter.
Estimated Time per Response: 2.00 hours.
Estimated Total Annual Burden Hours: 60,000.
Estimated Total Annual Cost: $1,989,000.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S. Code, Sections 182.

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: March 30, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–8048 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Award Amendment Requests and Project Service Maps

AGENCY: Economic Development Administration (EDA), Department of 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, as amended.

DATES: Written comments must be submitted on or before June 4, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th Street 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 John Cobb, Program Analyst, Office of Regional Affairs, Room 7009, Economic Development Administration, Washington, DC 20230, telephone (202) 482–0951, facsimile (202) 482–2838 (or via the Internet at *John.f.cobb@eda.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The mission of the Economic Development Administration (EDA) is to lead the Federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. In order to effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. A recipient must submit a written request to EDA to amend an investment award and provide such information and documentation as EDA deems necessary to determine the merit of altering the terms of an award (*see* 13 CFR 302.7(a) of EDA's regulations). EDA *may* require a recipient to submit a project service map and information from which to determine whether services are provided to all segments of the region being assisted (*see* CFR 302.16(c) of EDA's regulations).

II. Method of Collection

Paper Report.

III. Data

OMB Control Number: 0610–0102.
Agency Form Number(s): None.
Type of Review: Regular submission (extension of a currently approved information collection).
Affected Public: Current recipients of EDA assistance, to include (1) cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; and (6) Indian Tribes or a consortia of Indian Tribes; and (7) (for training, research, and technical assistance awards only) individuals and for-profit businesses.
Estimated Number of Annual Responses: 632 (600 requests for

amendments to construction awards, 30 requests for amendments to non-construction awards, 2 project service maps).

Estimated Time per Response: 2 hours for an amendment to a construction award, 1 hour for an amendment to a non-construction award, 6 hours for a project service map.

Estimated Total Annual Burden Hours: 1,242.

Estimated Total Annual Cost: $0.

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: March 30, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–8069 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–2012]

Foreign-Trade Zone 277—Western Maricopa County, AZ; Application for Manufacturing Authority; Suntech Arizona, Inc., (Solar Panel Manufacturing), Goodyear, AZ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Maricopa Foreign Trade Zone, Inc., grantee of FTZ 277, requesting manufacturing authority on behalf of Suntech Arizona, Inc. (Suntech), located in Goodyear, Arizona. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 27, 2012.

The Suntech facility (100 employees, 117,000 square feet, 50 megawatt annual capacity) is located within Site 5 of FTZ 277. The facility is used for the manufacture of 275 and 290 watt solar panels for industrial use. Components and materials sourced from abroad (representing 80% of the value of the finished product) include: Junction boxes, silicone sealant, putty/caulking compounds, plastic sheets, glass, tin-coated copper strips, aluminum frames, insulation strips, and copper bars (duty rate ranges from duty-free to 5.3%).

FTZ procedures could exempt Suntech from customs duty payments on the foreign components used in export production. The company has no current exports, but has indicated that it may export in the future. On its domestic sales, Suntech would be able to choose the duty rates during customs entry procedures that apply to solar panels (duty-free) for the foreign inputs noted above. Suntech would also be exempt from duty payments on any of these foreign inputs that become scrap or waste during manufacturing. FTZ designation would further allow Suntech to realize logistical benefits through certain customs procedures. Customs duties also could possibly be deferred or reduced on foreign-status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 4, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 18, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: March 27, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–7878 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Preliminary Results of Eighth Antidumping Duty Administrative Review and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is extending the time limit for the preliminary results of the administrative review, and aligned new shipper reviews, of certain frozen fish fillets (''fish fillets'') from the Socialist Republic of Vietnam (''Vietnam''). These reviews cover the period August 1, 2010, through July 31, 2011.

DATES: *Effective Date:* April 4, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone 202.482.0413.

Background

On October 3, 2011, the Department published in the **Federal Register** a notice of initiation for the eighth administrative review of the antidumping duty order on fish fillets from Vietnam.[1] On October 3, 2011 the Department published a notice of initiation for the eighth new shipper reviews of the antidumping duty order on fish fillets from Vietnam.[2] On March 15, 2012 the Department aligned the eighth administrative review with the eighth new shipper reviews of fish fillets from Vietnam.[3] The preliminary

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 61076 (October 3, 2011) (''*Initiation Notice*'').

[2] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of New Shipper Reviews,* 76 FR 61088 (October 3, 2011).

[3] *See* Memorandum to the File, from Paul Walker, Case Analyst, ''Alignment of 8th New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam with the 8th Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,'' dated March 15, 2012.

results of these reviews are currently due no later than May 2, 2012.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the ''Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limit because the Department requires additional time to analyze questionnaire responses, issue supplemental questionnaires, conduct verification, and to evaluate surrogate value submissions.

Therefore, the Department is extending the time limit for completion of the preliminary results of these reviews by 120 days. The preliminary results will now be due no later than August 30, 2012. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 26, 2012.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–8116 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–803]

Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 7, 2011, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on polyethylene terephthalate film (PET Film) from the United Arab Emirates.[1] This review covers one producer/exporter of subject merchandise: JBF RAK LLC (JBF). Based on our analysis of the comments received, we have made changes to the preliminary results, which are discussed below. For the final dumping margins, *see* the ''Final Results of Review'' section below.

DATES: *Effective Date:* April 4, 2012

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 428–4261.

SUPPLEMENTARY INFORMATION:

Background

Since the preliminary results, the following events have taken place. JBF submitted a timely case brief on January 6, 2012. DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. (collectively, Petitioners) filed a timely rebuttal brief on January 11, 2012.

Period of Review

The period of review is November 1, 2009, through October 31, 2010.

Scope of the Order

The products covered by the order are all gauges of raw, pre-treated, or primed polyethylene terephthalate film (PET Film), whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET Film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 76365 (December 7, 2011).

Analysis of Comments Received

The issues raised in the case and rebuttal briefs by parties in this administrative review are addressed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Issues and Decision Memorandum for the Final Results'' (Decision Memorandum), dated concurrently with, and hereby adopted by, this notice. A list of the issues addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum 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 Decision Memorandum is also accessible on the Web at *http://ia.ita.doc.gov/frn.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made adjustments to our margin calculations for JBF. Specifically, we revised coding in our margin program to correct an error in the deduction of credit expenses from the home market gross unit price.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period of November 1, 2009, through October 31, 2010:

Manufacturer/exporter	Weighted-Average margin (percent)
JBF RAK LLC	3.14

Assessment Rates

The Department shall 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, where the respondent reported the entered value for its sales, we calculated importer-specific (or customer-specific) *ad*

valorem assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. *See* 19 CFR 351.212(b)(1). However, where the respondent did not report the entered value for its sales, we have calculated importer-specific (or customer-specific) per-unit assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales.[2] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, any entries for which the assessment rate is *de minimis.* The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[3] This clarification applies to entries of subject merchandise during the period of review produced by JBF for which JBF did not know the merchandise it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate non-reviewed entries at the all-others rate of 4.05 percent from the investigation if there is no rate for the intermediate company(ies) involved in the transaction.[4]

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) For the company covered by this review, the cash deposit rate will be the rate listed above in the section ''Final Results of Review''; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and, (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 4.05 percent, the all-others rate established in the less than fair value investigation.[5] These deposit requirements shall remain in effect until further notice.

Notification Regarding Administrative Protective Orders

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Importers

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 review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 29, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

Issues in the Decision Memorandum

Comment 1: Zeroing

Comment 2: Deductions from Home Market Price

[FR Doc. 2012–8108 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 9, 2012, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* None were submitted. As a result, these final results do not differ from the *Preliminary Results.* The final dumping margin for Thong Thuan Company Limited, and its subsidiary company, Thong Thuan Seafood Company Limited (collectively, ''Thong Thuan'') for the period of review (''POR'') February 1, 2010, through January 31, 2011, is listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* April 4, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031.

[2] JBF notified CBP in a ''prior disclosure'' letter that some entries of subject merchandise were misidentified as ''free and dutiable'' entries at the time of entry. A ''prior disclosure'' letter is provided for in CBP's regulations (19 CFR 162.74). The letter allows importers to correct mistakes made during the entry process on their initiative, thus avoiding possible sanctions or penalties. JBF has certified that it is working with CBP to ensure these entries are properly classified, and the Department is working with CBP to ensure that all entries, including those misidentified, will be assessed at the appropriate rate in accordance with these final results.

[3] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[4] *See id.; see also Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates,* 73 FR 66595 (November 10, 2008) (*Order*).

[5] *See Order.*

[1] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Review,* 77 FR 1053 (January 9, 2012) (''*Preliminary Results*'').

SUPPLEMENTARY INFORMATION:

Background

As noted above, on January 9, 2012, the Department published the *Preliminary Results* of the administrative review of shrimp from Vietnam. The Department did not receive comments from interested parties on the *Preliminary Results.*

Changes Since the Preliminary Results

We have not made any changes to the *Preliminary Results.*

Scope of the Order

The scope of the order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations (including dusted shrimp), which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce [3]; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer.

When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.[4]

Final Results of Review

The dumping margin for the POR is as follows:

Manufacturer/Exporter	Margin
Thong Thuan Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited	0.00%

Assessment

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis.*

Cash Deposit Requirements

The following cash deposit requirement will be effective upon publication of the final results of this NSR for all shipments of subject merchandise produced and exported from Thong Thuan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Thong Thuan, the cash deposit rate will be the rate established in the final results of this NSR. If the cash deposit rate calculated in the final results is zero or *de minimis,* no cash deposit will be required for the specific producer-exporter combination listed above; (2) for subject merchandise exported by Thong Thuan but not manufactured by Thong Thuan, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* 25.76 percent); and (3) for subject merchandise manufactured by Thong Thuan, but exported by any other party, the cash deposit rate will be the Vietnam-wide rate (*i.e.,* 25.76 percent).

[2] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[3] The specific exclusion for Lee Kum Kee's shrimp sauce applies only to the scope in the People's Republic of China case.

[4] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (''CIT'') decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. Because the amendment of the antidumping duty order occurred after this POR, dusted shrimp continue to be excluded in this review. *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23227 (April 26, 2011); *see also Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011.

The cash deposit requirement, 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)(2) 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 Order

In accordance with 19 CFR 351.305(a)(3), 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 the APO, 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: March 29, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–8110 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before April 24, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 12–008. *Applicant:* Stevens Institute of Technology, Castle Point on Hudson, Hoboken, NJ 07030. Instrument: Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to study the interfacial wetting phenomena and develop robust superhydrophobic surfaces for anti-corrosion and anti-icing surfaces. The experiments will involve the examination of evaporation, condensation, and icing of water droplets on nanostructured surfaces. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 8, 2012.

Docket Number: 12–009. *Applicant:* Humboldt State University Sponsored Programs Foundation, 1 Harpst St., Arcata, CA 95521. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used in research activities including olfactory epithelium of amphibians, plant gravitropism, analyses of high temperature and high pressure mineralogy and petrology experiments, analyses of the microstructures and rock textures formed in active fault zones, and the weathering properties of minerals and formation of soils. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 5, 2012.

Docket Number: 12–010. *Applicant:* Howard Hughes Medical Institute, 4000 Jones Bridge Rd., Chevy Chase, MD 20815. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument will be used for medical research; the proteins to be studied are often malfunctioning in diseases such as diabetes, cancer and heath disease, and understanding how the proteins are built can help in understanding what goes wrong and help to design pharmaceuticals to correct the problem. The instrument will also be used to teach students in the use of electron microscopy for protein structure determination. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 19, 2012.

Docket Number: 12–012. *Applicant:* Alliance for Sustainable Energy, 1617 Cole Blvd. Golden, CO 80401–3305. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used in part as rapid feedback for synthesis of inorganic solution fabricated nanocrystals. By allowing a user to image their sample immediately following synthesis, the tool will allow development of new material with better monodispersity, size and shape control. The main experiments to be conducted are imaging at low and high resolution, with additional capabilities such as material identification using EDAX and electron diffraction. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 19, 2012.

Docket Number: 12–014. *Applicant:* California Institute of Technology, 1200 E. California Blvd. Pasadena, CA 91125. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to study semiconductors and heterogeneous catalysts in order to accelerate the rate of discovery of Earth-abundant, robust materials that can capture and convert the energy of sunlight into chemical fuels. The objective is to quantitatively characterize material morphology, conductivity and composition, which will aid in analyzing results from performance testing via electrochemistry and other techniques. The instrument will enable higher-precision nano-micro scale images of the materials, and it will also allow elemental analysis and current mapping. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 19, 2012.

Docket Number: 12–015. *Applicant:* University of Nebraska-Lincoln, 1700 Y St., Lincoln, NE 68588. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used for detailed characterization of surface and near-surface topography, dimensions, and elemental composition of chiral nanostructured hybrid materials, novel low work function and semiconducting materials, nanoscale hard magnet materials, as well as many other metals, ceramics, and composite materials. The properties to be studied are magnetic, electronic, mechanical, optical, and other properties that are enhanced or

attained because the materials are nanoscale or novel in structure. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 21, 2012.

Docket Number: 12–016. *Applicant:* University of Nebraska-Lincoln, 1700 Y St., Lincoln, NE 68588–0645. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument will be used for detailed characterization of surface and near-surface topography, dimensions, and elemental composition of chiral nanostructured hybrid materials, novel low work function and semiconducting materials, nanoscale hard magnet materials, as well as many other metals, ceramics, and composite materials. The properties to be studied are magnetic, electronic, mechanical, optical, and other properties that are enhanced or attained because the materials are nanoscale or novel in structure. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* March 21, 2012.

Dated: March 28, 2012.

Gregory Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2012–8117 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA865

Takes of Marine Mammals Incidental to Specified Activities; Pier 36/Brannan Street Wharf Project in the San Francisco Bay, CA

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) implementing regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Port of San Francisco (Port), allowing the take of small numbers of marine mammals, by Level B harassment only, incidental to pile driving during construction of the Brannan Street Wharf.

DATES: Effective May 1, 2012, through April 30, 2013.

ADDRESSES: A copy of the IHA, the application, and the Environmental Assessment are available by writing to Tammy C. Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is published in the **Federal Register** and provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) further established a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On May 6, 2011, NMFS received an application from the USACE, on behalf of the Port, requesting an IHA for the take, by Level B harassment, of small numbers of Pacific harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), gray whales (*Eschrichtius robustus*), and Pacific harbor porpoises (*Phocoena phocoena*) incidental to pile driving activities during construction of the Brannan Street Wharf in San Francisco, California. In accordance with the MMPA and implementing regulations, NMFS issued a notice in the **Federal Register** on October 26, 2011 (76 FR 66274), requesting comments from the public on the proposed IHA.

Description of the Specified Activity

A complete description of the specified activity may be found in NMFS' proposed IHA notice in the **Federal Register** (76 FR 66274, October 26, 2011) and a summary is provided here. The project will involve construction of a pile-supported park that will be known as the ''Brannan Street Wharf'' and will replace the existing Pier 36 and provide recreational space for the public. The project will require installation of 261 steel and concrete piles and 57,000 square feet (ft^2) of new decking. Installation of the 261 steel and concrete piles will require in-water pile driving that could produce high-intensity sound and has the potential to harass marine mammals. A breakdown of pile size and type is shown in Table 1.

TABLE 1—SUMMARY OF PILE TYPES AND PILE DRIVING ACTIVITY.

Pile type	Total piles	Pile driver	Max piles per day
24-inch octagonal concrete	141	Impact	8
24-inch steel shell	116	Vibratory and impact	5
36-inch steel shell	4	Vibratory and impact	4

All piles will be driven to a depth of 60 ft below the mudline elevation. Only one pile type is expected to be installed on any given day. Conservatively assuming the maximum vibratory time and number of impact blows required for each pile, a total of 988 minutes of vibratory driving and 150,000 impact blows will be necessary over the 12-month duration of the project. All vibratory pile driving will use a standard frequency hammer similar to an APE 150, which produces up to 1,800 vibrations per minute. All impact pile driving will use a DelMag D46–32 diesel impact hammer, which produces about 122,000 foot-pounds maximum energy blow at 1.5 seconds per blow on average. A bubble curtain will be used as a sound attenuation device during impact pile driving for the 24-in and 36-in steel shell piles.

Region of Activity

The activity will occur in the San Francisco Bay at Pier 36, four blocks south of the San Francisco Oakland Bay Bridge. More specifically, this area is located between Pier 30–32 and Pier 38, directly adjacent to the east side of the Embarcadero and within the South of Market district of San Francisco. San Francisco Bay and the adjacent Sacramento-San Joaquin Delta make up one of the largest estuarine systems on the continent. The Bay has undergone extensive industrialization, but remains an important environment for healthy marine mammal populations year round. The area surrounding the activity is an intertidal landscape with heavy industrial use and boat traffic.

Dates of Activity

Wharf and pier demolition—which is not expected to harass marine mammals—may begin in January 2012 and last for five months. The new wharf construction, including pile driving, is scheduled to begin in May 2012 and end 13 months later; however, pile driving is expected to be complete by December 2012.

Sound Propagation

For background, sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 μPa'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

A review of numerous pile driving projects with comparable water depth and substrate conditions was conducted to identify source sound level data and estimate potential sound levels for pile driving activities around Pier 36. In their calculations, the Port conservatively assumed that the use of a bubble curtain for steel shell piles will reduce sound levels by 5 dB RMS. A conservative attenuation factor of 16 dB RMS (about 5 dB RMS per doubling of distance) was also assumed in the Port's analysis; sound attenuation would likely be greater than 16 dB RMS for such shallow water pile driving (CalTrans, 2009). Pile driving at Pier 36 is expected to occur in water depths of zero to 15 feet. Maximum sound pressure levels for pile driving activities are shown in Table 2.

TABLE 2—MEASURED UNATTENUATED SOUND PRESSURE LEVELS IN THE NEAR FIELD (10 m) DURING PILE DRIVING IN SAN FRANCISCO BAY

[Caltrans, 2009]

Pile type	Attenuation device	Sound level (impact)	Sound level (vibratory)
24-in octagonal concrete	None	170 dB	n/a
24-in steel shell	Bubble curtain	190 dB	165 dB
36-in steel shell	Bubble curtain	190 dB	175 dB

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on October 26, 2011 (76 FR 66274). During the 30-day public comment period, the Marine Mammal Commission (Commission) provided the only comments.

Comment 1: The Commission recommends that NMFS require the Port to monitor the presence and behavior of marine mammals during all vibratory and impact pile driving activities.

Response: As stated in the proposed IHA, marine mammal monitoring will occur 30 minutes before, during, and 30 minutes after all impact pile driving activities. In addition, at least two NMFS-approved protected species observers will conduct behavioral

monitoring out to 1,900 m during all vibratory pile driving for the first two weeks of activity to validate take estimates and evaluate the behavioral impacts pile driving has on marine mammals out to the Level B harassment isopleth. NMFS believes this is an adequate effort of monitoring because sounds from vibratory pile driving will not exceed the Level A harassment threshold and sounds from impact pile driving only exceed the Level A harassment threshold 42 m from the source.

Comment 2: The Commission recommends that NMFS require the Port to monitor before, during, and after all soft-starts of vibratory and impact pile driving activities to gather the data needed to determine the effectiveness of this technique as a mitigation measure.

Response: NMFS disagrees that the Port needs to monitor for marine mammals before, during, and after all soft-starts. Protected species observers will be on-site and monitoring for marine mammals at least 30 minutes prior to, during, and after all impact driving (including during soft-starts) and at least two full days per week during all vibratory pile driving. NMFS believes that monitoring for all impact driving and at least two days per week of vibratory pile driving days per week will allow for adequate interpretation of how marine mammals are behaving in response to pile driving, including during soft-starts.

Comment 3: The Commission recommends that NMFS require the Port to implement soft-start procedures after 15 minutes for pinnipeds and 30 minutes for cetaceans, if pile driving was delayed or shut down due to the presence of a marine mammal within or approaching the Level A harassment zone.

Response: NMFS agrees with the Commission's recommendation and the Port will implement soft-start procedures after 15 minutes if pile driving is delayed or shut down due to the presence of a pinniped within or approaching the Level A harassment zone.

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals with confirmed occurrences in San Francisco Bay are the Pacific harbor seal, California sea lion, gray whale, harbor porpoise, humpback whale (*Megaptera noveangliae*), and sea otter (*Enhydra lutris*). However, humpback whales are considered extremely rare in San Francisco Bay and are highly unlikely to be present in the project vicinity during pile driving. Sea otters are managed by the United States Fish and Wildlife Service. Therefore, these two species are not discussed further. Information on the Pacific harbor seal, California sea lion, gray whale, and harbor porpoise was provided in the October 26, 2011 **Federal Register** notice (76 FR 66274).

Potential Effects on Marine Mammals

The action consists of both in-water and above-water components, but the only activity with the potential to take marine mammals is pile driving. A detailed description of potential impacts to marine mammals can be found in NMFS' October 26, 2011 **Federal Register** notice (76 FR 66274) and is summarized here.

Marine mammals are continually exposed to many sources of sound. For example, lightning, rain, sub-sea earthquakes, and animals are natural sound sources throughout the marine environment. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance or received levels will depend on the sound source, ambient noise, and the sensitivity of the receptor (Richardson *et al.,* 1995). Marine mammal reactions to sound may depend on sound frequency, ambient sound, what the animal is doing, and the animal's distance from the sound source (Southall *et al.,* 2007).

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for when PTS first occurs in marine mammals; therefore, it must be estimated from when TTS first occurs and from the rate of TTS growth with increasing exposure levels. PTS is likely if the animal's hearing threshold is reduced by ≥ 40 dB of TTS. PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Due to required mitigation measures and source levels in the proposed project area, NMFS does not expect marine mammals to be exposed to PTS levels.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to days, occurs in specific frequency ranges (i.e., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can occur to varying degrees (e.g., an animal's hearing sensitivity might be reduced by 6 dB or by 30 dB). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Southall *et al.* (2007) summarizes underwater pinniped data from Kastak *et al.* (2005), indicating that a tested harbor seal showed a TTS of around 6 dB when exposed to a non-pulse noise at SPL 152 dB re: 1 μPa for 25 minutes. In contrast, a tested sea lion exhibited TTS-onset at 174 dB re: 1 μPa under the same conditions as the harbor seal. Data from a single study on underwater pulses found no signs of TTS-onset in sea lions at exposures up to 183 dB re: 1 μPa (peak-to-peak) (Finneran *et al.,* 2003). There is no information on species-specific TTS for harbor porpoises or gray whales.

Behavioral Effects

There are limited data available on the behavioral effects of non-pulse noise (for example, vibratory pile driving) on pinnipeds while underwater; however, field and captive studies to date collectively suggest that pinnipeds do not react strongly to exposures between 90 and 140 dB re: 1 microPa; no data exist from exposures at higher levels. Jacobs and Terhune (2002) observed wild harbor seal reactions to high-frequency acoustic harassment devices around nine sites. Seals came within 44 m of the active acoustic harassment devices and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB. In a captive study (Kastelein, 2006), scientists subjected a group of seals to non-pulse sounds between 8 and 16 kHz. Exposures between 80 and 107 dB did not induce strong behavioral

responses; however, a single observation from 100 to 110 dB indicated an avoidance response. The seals returned to baseline conditions shortly following exposure. Southall *et al.* (2007) notes contextual differences between these two studies; the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging animals may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items. Vibratory and impact pile driving may result in anticipated hydroacoustic levels between 165 and 190 dB root mean square. Southall *et al.* (2007) reviewed relevant data from studies involving pinnipeds exposed to pulse sounds and concluded that exposures to 150 to 180 dB generally have limited potential to induce avoidance behavior.

No known data exist for sound levels resulting from the type of vibratory hammer and pile sizes that will be used at the proposed project site; however, measured sound levels for the ''King Kong'' vibratory hammer used in Richmond, California ranged between 163 and 180 dB RMS (Illingworth and Rodkin, 2007). Sound levels at the proposed project site are expected to be lower because the vibratory hammer being used has an expected sound level of 165 dB for 24-in piles and 175 dB for 36-in piles. In addition, San Francisco Bay is highly industrialized and masking of the pile driver by other vessels and anthropogenic noise within the action area may, especially in the nearby shipping channel, make construction sounds difficult to hear at greater distances. Underwater ambient noise levels along the San Francisco waterfront may be around 133 dB RMS, based on measurements from the nearby Oakland Outer Harbor (Caltrans, 2009). Seals will likely also exhibit tolerance or habituation (Richardson *et al.,* 1999) due to the amount of anthropogenic noise within the proposed project area and San Francisco Bay as a whole.

No impacts to marine mammal reproduction are anticipated because there are no known pinniped haul-outs or rookeries within the proposed project area and San Francisco Bay is not a known breeding ground for cetaceans. Marine mammals may avoid the area around the hammer, thereby reducing their exposure to elevated sound levels. NMFS expects any impacts to marine mammal behavior to be temporary, Level B harassment (for example, avoidance or alteration of behavior).

Anticipated Effects on Habitat

No permanent detrimental impacts to marine mammal habitat are expected to result from the proposed project. Pile driving (resulting in temporary ensonification) may impact prey species and marine mammals by resulting in avoidance or abandonment of the area; however these impacts are expected to be local and temporary. Site conditions are expected to be improved or substantively unchanged from existing conditions. The proposed project will result in the net removal of approximately 3,550 ft^2 of pile fill and clearing of 47,000 ft^2 of timber debris that has collapsed at the end of Pier 36. This debris includes 350–400 creosote-treated wood pilings. Creosote can leach out of the wood over time, potentially causing long-term impacts to marine species. The proposed project will also result in a net reduction of 47,000 ft^2 of shadow fill (shading over the water). This increase of unshaded water is expected to be beneficial to benthic invertebrates, fish, and marine mammals through restoration of ambient light conditions and increased biological productivity. Overall, the proposed activity is not expected to cause significant or long-term adverse impacts on marine mammal habitat.

Mitigation Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. There are no relevant subsistence uses of marine mammals implicated by this action.

Sound Attenuation Device

When using impact pile driving to install steel piles in water depths greater than two feet, an unconfined bubble curtain will be used to reduce hydroacoustic sound levels to avoid the potential for injury. The bubble curtain is expected to reduce sound levels by at least 5 dB.

Establishment of an Exclusion Zone

During all in-water impact pile driving, the Port will establish a preliminary marine mammal exclusion zone with 50 m (164 ft) radius around each pile to avoid exposure to sounds at or above 180 dB. This includes an 8-m (26-ft) buffer zone to further avoid marine mammals from entering the 180 dB isopleth. The exclusion zone will be monitored during all impact pile driving to ensure that no marine mammals enter the 50-m (164-ft) radius. The purpose of this area is to prevent Level A harassment (injury) of any marine mammal species. Once underwater sound measurements are taken, the exclusion zone may be adjusted accordingly so that marine mammals are not exposed to Level A harassment sound pressure levels. An exclusion zone for vibratory pile driving or installation of concrete piles is unnecessary as source levels will not exceed the Level A harassment threshold.

Pile Driving Shut Down and Delay Procedures

If a protected species observer sees a marine mammal within or approaching the exclusion zone prior to start of impact pile driving, the observer will notify the on-site resident engineer (or other authorized individual) who will then be required to delay pile driving until the marine mammal has moved outside of the exclusion zone or if the animal has not been resighted within 15 minutes for pinnipeds or 30 minutes for cetaceans. If a marine mammal is sighted within or on a path toward the exclusion zone during pile driving, pile driving should cease until that animal has cleared and is on a path away from the exclusion zone or 15/30 minutes (pinnipeds/cetaceans) has lapsed since the last sighting.

Soft-Start Procedures

A ''soft-start'' technique will be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60 percent reduced energy followed by a 1-minute waiting period. The procedure will be repeated two additional times before full energy may be achieved. For impact hammering, contractors will provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Soft-start procedures will be conducted prior to driving each pile if hammering ceases for more than 30 minutes.

Monitoring for Herring

Monitoring for herring spawning events will be conducted on a daily basis between December 1 and February (although pile driving is expected to be complete in December). If a herring spawning event is observed, in-water work will cease for a period of two weeks following the spawning event (a

measure designed to reduce impacts to fish). Pinniped presence can be sporadic and unpredictable during herring runs in San Francisco Bay; therefore, this mitigation measure will minimize impacts to marine mammals.

NMFS has carefully evaluated the above mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures and the Commission's comments, NMFS has determined that the above mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Hydroacoustic monitoring will be performed at the initial installation of each pile type (24-in concrete, 24-in steel, and 36-in steel) to ensure that the harassment isopleths are not extending past the calculated distances described in this notice. The Port must designate at least one biologically-trained, on-site individual, approved in advance by NMFS, to monitor the Level B harassment zone area for marine mammals 30 minutes before, during, and 30 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the designated exclusion zone (preliminarily set at 50 m [164 ft]). In addition, at least two NMFS-approved protected species observers will conduct behavioral monitoring out to 1,900 m during all vibratory pile driving for the first two weeks of activity to validate take estimates and evaluate the behavioral impacts piles driving has on marine mammals out to the Level B harassment isopleth. If there are no observations of marine mammals within the Level B harassment isopleth during this time, behavioral monitoring may be reduced to a level agreed upon by the applicant and NMFS. Note that for impact hammering, the initial Level B (160 dB) harassment isopleths are 42 m (138 ft) for the concrete piles and 750 m (2,460 ft) for the steel piles. For vibratory hammering, the initial estimated distance is 1,900 m (6,233 ft). If light condition is low (such as early morning or late afternoon), protected species observers will use infrared scopes to conduct their observations.

Protected species observers will be provided with the equipment necessary to effectively monitor for marine mammals (for example, high-quality binoculars, spotting scopes, compass, and range-finder) in order to determine if animals have entered into the exclusion zone or Level B harassment isopleth and to record species, behaviors, and responses to pile driving. If hydroacoustic monitoring indicates that threshold isopleths are greater than originally calculated, the Port will contact NMFS within 48 hours and make the necessary adjustments. Likewise, if threshold isopleths are actually less than originally calculated, adjustments may be made. Protected species observers will be required to submit a report to NMFS within 90 days of completion of pile driving. The report will include data from marine mammal sightings (such as species, group size, and behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), CWA shall immediately cease the specified activities and report the incident to the Acting Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Southwest Regional Stranding Coordinator at 562–980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with CWA to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CWA may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that CWA discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), CWA will immediately report the incident to the Acting Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Southwest Regional Stranding Coordinator at 562–980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with CWA to determine whether modifications in the activities are appropriate.

In the event that CWA discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), CWA will report the incident to the Acting Chief of the Permits and Conservation Division, Office of

Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Southwest Regional Stranding Coordinator at 562–980–3230 (*Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. CWA will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on the application and subsequent analysis, the impact of the described pile driving operations (including mitigation and monitoring) may result in, at most, short-term modification of behavior by small numbers of marine mammals within the action area. Marine mammals may avoid the area or temporarily alter their behavior at time of exposure.

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury (PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB for impulse sounds (such as impact pile driving) and 120 dB for non-pulse noise (such as vibratory pile driving). These levels are also considered precautionary.

Distances to NMFS' harassment thresholds were calculated based on the sound levels at each source and the expected attenuation rate of sound (Table 3). Two sets of threshold distances were identified: one for concrete piles and one for steel piles. The threshold distances listed for the steel piles are those expected from the 36-in steel pile driving activities, as they will also encompass the isopleths for the 24-in steel piles. The 42-m (268-ft) distance to the Level A harassment threshold provides protected species observers plenty of time and adequate visibility to prevent marine mammals from entering the area during impact pile driving. This will prevent marine mammals from being exposed to sound levels that reach the Level A harassment threshold. In-air sound from pile driving also has the potential to affect marine mammals. However, in-air sound is not a concern here because there are no pinniped haul-outs near the project area.

TABLE 3—CALCULATED UNDERWATER DISTANCES TO NMFS' MARINE MAMMAL HARASSMENT THRESHOLD LEVELS

Threshold	Distance from source (24-in concrete piles)	Distance from source (36-in steel piles)
120 dB RMS (Level B—continuous)	n/a	1,900 m (6,233 ft)
160 dB RMS (Level B—impulse)	42 m (138 ft)	750 m (2,460 ft)
180/190 dB RMS (Level A)	n/a	42 m (138 ft)

The estimated number of marine mammals potentially taken is based on marine mammal monitoring reports prepared by the California Department of Transportation during similar activities in San Francisco Bay and on discussions with the NMFS Southwest Regional Office. The California Department of Transportation's San Francisco-Oakland Bay Bridge marine mammal monitoring reports were used to estimate the number of pinnipeds near the Pier 36/Brannan Street Wharf area as both sites are relatively close in distance and are similar in bathymetric features. However, monitoring conducted for the San Francisco-Oakland Bay Bridge project was in close proximity to a haul-out area, while the Pier 36/Brannan Street Wharf location is in an area of high commercial boat activity and no adjacent haul-outs. Therefore, the Caltrans data likely overestimate marine mammal abundance for the Pier 36/Brannan Street Wharf location. Based on consultation with the NMFS Southwest Regional Office, review of the monitoring reports described above, and the estimated number of pile driving days, the Port requested authorization for the incidental take of 138 harbor seals (an average of 2 per day), 69 California sea lions (an average of 1 per day), 69 harbor porpoises (an average of 1 per day), and 2 gray whales (2 annually). Based on further consultation with the NMFS Southwest Regional Office and previous authorizations in this region, and included in the **Federal Register** notice of proposed IHA (76 FR 66274, October 26, 2011), NMFS is authorizing the take of five gray whales annually, rather than two. These numbers indicate the maximum number of animals expected to occur within the largest Level B harassment isopleth (1,900 m).

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which are authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

As described above, marine mammals will not be exposed to activities or sound levels which will result in injury (PTS), serious injury, or mortality. Pile driving will occur in shallow coastal waters of San Francisco Bay. The closest pinniped haul-out is 3.2 km (2 mi) away, which is well outside the project area's largest harassment zone. Marine mammals approaching the action area will likely be traveling or opportunistically foraging. The amount of take authorized is considered small (less than one percent each) relative to the estimated populations of 34,233 Pacific harbor seals, 238,000 California sea lions, 9,189 harbor porpoises, and 18,813 gray whales. Marine mammals may be temporarily impacted by pile driving noise. However, marine mammals are expected to avoid the area, thereby reducing exposure and impacts. Pile driving activities are expected to

occur for approximately 69 days. Furthermore, San Francisco Bay is a highly industrialized area, so animals are likely tolerant or habituated to anthropogenic disturbance, including low level vibratory pile driving operations, and noise from other anthropogenic sources (such as vessels) may mask construction related sounds. There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained in this notice, the proposed IHA notice (76 FR 66274, October 26, 2011), and the IHA application, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS has determined that the Port's proposed pile driving activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are anticipated to occur within the action area. Therefore, section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of a one-year IHA and the potential issuance of future authorizations for incidental harassment for the ongoing project. NMFS made a finding of no significant impact (FONSI) and the EA and FONSI are available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**).

Dated: March 29, 2012.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–8105 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Computer and Internet Use Supplement to the Census Bureau's Current Population Survey

AGENCY: National Telecommunications and Information Administration, 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: Submit comments on or before June 4, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6612, 14th Street 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 proposed information collection instrument and instructions should be directed to Rafi Goldberg, Telecommunications Policy Analyst, Office of Policy Analysis and Development, NTIA, at (202) 482–1880 or *RGoldberg@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Telecommunications and Information Administration (NTIA) proposes to add 12 questions to the U.S. Census Bureau's October 2012 Current Population Survey (CPS) in order to gather reliable data on broadband (also known as high-speed Internet) use by U.S. households. President Obama has established a national goal of universal, affordable broadband access for all Americans.[1] To that end, the Administration is working with Congress, the Federal Communications Commission (FCC), and other stakeholders to develop and advance economic and regulatory policies that foster broadband deployment and adoption. Collecting current, systematic, and comprehensive information on broadband use and non-use by U.S. households is critical to allow policymakers not only to gauge progress made to date, but also to identify problem areas with a specificity that permits carefully targeted and cost-effective responses.

The Census Bureau (''the Bureau'') is widely regarded as a superior collector of data based on its centuries of experience and its scientific methods. Collection of NTIA's requested broadband usage data, moreover, will occur in conjunction with the Bureau's scheduled October 2012 Current Population Survey (CPS), thereby significantly reducing the potential burdens on the Bureau and on surveyed households. Questions on broadband and Internet use have been included in ten previous CPS surveys.

The U.S. government has an increasingly pressing need for comprehensive broadband data. The General Accountability Office (GAO), NTIA, and the FCC have issued reports noting the lack of useful broadband adoption data for policymakers, and Congress passed legislation—the Broadband Data Improvement Act in 2008 and the American Recovery and Reinvestment Act in 2009—wholly or partly in response to such criticisms. The Organisation for Economic Co-operation and Development (OECD) looks to Census Bureau data as an important input into their inter-country benchmark analyses. Modifying the October CPS to include NTIA's requested broadband data will allow the Commerce Department and NTIA to respond to congressional concerns and directives, and to work with the OECD on its broadband methodologies with more recent data. The change to this reinstatement will be a revised set of computer and Internet usage survey questions.

II. Method of Collection

Personal visits and telephone interviews, using computer-assisted telephone interviewing and computer-assisted personal interviewing.

III. Data

OMB Control Number: 0660–0021.

Form Number(s): None.

Type of Review: Regular submission (Reinstatement with change of a previously approved collection).

Affected Public: Individuals and households.

Estimated Number of Respondents: 54,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 2,700.

[1] See *http://www.whitehouse.gov/sites/default/files/20091217-recovery-act-investments-broadband.pdf* (last viewed January 30, 2012).

Estimated Total Annual Cost to Public: $0.

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 be a matter of public record.

Dated: March 30, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–8103 Filed 4–3–12; 8:45 am]

BILLING CODE 3510–06–P

CONSUMER PRODUCT SAFETY COMMISSION

Petition for Classification of ''BeeSafe System'' as an Anti-Entrapment System Under the Virginia Graeme Baker Pool and Spa Safety Act (''VGB Act'')

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The U.S. Consumer Product Safety Commission (''Commission'' or ''We'') has received a petition (CP 12–1) requesting that the Commission initiate rulemaking to determine that the ''BeeSafe System'' is equally effective as, or better than, the systems designed to prevent entrapment listed in the Virginia Graeme Baker Pool and Spa Safety Act (''VGB Act''). We invite written comments concerning the petition.[1]

DATES: The Office of the Secretary must receive comments on the petition by June 4, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0020, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and petition number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

SUPPLEMENTARY INFORMATION: Section 1404(c)(1)(A)(ii) of the VGB Act requires that each public pool and spa in the United States with a single main drain other than an unblockable drain be equipped, at a minimum, with one or more of the following anti-entrapment devices or systems: (I) Safety vacuum release system; (II) Suction-limiting vent system; (III) Gravity drainage system; (IV) Automatic pump shut-off system; (V) Drain disablement; or (VI) any other system determined by the Commission to be equally effective as, or better than, these systems at preventing or eliminating the risk of injury or death associated with pool drainage systems. 15 U.S.C. 8003(c)(1)(A)(ii). The Commission has received correspondence from Bonnie Snow and Teri Snow (''petitioners''), dated February 13, 2012, requesting that the Commission initiate rulemaking to determine that the ''BeeSafe System'' is equally effective as, or better than, systems designed to prevent entrapment listed in 1406(c)(1)(A)(ii)(I)–(V) of the VGB Act. We are docketing this request as a petition under the Consumer Product Safety Act. 15 U.S.C. 2056 and 2058.

Petitioners offer information in support of their claim that the BeeSafe System is equally effective as, or better than, the systems designed to prevent entrapment listed in the VGB Act. They assert that the most defining feature of their system is the presence of long tubes, which they claim empty if they become blocked. For this reason, petitioners state, the ''BeeSafe System is better alone than with an SVRS [suction vacuum release system] or back-up breaker.'' Petitioners also describe that through the design of the BeeSafe system, they have eliminated the possibility of the entire cover going missing. They state that if the smaller, winterizing lid were to go missing, any tubes that became blocked would empty the water into the built-in sump and any suction at the surface would be released when this happened. They compare this action to a hydraulic switch, claiming that the action is ''as fast or faster than any of the breaker secondary systems currently on the market.''

By this notice, the Commission seeks comments concerning this petition. Interested parties may obtain a copy of the petition and submission on the Commission's Web site at *http://www.cpsc.gov/library/foia/foia12/petition/beesafe.pdf,* by writing or calling the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East West Highway, Bethesda, MD, or from the Commission's Web site at: *www.cpsc.gov.*

Dated: March 29, 2012.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2012–8005 Filed 4–3–12; 8:45 am]

BILLING CODE 6355–01–P

[1] The Commission voted 3–0–1 to publish this **Federal Register** notice. Chairman Tenenbaum abstained from voting.

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the annual meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The Board's charter was renewed on February 21, 2012 in compliance with the requirements set forth in Title 10 U.S.C. 2166.

Date: Wednesday, June 27th, 2012.

Time: 4 p.m. to 6 p.m.

Location: Double Tree Hotel Conference Room, 5351 Sidney Simons Blvd., Columbus, Georgia.

Proposed Agenda: Update briefings from the Office of the Secretary of Defense (Policy); Department of State; US Northern Command and US Southern Command as well as receive other information appropriate to its interests.

Date: Thursday, June 28th, 2012.

Time: 8 a.m. to 4 p.m.

Location: WHINSEC, 7161 Richardson Circle, Modular 2D, Fort Benning, Georgia 31905.

Proposed Agenda: Topics will include a public comments period; update briefing from the WHINSEC Commandant; Subcommittee objectives discussion; and open discussion period.

FOR FURTHER INFORMATION CONTACT: WHINSEC Board of Visitors Secretariat at (703) 614–8721.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the advisory committee for consideration by the committee members. Written statements should be no longer than two type-written pages and sent via fax to (703) 614–8920 or emailed to *scott.caldwell@us.army.mil* by 5 p.m. EST on Wednesday, June 20th, 2012, for consideration at this meeting. In addition, public comments by individuals and organizations may be made from 8:30 to 8:45 a.m. during the meeting on June 28th. Public comments will be limited to three minutes each. Anyone desiring to make an oral statement must register by sending a fax to (703) 614–8920 or email to *scott.caldwell@us.army.mil* with his/her name, phone number, email address, and the full text of his/her comments (no longer than two typewritten pages) by 5 p.m. EST on Wednesday, June 20th, 2012. The first five requestors will be notified by 5 p.m. EST on Monday, June 25th, 2012, of their time to address the Board during the public comment forum. All other comments will be retained for the record. Public seating is limited and will be available on a first-come, first-served basis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–8047 Filed 4–3–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Centers for Independent Living—Training and Technical Assistance

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education

ACTION: Notice.

Overview Information

Centers for Independent Living—Training and Technical Assistance

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number 84.132B.

DATES:

Applications Available: April 4, 2012.

Deadline for Transmittal of Applications: May 21, 2012.

Deadline for Intergovernmental Review: July 18, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program

The purpose of the Training and Technical Assistance grant under the Centers for Independent Living program is to provide training and technical assistance to eligible agencies, centers for independent living (CILs), and Statewide Independent Living Councils (SILCs) with respect to planning, developing, conducting, administering, and evaluating CILs.

A CIL is a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities and that provides an array of independent living services. An eligible agency is a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency.

The purpose of independent living services is to maximize leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to integrate these individuals into the mainstream of American society.

Each State establishes a SILC that jointly develops and signs the State Plan for Independent Living with the Designated State Unit and monitors, reviews, and evaluates the implementation of the State plan. A majority of a SILC's members are individuals with disabilities, and other members include CIL representatives and State agency representatives, as well as other appropriate individuals.

Priorities: This competition contains two absolute priorities. These priorities are from the notice of final priorities for this program, published in the **Federal Register** on June 22, 2007 (72 FR 34450).

Background

The Department is inviting applications for one grant to provide training and technical assistance to CILs and SILCs. This is a change from how we conducted the last competition for this grant. In 2007, we awarded separate grants to train CILs and SILCs. In response to the FY 2007 notice of proposed priorities published in the **Federal Register** on March 6, 2007 (72 FR 9936), the majority of the commenters expressed their preference for awarding a single training and technical assistance grant for both CILs and SILCs. These commenters stated that training CILs and SILCs together would allow them to understand each other's activities, needs, and issues and would promote effective communication and collaboration between CILs and SILCs, thus enabling them to better achieve their common goals. While CILs and SILCs have discrete statutorily-based responsibilities, commenters recognized that CILs and SILCs share the common fundamental objective to improve independent living for persons with significant disabilities.

While acknowledging the validity of the concerns expressed regarding separate grants, the Department determined in 2007 that the benefits of two grants outweighed the potential costs. The Department believed that two grants would permit grantees to focus training and technical assistance on the specific needs of CILs and SILCs separately to ensure that the unique activities and responsibilities of the CILs and SILCs were addressed.

However, based on the Department's experience with the separate grants awarded in 2007, we have determined that there is no distinct advantage in administering separate grants to train and provide technical assistance to CILs and SILCs separately. The Department has determined that it can realize the benefits of using one grantee to provide the unique training and technical assistance required by CILs and SILCs and also eliminate the unnecessary duplication of costs that came with funding two grants. Therefore, the Department is returning to its practice prior to 2007 and consolidating training and technical assistance into a single grant for CILs and SILCs.

In addition to furthering program objectives, this decision maximizes the funds available for the direct provision of training and technical assistance to CILs and SILCs.

Although the number of CILs has increased as a result of funds made available under the American Recovery and Reinvestment Act of 2009, the funds appropriated for the CIL program, including the funds available for training and technical assistance for CILs and SILCs, have decreased in both FY 2011 and FY 2012. By providing training and technical assistance to CILs and SILCs through a single grant, the Department will also increase the efficiency of the training and technical assistance by reducing administrative costs.

Absolute Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet both of these priorities.

These priorities are:

Priority 1—Centers for Independent Living (CILs) Training and Technical Assistance Center

This priority supports a CILs Training and Technical Assistance Center (CILs T&TA Center) to improve the performance of CILs by providing training and technical assistance to the CILs on the programmatic and financial aspects of their operations, including information on effective practices and proven solutions to common problems. CILs are distributed across the Nation and vary in size, stage of development, service area characteristics, and urgency of need for training and technical assistance. Therefore, the training and technical assistance provided by the CILs T&TA Center must be sensitive to this diversity and must encompass a broad range of topics.

The CILs T&TA Center must make available to all CILs a broad array of resources, training, and technical assistance. In addition, the CILs T&TA Center must address the specific needs of CILs by providing those CILs that require it with intensive, individualized, on-site training and technical assistance that meets their needs. In this regard, the CILs T&TA Center must be prepared to respond promptly to the Department's identification of particular training and technical assistance needs in general and those of particular CILs.

In coordination with the Department, the CILs T&TA Center must—

(a) Develop and provide training and technical assistance, based on the CILs' annual performance report survey and other available data, on topics related to the provision and expansion of independent living (IL) services (primarily the IL core services), fiscal and management practices, compliance with CIL standards and assurances, increased program efficiency, rigorous evaluations, and improved outcomes as measured by long-term goals and indicators;

(b) Develop and implement a plan to ensure that training and technical assistance efforts will reach all federally funded CILs and other eligible agencies;

(c) Refer CILs and eligible agencies to non-IL specific training and technical assistance available through government or non-government resources;

(d) Utilize a broad range of available, accessible technologies and methodologies to provide training and technical assistance to CILs and eligible agencies in the most effective and cost efficient manner;

(e) Provide focused, intensive, and rapid training and technical assistance to CILs identified by the Department as needing, or to CILs requesting, such assistance;

(f) Identify and develop accessible training and technical assistance materials and disseminate these materials to CILs and eligible agencies; and

(g) Coordinate and collaborate with other training and technical assistance projects funded by the Department to ensure that training and technical assistance activities are complementary and non-duplicative and that dissemination activities are effective and efficient. At a minimum, the CILs T&TA Center must coordinate with any SILC Training and Technical Assistance Center funded under the Statewide Independent Living Councils (SILCs) Training and Technical Assistance Center priority.

Priority 2—Statewide Independent Living Councils (SILCs) Training and Technical Assistance Center

This priority supports a SILCs Training and Technical Assistance Center (SILCs T&TA Center) to improve the performance of SILCs through greater access to timely and relevant training and technical assistance regarding SILC duties and operation.

In coordination with the Department, the SILCs T&TA Center must—

(a) Develop and provide training and technical assistance, based on the SILCs' annual performance report survey and other available data, on topics directly related to SILC legal responsibilities, including SILC organization and operation and the development of the State Plan for Independent Living;

(b) Develop and implement a plan to provide to all SILCs the training and technical assistance identified in paragraph (a) of this priority;

(c) Refer SILCs to non-IL specific training and technical assistance available through government or non-government resources;

(d) Utilize a broad range of available, accessible technologies and methodologies to provide training and technical assistance to SILCs in the most effective and cost efficient manner;

(e) Identify and develop accessible training and technical assistance materials and disseminate these materials to the SILCs;

(f) Provide training and technical assistance to SILCs to enhance SILC partnerships with State vocational rehabilitation agencies, CILs, and other organizations, with a focus on sharing successful operational experiences of other SILCs; and

(g) Coordinate and collaborate with other training and technical assistance projects funded by the Department to ensure that training and technical assistance activities are complementary and non-duplicative and dissemination activities are effective and efficient. At a minimum, the SILCs T&TA Center must coordinate with any CILs Training and Technical Assistance Center funded under the Centers for Independent Living (CILs) Training and Technical Assistance Center priority.

Program Authority: 29 U.S.C. 796f.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 86. (b) The regulations for this program in 34 CFR part 366. (c) The notice of final priorities published in the **Federal Register** on June 22, 2007 (72 FR 34450).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,444,165.

Maximum Award: We will reject any application that proposes a budget exceeding a total of $1,444,165 for both Priority 1 and Priority 2 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Entities that have experience in the operation of centers for independent living.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: April 4, 2012.

Deadline for Transmittal of Applications: May 21, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. *Deadline for Intergovernmental Review: July 18, 2012.*

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Centers for Independent Living—Training and Technical Assistance, CFDA number 84.132B must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Centers for Independent Living—Training and Technical Assistance at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include

the CFDA number's alpha suffix in your search (e.g., search for 84.132, not 84.132B).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Mary Williams, U.S. Department of Education, 400 Maryland Avenue SW., Room 5144, PCP, Washington, DC 20202–2800. FAX: (202) 245–7590.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention:

(CFDA Number 84.132B), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.132B), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in 34 CFR 366.15 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of this grant is to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating CILs to the following eligible entities authorized under title VII of the Rehabilitation Act of 1973, as amended: Eligible agencies, CILs, and SILCs.

In annual performance reports, grantees are required to provide specific information on the number of training activities, the topics of each training program, the number and types of participants served (i.e., CILs, SILCs, or eligible agencies), and summary data from participant evaluations.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial

assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Mary Williams, U.S. Department of Education, 400 Maryland Avenue SW., room 5144, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7586 or by email: *mary.williams@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 30, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–8107 Filed 4–3–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–98–M]

Application To Export Electric Energy; WSPP Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: WSPP Inc. (WSPP) has applied, on behalf of ten of its members, to renew the authority of those members to transmit electric energy from the United States to Canada, pursuant to section 202(e) of the Federal Power Act (FPA). The WSPP application also requested new export authority for two other members to transmit electric energy from the United States to Canada.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 19, 2012.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov*, or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by email to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On September 5, 1996, DOE authorized 42 members of the WSPP to export electric energy to Canada (Order No. EA–98–C). Over time, the specific members authorized to export has changed through the addition or deletion of various members in several subsequent proceedings in the EA–98 docket. Current Order No. EA–98–L was issued on May 6, 2009, and authorizes 13 WSPP member companies individually to transmit electric energy to Canada. That Order will expire on April 25, 2012.

The international transmission facilities authorized for use by those exporters are owned by the Bonneville Power Administration, also a WSPP member. The facilities consist of two 500-kV transmission lines and one 230-kV transmission line that interconnect with facilities of British Columbia Hydro and Power Authority, and one 230-kV transmission line that interconnects with West Kootenay Power, Limited. The construction, operation, maintenance, and connection of these international transmission facilities was previously authorized by Presidential Permits PP–10, PP–46, and PP–36, respectively.

WSPP filed an application with DOE on February 24, 2012, which was subsequently amended, on behalf of the following member companies for renewal of their export authority contained in Order No. EA–98–L: Avista Corporation, Edison Mission Marketing and Trading, Inc., Idaho Power Company, Northern States Power Company, PacifiCorp, Portland General Electric Company, Powerex Corporation, Public Service Company of Colorado, Puget Sound Energy, and TransCanada Energy Sales Ltd. The application, as amended, also requested new export authority for the following two members: BP Energy Company and Twin Eagle Resource Management, LLC.

WSPP also requested that DOE expedite the processing of its application in order to avoid any lapse in the export authority for some of its members. Accordingly, DOE has shortened the public comment period to 15 days.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the WSPP application to export electric energy to Canada should be clearly marked with OE Docket No. EA–98–M. An additional copy is to be filed directly with Arnold B. Podgorsky, General Counsel to WSPP and Patrick L. Morand, Associate, Wright & Talisman, P.C., 1200 G Street NW., Suite 600, Washington, DC 20005–3802. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/*

node/11845 or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on March 29, 2012.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–8078 Filed 4–3–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–296–B]

Application to Export Electric Energy; Rainbow Energy Marketing Corporation

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Rainbow Energy Marketing Corporation (Rainbow) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or motions to intervene must be submitted on or before May 4, 2012.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Christopher Lawrence, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Christopher.Lawrence@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) at 202–586–5260, or by email to *Christopher.Lawrence@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On November 9, 2004 the Department of Energy (DOE) issued Order No. EA–296 authorizing Rainbow to transmit electric energy from the United States to Canada as a power marketer for a two-year term. That Order expired on November 9, 2006. On September 17, 2007, DOE issued Order No. EA–210–A to Rainbow for a five-year term. That Order will expire on September 17, 2012. On March 13, 2012, Rainbow filed an application with DOE for renewal of the export authority contained in Order No. EA–296–A for an additional five-year term.

Note: You need to start identifying more specifics about the applicant, such as the type of entity.

In its application, Rainbow states that it ''does not own or control any physical electric generation or transmission facilities in the U.S. and does not have any franchised service territory in the U.S.'' Therefore, the electric power proposed to be exported to Canada will be surplus to the needs of the entities selling power to Rainbow. The application also indicates that Rainbow is a power marketer authorized by the Federal Energy Regulatory Commission to sell energy, capacity, and specified ancillary services at market-based rates.

The existing international transmission facilities to be utilized by Rainbow have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the Rainbow application to export electric energy to Canada should be clearly marked with OE Docket No. 296–B. An additional copy is to be filed directly with Joseph M. Wolfe, Rainbow Energy Marketing Corporation, Kirkwood Office Tower, 919 South 7th Street, Suite 405, Bismarck, ND 58504. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR Part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Dated: Issued in Washington, DC, on March 29, 2012.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2012–8081 Filed 4–3–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Secretarial Determination and Basis for Determination Under Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA) for Closure of the F-Tank Farm at the Savannah River Site and Clarification for Its Record of Decision: Savannah River Site High-Level Waste Tank Closure

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Secretarial Determination and Basis for Section 3116 Determination for Closure of the F-Tank Farm (FTF) at the Savannah River Site (FTF 3116 Basis Document). DOE prepared and approved the FTF 3116 Basis Document pursuant to Section 3116(a) of the NDAA, which provides that the Secretary of Energy may, in consultation with the U.S. Nuclear Regulatory Commission (NRC), determine that certain waste from reprocessing of spent nuclear fuel is not high-level waste if the provisions set forth in Section 3116(a) are satisfied. To make the determination for the FTF, the Secretary of Energy determined that the waste in the FTF: (1) Does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste; (2) has had highly radioactive radionuclides removed to the maximum extent practical; and (3)(A) does not exceed concentration limits for Class C low-level waste and will be disposed of in compliance with the performance objectives in 10 CFR part 61, Subpart C and pursuant to a State approved closure plan or State-issued permit; or (3)(B) exceeds concentration limits for Class C low-level waste but will be disposed of in compliance with the performance objectives of 10 CFR part 61, Subpart C; pursuant to a State-approved closure plan or State-issued

permit; and pursuant to plans developed by DOE in consultation with the NRC. DOE has also clarified its *Record of Decision: Savannah River Site High-Level Waste Tank Closure* issued on August 19, 2002 (67 FR 53784) in which the Department decided to implement the ''Stabilize Tanks—Fill with Grout'' option evaluated in the *Savannah River Site High-Level Waste Tank Closure Final Environmental Impact Statement* (EIS) (DOE/EIS–0303; May 2002). DOE is not changing its decision to implement the ''Stabilize Tanks—Fill with Grout'' option but is publishing this Notice to clarify that the decision to close the tanks has been made pursuant to NDAA Section 3116(a). All other aspects of the 2002 Record of Decision remain unchanged.

ADDRESSES: The Basis for Determination and the Supplement Analyses to the NEPA ROD is available on the Internet at *http://sro.srs.gov/f_htankfarmsdocuments.htm,* and *http://www.em.doe.gov/stakepages/wmdi_swd.aspx?PAGEID=WMDI* is publicly available at the following locations:

District of Columbia

U.S. Department of Energy, Freedom of Information Act, Public Reading Room, 1000 Independence Avenue SW., Room 1G–033, Washington, DC 20585, (202) 586–5955.

South Carolina

University of South Carolina–Aiken, Gregg-Graniteville Library, 471 University Parkway, Aiken, SC 29801, (803) 641–3320.

For more information, contact: Ms. Sherri Ross, DOE–SR, Building 704–S, Room 43, U.S. Department of Energy, Savannah River Operations Office, Aiken, SC 29802 (ATTN: F-Tank Farm Secretarial Determination and Basis).

SUPPLEMENTARY INFORMATION: The FTF is a 22-acre site, located at the Savannah River Site near Aiken, South Carolina. The FTF consists of 22 underground radioactive waste storage tanks and supporting ancillary structures. Two of those waste tanks, Tanks 17 and 20 were cleaned and operationally closed in 1997, prior to enactment of NDAA Section 3116. Accordingly, Tanks 17 and 20 are not within the scope of this FTF Section 3116 Basis Document. The major FTF ancillary structures are two evaporator systems, transfer lines, six diversion boxes, one catch tank, a concentrate transfer system, three pump pits, three pump tanks and eight valve boxes. There are three waste tank types in FTF with operating capacities ranging from 750,000 gallons (Type I tanks) to 1,300,000 gallons (Type III/IIIA and Type IV tanks). The waste tanks have varying degrees of secondary containment and in-tank structural features such as cooling coils and columns. All FTF waste tanks are constructed of carbon steel. The FTF was constructed to receive waste generated by various SRS production, processing and laboratory facilities.

DOE has initiated waste removal and cleaning of tanks and ancillary structures in the FTF using a process that includes removing bulk waste from tanks and ancillary structures and then deploying tested technologies to removing the majority of the remaining waste. After completing cleaning operations, a small amount of residual radioactive waste will remain in the tanks, ancillary equipment and piping. DOE plans to stabilize the residuals in the tanks and certain ancillary structures with grout. Tank waste storage and removal operations in the FTF are governed by a South Carolina Department of Health and Environmental Control (SCDHEC) industrial wastewater operating permit. Removal of tanks from service and stabilization of the FTF waste tanks and ancillary structures will be carried out pursuant to a State-approved closure plan, the *Industrial Wastewater General Closure Plan for F-Area Waste Tank Systems* (GCP). Specific Closure Modules for each tank or ancillary structure or groupings of tanks and ancillary structures have been developed and submitted to SCDHEC for approval. SCDHEC approved the specific and final closure configuration documentation and after grouting, the tank/system will be removed from the State's industrial wastewater permit. This FTF Section 3116 Basis Document applies to stabilized residuals in the waste tanks and ancillary structures, the waste tanks, and the ancillary structures in the FTF at the time of closure.

Dated: Issued in Washington, DC, on March 29, 2012.

Mark Gilbertson,

Deputy Assistant Secretary for Site Restoration.

[FR Doc. 2012–8075 Filed 4–3–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring, Surveillance and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 25, 2012, 1 p.m.–2:15 p.m.

ADDRESSES: Bradbury Science Museum, 15th and Central Avenue, Los Alamos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Environmental Monitoring, Surveillance and Remediation Committee (EMS&R): The EMS&R Committee provides a citizen's perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EMS&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda

- Welcome and Introductions, Doug Sayre, EMS&R Committee Chair and

Manuel Pacheco, WM Committee Chair
- Committee Business Items
  - Approve April 25, 2012, Meeting Agenda
  - Approve March 14, 2012, Committee Meeting Minutes
- Public Comment Period
- Presentation: DOE Budget Request for Fiscal Year 2014, Pete Maggiore, Assistant Manager for Environmental Operations, Los Alamos Site Office
- Adjournment

Public Participation: The NNMCAB's EMS&R and WM Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC, on March 30, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–8074 Filed 4–3–12; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Open Webinar.

SUMMARY: This notice announces an open webinar of the Biomass Research and Development Technical Advisory Committee under Section 9008(d) of the Food, Conservation, and Energy Act of 2008. The Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: April 24, 2012, 2 a.m.–4 p.m.

Webinar Instructions: To Register for the Webinar go to: *https://www1.gotomeeting.com/register/140123360.*

FOR FURTHER INFORMATION CONTACT: Elliott Levine, Designated Federal Officer, Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; (202) 586–1476; Email: *Elliott.Levine@ee.doe.gov* or Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:
- Presentation on The Analytical Basis for Setting Biofuels Technical Goals

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the webinar and/or to make oral statements regarding any of the items on the agenda, you must contact Elliott Levine at 202–586–1476; Email: *Elliott.Levine@ee.doe.gov* or Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com* at least 5 business days prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the webinar. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the webinar to facilitate the orderly conduct of business.

Minutes: The minutes of the webinar will be available for public review and copying at *http://biomassboard.gov/committee/meetings.html.*

Issued at Washington, DC, on March 29, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–8090 Filed 4–3–12; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–512–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Penalty Revenue Crediting Report of Natural Gas Pipeline Company of America LLC.
Filed Date: 3/23/12.
Accession Number: 20120323–5127.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: RP12–513–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits tariff filing per 154.204: 2012 Molycorp Nonconforming to be effective 4/24/2012.
Filed Date: 3/23/12.
Accession Number: 20120323–5131.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: RP12–514–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Tennessee Gas Pipeline Company, L.L.C. submits tariff filing per 154.204: Pro Forma Scheduling Priorities Secondary/Primary Delivery Points to be effective 12/31/9998.
Filed Date: 3/23/12.
Accession Number: 20120323–5145.
Comments Due: 5 p.m. ET 4/4/12.

Docket Numbers: RP12–515–000.
Applicants: Texas Gas Transmission, LLC.
Description: Southwestern Short Term Amendments to Negotiated Rate Agreements to be effective 3/27/2012.
Filed Date: 3/26/12.
Accession Number: 20120326–5095.
Comments Due: 5 p.m. ET 4/9/12.

Docket Numbers: RP12–516–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Storage Tracker Filing to be effective 3/26/2012.
Filed Date: 3/26/12.
Accession Number: 20120326–5128.
Comments Due: 5 p.m. ET 4/9/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1566–011.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Rate Case 2011—Settlement Implementation Clean Up Sheet No. 19 Corrected to be effective 2/1/2012.
Filed Date: 2/24/12.
Accession Number: 20120224–5153.
Comments Due: 5 p.m. ET 3/30/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 27, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8027 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2628–001; ER11–3959–002; ER11–4363–001.
Applicants: Lost Creek Wind, LLC, Post Rock Wind Power Project, LLC, Osage Wind, LLC.
Description: Notice of change in status of Lost Creek Wind, LLC et al.
Filed Date: 3/26/12.
Accession Number: 20120326–5191.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER11–3614–006; ER11–3551–003; ER11–3822–002; ER11–3553–003; ER11–3554–003; ER11–3824–002.
Applicants: Glacial Energy Holdings, Glacial Energy of New York, Glacial Energy of New England, Inc., Glacial Energy of New Jersey, Inc., Glacial Energy of California, Inc., Glacial Energy of Illinois, Inc.
Description: Notice of Non-Material Change in Status of the Glacial Sellers.
Filed Date: 3/26/12.
Accession Number: 20120326–5193.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1352–000.
Applicants: Southwest Power Pool, Inc.
Description: Ministerial Changes to Oklahoma Gas & Electric Co. Formula Rate Templates to be effective 7/26/2010.
Filed Date: 3/27/12.
Accession Number: 20120327–5005.
Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1353–000.
Applicants: Keystone Energy Partners, LP.
Description: Base Line Filing Cancellation to be effective 3/31/2012.
Filed Date: 3/27/12.
Accession Number: 20120327–5010.
Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1354–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc.'s Notice of Cancellation of Meter Agent Agreement.
Filed Date: 3/26/12.
Accession Number: 20120326–5188.
Comments Due: 5 p.m. ET 4/16/12.

Docket Numbers: ER12–1355–000.
Applicants: Iron Energy LLC.
Description: Baseline New to be effective 3/27/2012.
Filed Date: 3/27/12.
Accession Number: 20120327–5029.
Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1356–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: Agreement No. 1872 between Niagara Mohawk and Wheelabrator Hudson Falls to be effective 10/24/2011.
Filed Date: 3/27/12.
Accession Number: 20120327–5032.
Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1357–000.
Applicants: Louisville Gas and Electric Company.
Description: 03_27_12 Att P Rev NSI to be effective 6/1/2012.
Filed Date: 3/27/12.
Accession Number: 20120327–5037.
Comments Due: 5 p.m. ET 4/17/12.

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: March 27, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8025 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–48–000.
Applicants: Ensign Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Ensign Wind, LLC.
Filed Date: 3/27/12.
Accession Number: 20120327–5056.
Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: EG12–49–000.
Applicants: Tuscola Bay Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Tuscola Bay Wind, LLC.
Filed Date: 3/27/12.
Accession Number: 20120327–5059.
Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: EG12–50–000.
Applicants: Minco Wind III, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Minco Wind III, LLC.
Filed Date: 3/27/12.
Accession Number: 20120327–5062.
Comments Due: 5 p.m. ET 4/17/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1144–001; ER11–2005–003; ER11–2013–003; ER11–2014–003.

Applicants: CR Clearing, LLC, Exelon Generation Company, LLC, Wind Capital Holdings, LLC, Cow Branch Wind Power, L.L.C.

Description: Supplement to Updated Market Power Analysis.

Filed Date: 3/21/12.

Accession Number: 20120321–5170.

Comments Due: 5 p.m. ET 4/11/12.

Docket Numbers: ER12–1058–000.

Applicants: Oklahoma Gas and Electric Company.

Description: Supplemental for Docket ER12–1058 to be effective N/A.

Filed Date: 3/27/12.

Accession Number: 20120327–5055.

Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1358–000.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: 2011 Formula Rate Charges for Post-Retirement Benefits Other than Pensions of Northern States Power Company, a Wisconsin corporation.

Filed Date: 3/27/12.

Accession Number: 20120327–5049.

Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1359–000.

Applicants: Alliance NYGT, LLC.

Description: Baseline Market-Based Application to be effective 3/28/2012.

Filed Date: 3/27/12.

Accession Number: 20120327–5064.

Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1360–000.

Applicants: Pace Global Asset Management, LLC.

Description: NOTICE OF CANCELLATION to be effective 3/27/2012.

Filed Date: 3/27/12.

Accession Number: 20120327–5067.

Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1361–000.

Applicants: PacifiCorp.

Description: BPA Umpqua Business Center Construction Agreement to be effective 3/21/2012.

Filed Date: 3/27/12.

Accession Number: 20120327–5069.

Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1362–000.

Applicants: NaturEner Montana Wind Energy 2, LLC.

Description: Cancellation of Market-Based Rate Tariff to be effective 3/28/2012.

Filed Date: 3/27/12.

Accession Number: 20120327–5074.

Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1363–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Revised Wholesale Power Contracts Filing to be effective 5/28/2012.

Filed Date: 3/27/12.

Accession Number: 20120327–5125.

Comments Due: 5 p.m. ET 4/17/12.

Docket Numbers: ER12–1364–000.

Applicants: New England Power Company.

Description: Notice of Cancellation of Second Revised Service Agreement No. 200 with Rhode Island State Energy Statutory Trust 2000 of New England Power Company.

Filed Date: 3/27/12.

Accession Number: 20120327–5128.

Comments Due: 5 p.m. ET 4/17/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF11–512–000.

Applicants: Uilk Wind Farm, LLC.

Description: Refund Report of Uilk Wind Farm, LLC.

Filed Date: 3/27/12.

Accession Number: 20120327–5090.

Comments Due: 5 p.m. ET 4/17/12.

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: March 27, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8026 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–10–000, *et al.*]

Puget Sound Energy, Inc., v. *All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity, Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement;* Notice of Designation of Certain Commission Personnel as Non-Decisional

Commission staff member Aaron Siskind, of the Office of Energy Market Regulation, was previously assigned to settlement and litigation proceedings in the above-referenced dockets when he worked for the Office of Administrative Litigation.

As non-decisional staff, Mr. Siskind will not participate in an advisory capacity in the Commission's review of any future filings in the above-referenced dockets, including offers of settlement or settlement agreements.

Mr. Siskind will not be assigned as advisory staff to review and process subsequent filings that are made in the above-referenced dockets, including any offer of settlement or settlement agreement. Non-decisional staff and advisory staff are prohibited from subsequent communications with one another concerning matters in the above-referenced dockets.

Dated: March 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8021 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000, *et al.*]

San Diego Gas & Electric Company v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange;* Notice of Designation of Certain Commission Personnel as Non-Decisional

Commission staff member Aaron Siskind, of the Office of Energy Market Regulation, previously was assigned to assist the Office of Administrative Litigation in settlement and litigation proceedings in the above-referenced dockets. In addition, Mr. Siskind

remains assigned to the designated matters to assist in litigation proceedings.

As non-decisional staff, Mr. Siskind will not participate in an advisory capacity in the Commission's review of any future filings in the above-referenced dockets, including offers of settlement or settlement agreements.

Mr. Siskind will not be assigned as advisory staff to review and process subsequent filings that are made in the above-referenced dockets, including any offer of settlement or settlement agreement. Non-decisional staff and advisory staff are prohibited from subsequent communications with one another concerning matters in the above-referenced dockets.

Dated: March 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8020 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1355–000]

Iron Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Iron Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8031 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1329–000]

Wildcat Wind Farm I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Wildcat Wind Farm I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8030 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1320–000]

Desert View Power, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Desert View Power, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR

part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8029 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1316–000]

Silver State Solar Power North, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Silver State Solar Power North, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8028 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1359–000]

Alliance NYGT, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Alliance NYGT, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–8024 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14365–000]

FFP Project 108, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 17, 2012, FFP Project 108, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers (Corps) R. D. Bailey Dam located on the Guyandotte River in Mingo and Wyoming Counties, West Virginia. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed R. D. Bailey Water Power Project would consist of the following: (1) A new 60-foot-long by 40-foot-wide by 25-foot-high powerhouse to be located downstream on the tailrace side of R. D. Bailey Dam; (2) a new bifurcating steel structure to be built on the existing outlet tunnel and consisting of a gated bypassed outlet and a 10-foot-diameter steel penstock; (3) two new turbine generator units for a total installed capacity of 7.8 megawatts; (4) a new 6.5-mile-long, 14.7-kilovolt (kV) transmission line; (5) a 4.16/46-kV substation; and (6) appurtenant facilities. The proposed project would have an annual generation of 30,000 megawatt-hours, and operate on a modified run-of-river mode as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, FFP Project 108, LLC, 239 Causeway Street, Suite 300, Boston, MA 02114; phone: (978) 283–2822.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14365–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8019 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13305–003]

Whitestone Power and Communications; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 5, 2012, Whitestone Power and Communications filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Microturbine Hydrokinetic River-In-Stream Energy Conversion Project (Whitestone Project or project) to be located on the Tanana River within an Unorganized Borough, near Delta Junction, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Whitestone Project would consist of: (1) A 12-foot-wide, 16-foot-diameter Poncelet undershot water wheel; (2) a 34-foot-long, 19- to 24-foot-wide, aluminum-frame floatation platform mounted on a 34-foot-long, 3.5-foot-diameter high-density-polyethylene (HDPE) pontoon and a 34-foot-long, 3-foot-diameter HDPE pontoon; (3) a 100-kilowatt turbine/generator unit; (4) a 33-foot-long, 3.5-foot-wide gangway from the shore to the floating pontoon; (5) three anchoring cables to secure the flotation platform to the shore, including a 30-foot-long primary safety tether, a 117-foot-long primary cable, and a 100-foot-long secondary cable; (6) an approximately 900-foot-long transmission cable from the floatation platform to an existing Golden Valley Electric Association distribution line; and (7) appurtenant facilities. The project is anticipated to operate from April until October, with an estimated annual generation of 200 megawatt-hours.

Applicant Contact: Mr. Steven M. Selvaggio, Whitestone Power and Communications, P.O. Box 1630, Delta Junction, Alaska 99737; phone: (907) 895–4938.

FERC Contact: Dianne Rodman; phone: (202) 502–6077.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of

intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13305) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8023 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revisions to FERC Online, eSubscription Service

Take notice that on March 30, 2012, the Federal Energy Regulatory Commission (Commission) will update its eSubscription service that provides email notification when documents are added to eLibrary in a subscribed-to docket. eSubscription is one of the Commission's ''FERC Online'' services available to users that have established an eRegistration account on *www.ferc.gov.*

Currently, when users eSubscribe to a docket or project number they are provided options to: (1) ''Subscribe to open dockets only''; (2) ''subscribe to the docket only''; or (3) ''subscribe to the root and all existing and new sub-dockets.'' To ensure that eSubscribers receive all of the email notifications relating to dockets they are subscribed to, the new release will only offer subscription to a docket or project number without the additional options mentioned above (e.g. options (1) and (2)). With this update, existing eSubscriptions will default to the root and all sub-dockets in subscribed-to dockets. eSubscribing to Commission Press Releases will not be affected by this update and will continue to be available for eSubscription.

Accordingly, this update will ensure that eSubscribers receive email notifications when various types of documents are added to a subscribe-to docket(s) in eLibrary, even if those documents are assigned new sub-dockets (e.g., requests for rehearing) or are filed in a ''closed'' docket.

For questions about eSubscription or assistance, please contact *efiling@ferc.gov* or call 202–502–8258.

Dated: March 28, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8022 Filed 4–3–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0245; FRL–9515–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Inorganic Arsenic Emissions From Glass Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 4, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2011–0245, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 FR 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0245, which is available for public viewing either online at *http://www.regulations.gov,* or in person at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other

information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (Renewal)

ICR Numbers: EPA ICR Number 1081.10, OMB Control Number 2060–0043.

ICR Status: This ICR is scheduled to expire on May 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Inorganic Arsenic Emissions from Glass Manufacturing Plants were proposed on July 20, 1983, and promulgated on August 4, 1986. The standards were amended on both May 31, 1990 and October 17, 2000. These standards apply to each glass melting furnace that uses commercial arsenic as a raw material. The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 61, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 61, subpart N.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 61, subpart N, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 49 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: owners or operators of inorganic arsenic emissions from glass manufacturing plants.

Estimated Number of Respondents: 16.

Frequency of Response: Initially, occasionally, annually, and semiannually.

Estimated Total Annual Hour Burden: 3,080.

Estimated Total Annual Cost: $351,094, which is comprised of $295,094 in labor costs, $56,000 in Operations & Maintenance (O&M) costs, and no annualized capital/start-up costs.

Changes in the Estimates: There is a decrease in the labor hours to the respondents in this ICR compared to the previous ICR. This is due to a calculation error in the burden estimate for the previous ICR.

There is an increase in the total respondent and Agency costs as currently identified in the OMB Inventory of approved Burdens. This increase is not due to any program changes. The change in cost estimated reflects updated labor rates available from the Bureau of Labor Statistics.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–8046 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0891; FRL 9514–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0891, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460 and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Staci Gatica, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9469; fax number: (202) 343–2338; email address: *gatica.staci@epa.gov.* You may also visit the Ozone Depletion Web site at *www.epa.gov/ozone/strathome.html.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 30, 2011 (76 FR 74055), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one late comment, which is addressed in the ICR. Any additional

comments should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2011–0891, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal).

ICR numbers: EPA ICR No. 1432.30, OMB Control No. 2060–0170.

ICR status: This ICR is currently scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR authorizes the recordkeeping and reporting requirements established in the regulations stated in 40 CFR part 82, subpart A and as required by the United States' commitments under *The Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). This information collection allows EPA to monitor the United States' compliance with the Protocol and Title VI of the Clean Air Act Amendments of 1990 (CAA).

Under its Protocol commitments, the United States is obligated to cease production and import of Class I controlled substances excluding chlorofluorocarbons (CFCs) that are subject to essential use exemptions, methyl bromide that is subject to critical use exemptions or exemptions for quarantine and preshipment uses, previously used material, and material that will be transformed, destroyed, or exported to developing countries. The Protocol also establishes limits and reduction schedules leading to the eventual phaseout of Class II controlled substances with similar exemptions beyond the phaseout. The CAA has its own limits on production and consumption of controlled substances that EPA must adhere to and enforce.

Under 40 CFR 82.13, producers, importers, exporters, and distributors of Class I ozone-depleting substances (ODS) must meet quarterly, annual, and/or transactional recordkeeping and reporting requirements. This information collection is conducted to meet U.S. obligations under the Montreal Protocol.

The reporting and recordkeeping requirements for Class I ODS will enable EPA to: (1) Ensure compliance with the restrictions on production, import, and export of Class I controlled substances; (2) allow exempted production and import for certain uses and the consequent tracking of that production and import; (3) address industry and Federal concerns regarding the illegal import of mislabeled used controlled substances; (4) satisfy the United States' obligations to report data under Article 7 of the Montreal Protocol; (5) fulfill statutory obligations under Section 603(b) of the CAA for reporting and monitoring; (6) provide information to report to the U.S. Congress on the production, use, and consumption of Class I controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

The reported data will enable EPA to maintain compliance with the Protocol requirements for annual data submission on the production of ODS and analyze technical use data to ensure that exemptions are used in accordance with requirements included in the annual authorization rulemakings.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Chemical Producers, Importers, and Exporters (CFCs); Research and Development (Laboratories); and MeBr Producers, Importers, Exporters, Distributors, and Applicators.

Estimated Number of Respondents: 1143.

Frequency of Response: quarterly, annually, occasionally.

Estimated Total Annual Hour Burden: 2583 hours.

Estimated Total Annual Cost: $277,085, which includes $271,550 in labor costs and $5,535 in operation and maintenance costs.

Changes in the Estimates: There is a decrease of 227 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the continued phaseout and decreased use of Class I controlled substances, which subsequently reduces reporting obligations. EPA also offers electronic reporting to the regulated community via the Agency's central data exchange (CDX), which has contributed to the reduction in burden for both the Agency as well as the regulated community.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–8054 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0244; FRL–9515–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Polyether Polyols Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before May 4, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0244, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0244, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Polyether Polyols Production (Renewal).

ICR Numbers: EPA ICR Number 1811.07, OMB Control Number 2060–0415.

ICR Status: This ICR is scheduled to expire on May 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Polyether Polyols Production (40 CFR part 63 subpart PPP) were proposed on September 4, 1997 (62 *FR* 46818), and promulgated on June 1, 1999 (64 *FR* 29420). These regulations apply to existing facilities and new facilities that engage in the manufacture of polyether polyols (which also include polyether monools). The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 62, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart PPP.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart PPP, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 72 hours per response. ''Burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of polyether polyols production.

Estimated Number of Respondents: 83.

Frequency of Response: Initially, annually, and semiannually.

Estimated Total Annual Hour Burden: 13,189.

Estimated Total Annual Cost: $1,469,280, which includes $1,263,792 in labor costs, $205,488 in capital/startup costs, and no operation and maintenance (O&M) costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The adjustment increase in burden hours from the most recently approved ICR is due to an increase in the number of sources subject to the standard. The increase in costs reflects updated labor rates for both the respondents and Agency.

There is also an increase in the capital/startup costs in this ICR compared to the previous ICR due to an increase in the number of affected sources. The previous ICR estimates annualized capital/startup costs for existing and new facilities. This ICR reflects the on-going annualized capital/startup costs for all facilities including new facilities that have become subject to the standard in the past three years.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–8066 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0841; FRL–9515–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Hazardous Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 4, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2011–0841, to (1) EPA online using *www.regulations.gov* (our preferred method), by email *to a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shiva Garg, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, (mail code 5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–8459; fax number: 703–308–0522; email address: *garg.shiva@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 18, 2012 (77 FR 2535), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2011–0841, which is available for online viewing at *www.regulations.gov,* or in person viewing at the OAR Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Hazardous Waste Combustors (Renewal).

ICR numbers: EPA ICR No. 1773.10, OMB Control No. 2050–0171.

ICR Status: This ICR is scheduled to expire on June 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR part 63, Subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, Subpart EEE. Hazardous waste combustors include: hazardous waste incinerators, hazardous waste cement kilns, hazardous waste lightweight aggregate kilns, hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers, and hazardous waste hydrochloric acid production furnaces. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, notification of exceedances, notification of performance test and continuous monitoring system evaluation, notification of intent to comply, notification of compliance, notification if the owner or operator elects to comply with alternative requirements, initial performance tests, and periodic reports and results.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 42 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information;

and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of combustion units burning hazardous waste, States.

Estimated Number of Respondents: 208.

Frequency of Response: Initially, occasionally, semiannually, and annually.

Estimated Total Annual Hour Burden: 142,447 Hours.

Estimated Total Annual Cost: $19,665,792, includes $100,059 for annualized capital cost and $3,951,790 for operation and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease of 57,450 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This burden decrease is due to a decrease in the number of estimated hazardous waste combustors affected by this ICR since the last renewal.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–8055 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9655–9]

California State Nonroad Engine Pollution Control Standards; Large Spark-Ignition (LSI) Engines; New Emission Standards and In-Use Fleet Requirements; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Decision.

SUMMARY: EPA is granting the California Air Resources Board's (CARB's) request for authorization of California's emission standards and certification and test procedures for large spark-ignition nonroad engines and in-use fleet average emission requirements for large- and medium-sized fleets. California's LSI in-use fleet requirements are applicable to fleets comprised of four or more pieces of equipment powered by LSI engines, including forklifts, industrial tow tractors, sweepers/scrubbers, and airport ground support equipment.

DATES: Petitions for review must be filed by June 4, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2011–0830. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA–HQ–OAR–2011–0830 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Kristien G. Knapp, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343–9949. Fax: (202) 343–2800. Email: *knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. California's LSI Regulations

By letter dated December 10, 2008, CARB submitted to EPA its request pursuant to section 209(e) of the Clean Air Act (''CAA'' or ''the Act''), regarding its regulation of emissions from new off-road large spark-ignition (LSI) engines and its in-use fleet requirements for forklifts and other industrial equipment with LSI engines.[1] The LSI regulations are designed to reduce emissions of hydrocarbons (HC) and oxides of nitrogen (NO_X) from forklifts and other industrial equipment powered by LSI engines. CARB approved the LSI regulations at a public hearing on May 25, 2006 (by Resolution 06–11).[2] After making modifications to the regulation available on December 1, 2006, and February 1, 2007 for supplemental public comment, CARB's Executive Officer formally adopted the LSI regulations in Executive Order R–07–001 on March 2, 2007.[3] The LSI regulations are codified at title 13, California Code of Regulations, sections 2775 through 2775.2.[4]

Underpinning CARB's LSI regulations is a set of emission standards for new off-road LSI engines beginning in 2007. The emission standards include: adoption of EPA's 2007 and later model year emission standards for the same engines, more stringent standards for the 2010 and later model years, optional certification standards, and more rigorous certification and test procedures. The LSI regulations also apply to operators of large- and medium-sized fleets of forklifts, sweepers/scrubbers, airport ground support equipment (GSE), and industrial tow tractors with engine displacements of greater than one liter. These fleets must meet a fleet average in-use emission standard.

B. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for new nonroad engines or vehicles. States are also preempted from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce such standards and other requirements, unless EPA makes one of three findings. In addition, other states with attainment plans may adopt and enforce such regulations if the standards, and

[1] California Air Resources Board (''CARB''), ''Request for Authorization,'' December 10, 2008, EPA–HQ–OAR–2011–0830–0001.

[2] CARB Enclosure 1, ''Resolution 06–11,'' EPA–HQ–OAR–2011–0830–0002.

[3] CARB Enclosure 2, ''Executive Order R–07–001,'' EPA–HQ–OAR–2011–0830–0003.

[4] CARB Enclosure 3, ''Final Regulation Order,'' EPA–HQ–OAR–2011–0830–0004.

implementation and enforcement procedures, are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[5] EPA later revised these regulations in 1997.[6] As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[7]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

C. Burden of Proof

In *Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*''), the U.S. Court of Appeals stated that the Administrator's role in a section 209 proceeding is to:

> consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[8]

The court in *MEMA I* considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [9]

The court upheld the Administrator's position that, to deny a waiver, there must be ''clear and compelling evidence'' to show that proposed procedures undermine the protectiveness of California's standards.[10] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[11]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [12]

Opponents of the waiver bear the burden of showing that the criteria for a denial of California's waiver request have been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver in a section 209 proceeding:

> [t]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[13]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [14] Therefore, the Administrator's burden is to act ''reasonably.'' [15]

D. EPA's Administrative Process in Consideration of California's LSI Regulations

Upon review of CARB's request, EPA offered an opportunity for a public hearing, and requested written comment on issues relevant to a full section 209(e) authorization analysis, by publication of a **Federal Register** notice on October 31, 2011.[16] Specifically, we requested comment on: (a) Whether CARB's determination that its

[5] 59 FR 36969 (July 20, 1994).

[6] *See* 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[7] *See* 59 FR 36969 (July 20, 1994).

[8] *MEMA I,* 627 F.2d at 1122.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *See, e.g.,* 40 FR 21102–103 (May 28, 1975).

[13] *MEMA I,* 627 F.2d at 1121.

[14] *Id.* at 1126.

[15] *Id.*

[16] 76 FR 67184 (October 31, 2011).

standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

In response to EPA's October 31, 2011 **Federal Register** notice, EPA received one public comment, from Airlines for America (''A4A''). A4A comments that California's LSI regulations as applicable to airport ground support equipment is preempted by the Federal Aviation Act and the Airline Deregulation Act.

II. Discussion

A. California's Protectiveness Determination

Section 209(e)(2)(i) of the Act instructs that EPA cannot grant an authorization if the agency finds that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. CARB's Board made a protectiveness determination in Resolution 06–11, finding that California's LSI regulations will not cause the California emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.[17] CARB presents that California's LSI program is at least as stringent as the federal LSI program ''because for 2010 and later model-year LSI engines, California's standard for $HC+NO_X$ at 0.8 g/kW-hr is more stringent than applicable federal standard at 2.0 g/kW-hr and California's other LSI engine standards are equivalent to federal standards for these model years.'' [18] CARB contends that its protectiveness determination, based on the stringency of its program as compared to the federal program, ''clearly is not arbitrary and capricious.'' [19]

EPA did not receive any comments challenging California's protectiveness determination. Therefore, based on the record before us, EPA finds that opponents of the authorization have not shown that California was arbitrary and capricious in its determination that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

B. Need for California Standards To Meet Compelling and Extraordinary Conditions

Section 209(e)(2)(ii) of the Act instructs that EPA cannot grant an authorization if the agency finds that California ''does not need such California standards to meet compelling and extraordinary conditions * * *.'' This criterion restricts EPA's inquiry to whether California needs its own mobile source pollution program to meet compelling and extraordinary conditions, and not whether any given standards are necessary to meet such conditions.[20] As discussed above, for over forty years CARB has repeatedly demonstrated the need for its mobile source emissions program to address compelling and extraordinary conditions in California. In its Resolution 06–11, CARB affirmed its longstanding position that California continues to need its own motor vehicle and engine program to meet its serious air pollution problems. Likewise, EPA has consistently recognized that California continues to have the same ''geographical and climatic conditions that, when combined with the large numbers and high concentrations of automobiles, create serious pollution problems.'' [21] Furthermore, no commenter has presented any argument or evidence to suggest that California no longer needs a separate mobile source emissions program to address compelling and extraordinary conditions in California. Therefore, EPA has determined that we cannot deny California an authorization for its LSI regulations under section 209(e)(2)(ii).

C. Consistency With Section 209 of the Clean Air Act

Section 209(e)(2)(iii) of the Act instructs that EPA cannot grant an authorization if California's standards and enforcement procedures are not consistent with section 209. As described above, EPA has historically evaluated this criterion for consistency with sections 209(a), 209(e)(1), and 209(b)(1)(C).

1. Consistency With Section 209(a)

To be consistent with section 209(a) of the Clean Air Act, California's LSI regulations must not apply to new motor vehicles or new motor vehicle engines. California's LSI regulations expressly apply only to off-road vehicles and do not apply to engines used in motor vehicles as defined by section 216(2) of the Clean Air Act.[22] No commenter presented otherwise. Therefore, EPA cannot deny California's request on the basis that California's LSI regulations are not consistent with section 209(a).

2. Consistency With Section 209(e)(1)

To be consistent with section 209(e)(1) of the Clean Air Act, California's LSI regulations must not affect new farming or construction vehicles or engines that are below 175 horsepower, or new locomotives or their engines. CARB presents that the Board ''ensured consistency with section 209(e)(1) by specifically excluding new off-road engines under 175 horsepower primarily used in farm and construction vehicles and equipment from the definition of off-road LSI engines.'' [23] No commenter presented otherwise. Therefore, EPA cannot deny California's request on the basis that California's LSI regulations are not consistent with section 209(e)(1).

3. Consistency With Section 209(b)(1)(C)

The requirement that California's standards be consistent with section 209(b)(1)(C) of the Clean Air Act effectively requires consistency with section 202(a) of the Act. California standards are inconsistent with section 202(a) of the Act if there is inadequate lead-time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that timeframe. California's accompanying enforcement procedures would also be inconsistent with section 202(a) if federal and California test procedures conflicted. The scope of EPA's review of whether California's action is consistent with section 202(a) is narrow. The determination is limited to whether those opposed to the authorization or waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures

[17] ''BE IT FURTHER RESOLVED that the Board hereby determines, pursuant to section 209(e)(2) of the federal Clean Air Act that the emission standards and other requirements related to the control of emissions adopted as part of these regulations are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, that California needs the adopted standards to meet compelling and extraordinary conditions, and that the adopted standards and accompanying enforcement procedures are consistent with the provisions in section 209.'' CARB, Resolution 06–11, EPA–HQ–OAR–2011–0830–0003.

[18] CARB, Request for Authorization at 19.

[19] *Id.*

[20] *See* 74 FR 32744, 32761 (July 8, 2009); 49 FR 18887, 18889–18890 (May 3, 1984).

[21] 49 FR 18887, 18890 (May 3, 1984); *see also* 76 FR 34693 (June 14, 2011), 74 FR 32744, 32763 (July 8, 2009), and 73 FR 52042 (September 8, 2008).

[22] CARB, Request for Authorization at 20.

[23] *Id.*

impose requirements inconsistent with the federal test procedures.[24]

a. Technological Feasibility

Congress has stated that the consistency requirement of section 202(a) relates to technological feasibility.[25] Section 202(a)(2) states, in part, that any regulation promulgated under its authority ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' Section 202(a) thus requires the Administrator to first determine whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. The latter scenario also requires the Administrator to decide whether the cost of developing and applying the technology within that time is feasible. Previous EPA waivers are in accord with this position.[26] For example, a previous EPA waiver decision considered California's standards and enforcement procedures to be consistent with section 202(a) because adequate technology existed as well as adequate lead-time to implement that technology.[27] Subsequently, Congress has stated that, generally, EPA's construction of the waiver provision has been consistent with congressional intent.[28]

CARB presents that the technology required to comply with its LSI regulations is currently available, and that it has provided sufficient lead-time, giving consideration to cost of compliance.[29] CARB points to EPA's own analysis in the federal rule for these same engines, but also separately concluded that fleet owners will be able to absorb or pass compliance costs to their customers. CARB's LSI fleet requirements progressively increase in stringency from year-to-year, and allow a variety of compliance options, including combinations of retrofits that have already been verified, lower-emission purchases, and zero emission purchases. Capital costs of these options range from $30 to $5,000, and may be exceeded by resultant lowered fuel use and lessened maintenance. CARB also points out that fleet requirements apply selectively, provide several exemptions, and that compliance extensions may be granted.

EPA did not receive any comments suggesting that CARB's standards and test procedures are technologically infeasible. Consequently, based on the record, EPA cannot deny California's authorization based on technological infeasibility.

b. Consistency of Certification Procedures

California's standards and accompanying enforcement procedures would also be inconsistent with section 202(a) if the California test procedures were to impose certification requirements inconsistent with the federal certification requirements. Such inconsistency means that manufacturers would be unable to meet both the California and federal testing requirements using the same test vehicle or engine.[30] CARB presents that the LSI fleet requirements raise no issue regarding test procedure consistency because there are no analogous federal test procedures for LSI retrofit technologies.[31] CARB also points out that its retrofit verification program is a voluntary program available to retrofit device manufacturers, and not directly required of fleet owners.

EPA received no comments suggesting that CARB's LSI regulations pose any test procedure consistency problem. Therefore, based on the record, EPA cannot find that CARB's testing procedures are inconsistent with section 202(a). Consequently, EPA cannot deny CARB's request based on this criterion.

D. Other Issues

Airlines for America (''A4A'') has provided comments opposing EPA's grant of authorization for California's LSI regulations. The reasons A4A provides in its comments are outside the scope of EPA's scope of review of California authorization requests under section 209(e)(2). A4A claims that California's LSI rules are preempted by the Federal Aviation Act and the Airline Deregulation Act. As EPA has stated on numerous occasions, EPA's review of California regulations under section 209 is not a broad review of the reasonableness of the regulations or its compatibility with all other laws. Sections 209(b) and 209(e) of the Clean Air Act limit our authority to deny California requests for waivers and authorizations to the three criteria listed therein. As a result, EPA has consistently refrained from denying California's requests for waivers and authorizations based on any other criteria.[32] In instances where the U.S. Court of Appeals has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the Court has upheld and agreed with EPA's determination.[33] A4A's comment raises issues of federal preemption that are not included within the criteria listed under sections 209(b) and 209(e).[34] Therefore, in considering whether to grant authorization for California's LSI regulations under section 209(e), EPA cannot deny California's request for authorization based on the issues raised by A4A.

E. Authorization Determination for California's LSI Regulations

After a review of the information submitted by CARB and A4A, EPA finds that those opposing California's request have not met the burden of demonstrating that authorization for California's LSI regulations should be denied based on any of the statutory criteria of section 209(e)(2). For this reason, EPA finds that an authorization for California's LSI regulations should be granted.

III. Decision

The Administrator has delegated the authority to grant California section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating California's LSI regulations, CARB's submissions, and the public comments from A4A, EPA is granting an authorization to California for its LSI regulations.

My decision will affect not only persons in California, but also entities outside the State who must comply with California's requirements. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by June 4, 2012. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

[24] *MEMA I,* 627, F.2d at 1126.

[25] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[26] *See, e.g.,* 49 FR 1887, 1895 (May 3, 1984); 43 FR 32182, 32183 (July 25, 1978); 41 FR 44209, 44213 (October 7, 1976).

[27] 41 FR 44209 (October 7, 1976).

[28] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[29] CARB, Request for Authorization at 24–28.

[30] *See, e.g.,* 43 FR 32182 (July 25, 1978).

[31] CARB, Request for Authorization at 28.

[32] *See, e.g.,* 74 FR 32744, 32783 (July 8, 2009).

[33] *See Motor and Equipment Manufacturers Ass'n* v. *Nichols,* 142 F.3d 449, 462–63, 466–67 (D.C. Cir. 1998), *Motor and Equipment Manufacturers Ass'n* v. *EPA,* 627 F.2d 1095, 1111, 1114–20 (D.C. Cir. 1979).

[34] A4A may raise these issues in a direct challenge to California's regulations in other forums, but these issues are not relevant to EPA's limited review under section 209.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: March 29, 2012.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2012–8112 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0230; FRL–9343–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review Problem Formulation for the Reassessment of Ecological Risks from the Use of Atrazine.

DATES: The meeting will be held on June 12–14, 2012, from 9 a.m. to approximately 5:30 p.m. and on June 15, 2012, from 9 a.m. to approximately 12:30 p.m.

Comments. The Agency encourages that written comments be submitted by May 29, 2012, and requests for oral comments be submitted by June 5, 2012. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after May 29, 2012, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before April 18, 2012.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's Web site, *http://www.epa.gov/scipoly/sap* for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0230, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2012–0230. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0130; fax number: (202) 564–

8382; email address: *matten.sharlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

C. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2012–0230 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES,** no later than May 29, 2012, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after May 29, 2012, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments.* The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than June 5, 2012, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Aquatic community ecology, surface water monitoring, water quality, environmental fate and transport, aquatic toxicity, plant toxicity, and statistics. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before April 18, 2012. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10–12 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer

review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP Web site at *http://www.epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

In 2006, EPA initiated a program called Registration Review to re-evaluate all pesticides on a regular cycle as part of the requirements of the FQPA. The program reviews each pesticide active ingredient every 15 years to make sure that as the ability to assess risks to human health and the environment evolves and as policies and practices change, all pesticide products in the marketplace can still be used safely. EPA will soon be reviewing atrazine as part of Registration Review.

An important step in the development of a risk assessment is the problem formulation. In a problem formulation, available information, including stressor sources and characteristics, exposure, ecological effects on plants and animals (*e.g.,* amphibians, fish, invertebrates, birds, and mammals), and characteristics of the ecosystem(s), is used to define assessment endpoints and to develop a preliminary understanding of potential risks (i.e., develop a risk hypothesis and conceptual model) associated with the use of a pesticide. The problem formulation also serves as an opportunity to identify missing information/uncertainties that may limit the assessment and any assumptions that may be made in the absence of such data. This SAP meeting will focus on the proposed use of the Plant Assemblage Toxicity Index (PATI)-model, amphibians, and monitoring data all which are components of the problem formulation.

For the June 2012 SAP meeting, EPA will provide an overview of the current state of information on atrazine use, environmental fate (exposure), and ecological effects (toxicity) for assessing the potential ecological risk from the use of atrazine. Emphasis of the SAP meeting will be directed at re-evaluation of micro/mesocosm studies and their impact on a PATI-derived level of concern (LOC) for aquatic plant communities and a strategy for using the PATI-derived LOC for identification of watersheds at risk. The strategy will employ adjustments to control for bias in atrazine concentrations from monitoring data according to sampling frequency. EPA will also include a review of atrazine studies with amphibians published in the open literature since the 2007 SAP on amphibians. This review will explore whether additional effects have been associated with exposure to atrazine and whether there is a relationship between effects reported across various studies and common study design elements. The SAP will be asked to comment on whether the review is thorough and whether uncertainties have been sufficiently characterized.

The Interim Reregistration Eligibility Decision (IRED) presented the results of the atrazine ecological risk assessment that identified the potential for community and population risk to sensitive aquatic species. Information in the revised IRED was based in part on the review and recommendations of the SAP which met in June 2003 to discuss the potential developmental effects of atrazine on amphibians. At that meeting, the Panel concurred with EPA's analysis that there was sufficient evidence to formulate a hypothesis that atrazine exposure may impact gonadal development in amphibians, but there were insufficient data at that time to confirm or refute the hypothesis. This led EPA to seek additional data through a data call-in (DCI) to reduce uncertainties regarding potential risk to amphibians.

In October 2007, EPA convened a second SAP meeting to evaluate available data on atrazine effects on gonadal development in amphibians. The SAP reviewed the document entitled ''White Paper on the Potential for Atrazine to Affect Amphibian Gonadal Development'' and concurred with EPA that atrazine does not consistently affect amphibian gonadal development. Although the 2003 SAP indicated that African clawed frog (*Xenopus laevis*) was an appropriate test species given the extent to which the animal is used in amphibian developmental studies, the 2007 Panel concluded that a major uncertainty in the registrant data was the use of *X. laevis* as the test organism and the Panel recommended that additional studies were warranted on North American frog species. The SAP acknowledged though that there was uncertainty whether study methods for North American species were sufficiently developed or vetted to yield consistent results. Following the October 2007 SAP meeting, EPA determined that it was reasonable to reject the hypothesis that atrazine exposure can affect gonadal development. Consistent with the recommendations from the 2003 SAP, the Agency also determined, that given the absence of consistent effects and inability to reproduce effects used to support the hypothesis that atrazine affects amphibian development, there was no compelling reason to pursue additional testing with regard to the potential effects of atrazine on amphibian gonadal development. However, the Agency acknowledged that it would continue to monitor research on this subject as it becomes available.

Also as a condition of the 2003 reregistration, the atrazine registrants were required to develop a monitoring program to determine the extent to which atrazine concentrations associated with corn, sorghum, and sugarcane production may be exceeding levels that could cause effects to aquatic plant communities. Forty watersheds representing high atrazine use locations vulnerable to atrazine runoff were selected for monitoring using a

stratified, random statistical survey design. Sampling within these watersheds began in 2004 and is ongoing in selected watersheds. There are an additional 25 sites where monitoring began in 2010 to refine the approach for identifying vulnerable watersheds. EPA is evaluating the results of the atrazine monitoring program, also in part, to identify the characteristics of those watersheds that resulted in atrazine exposures exceeding the Agency's LOC and to extrapolate those results to other non-monitored locations to determine where atrazine concentrations may exceed the LOC.

In December 2007, EPA presented to the SAP the use of the Comprehensive Aquatic Systems Model (CASM) as a tool to determine an LOC that relates time variable monitoring data to effects identified in a series of microcosm and mesocosm studies. The SAP recommended that EPA:

1. Work with the CASM–Atrazine model to make the population time series more realistic;

2. Provide a better validation of this model, and

3. Conduct a more comprehensive sensitivity analysis.

In May 2009, EPA presented a simpler alternative to the CASM-based approach to relate surface water monitoring data to the microcosm and mesocosm data, called the PATI. Other issues presented at this meeting included a revised assessment of the microcosm and mesocosm exposure profiles, an update on the ecological monitoring program results, interpretation of the monitoring results with PATI, identification of the watershed factors driving atrazine runoff, and extrapolation of those results to the entire atrazine use area to identify other areas where atrazine exposures may exceed the LOC. The 2009 Panel suggested that both the CASM–Atrazine model (presented by Syngenta) and PATI were suitable assessment tools for atrazine. The PATI model was recommended by the SAP as a generic assessment tool for developing an LOC, while CASM was recommended by the SAP as a site-specific assessment tool because of the need for extensive site-specific data. The Panel noted that a limitation in the CASM model is the lack of understanding of the sensitivity of model predictions with correlations among model parameters. The SAP recommended that EPA re-evaluate the meso/microcosm data set for study quality and concentration-specific effects, and provided additional citations for meso/microcosm studies to consider including in the assessment. They also recommended using a probabilistic approach to determine the LOC. The SAP concurred with EPA's incorporation of depth to impervious layer and slope to identify vulnerable watersheds for atrazine runoff as part of the atrazine vulnerability index. They also cautioned EPA that several watershed factors such as atrazine use intensity and rainfall are temporally dependent and, therefore, should not be considered minimum criteria in the vulnerability index.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available at least 15 days prior to the meeting. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap.*

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP Web site or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 27, 2012.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2012–8085 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9655–8]

Clean Air Act Advisory Committee; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific and enforcement policy issues.

Dates & Addresses: Open meeting notice; Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on April 25, 2012 from 8 a.m. to 3:45 p.m. at the Holiday Inn in Old Town Alexandria located at 625 1st Street, Alexandria, VA 22314. Seating will be available on a first come, first served basis. The Permits, New Source Review and Toxics Subcommittee and the Tailoring Rule Permit Streamlining Workgroup will meet at the same location on April 24, 2012 from 10:30 a.m. to 3:30 p.m. The agenda for the CAAAC full committee meeting on April 25, 2012 will be posted on the Clean Air Act Advisory Committee Web site at *http://www.epa.gov/oar/caaac/.*

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket EPA–HQ–OAR–2004–0075. The Docket office can be reached by email at: *a-and-r-Docket@epa.gov* or Fax: 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Concerning the CAAAC, please contact Pat Childers, Office of Air and Radiation, U.S. EPA (202) 564–1082, Fax (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue NW., Washington, DC 20004. For information on the Permits, New Source Review and Toxics subcommittee, please contact Liz Naess at (919) 541–1892. For information on the Tailoring Rule Permit Streamlining Workgroup, please contact Juan Santiago at (919) 541–1084. Additional Information on these meetings, CAAAC, and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/.*

For information on access or services for individuals with disabilities, please contact Mr. Pat Childers at (202) 564–1082 or *childers.pat@epa.gov.* To request accommodation of a disability, please contact Mr. Childers, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated March 29, 2012.

Pat Childers,

Designated Federal Official, Clean Air Act Advisory Committee, Office of Air and Radiation.

[FR Doc. 2012–8099 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0003; FRL–9343–8]

SFIREG POM Working Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG), Pesticides Operations and Management (POM) Working Committee will hold a 2-day meeting, beginning on May 30, 2012 and ending May 31, 2012. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, May 30, 2012 from 8:30 a.m. to 5 p.m. and 8:30 a.m. to 12 noon on Tuesday May 31, 2012.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA Region Five Metcalf Office Building, 12th Floor, 77 West Jackson Blvd., Chicago, IL.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5561; fax number: (703) 305–1850; email address: *kendall.ron@epa.gov.* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford DE 19963; telephone number (302) 422–8152; fax (302) 422–2435; email address: *Grier Stayton at aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are interested in pesticide regulation issues affecting States and any discussion between EPA and SFIREG on FIFRA field implementation issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and those who sell, distribute or use pesticides, as well as any Non Government Organization.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2012–0003. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Tentative Agenda Topics

1. EPA expectations of State Lead Agencies and Regions in pesticide cooperative agreement negotiations.
2. Pyrethroid Label Issues.
3. Phase 2 Fumigant Label Changes.
4. Non cropland label language—evaluate existing position, propose remedies.
5. Development of recommendations on the ''hot compost'' issue—how to deal with downstream effects of pesticide application that applicator can't control.
6. Impact of United States Department of Agriculture record keeping cuts.
7. Distributor label enforcement initiative coordination.
8. Classification of methomyl containing products as Restricted Use Pesticides.
9. State Pesticide Residency Program—Registration Division.
10. Cooperative Agreement Grant Template.
11. Section 18 Training Tool.
12. Agency's Revised Rodenticide Risk Mitigation Decision for Professional Use Rodenticides.

III. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection.

Dated: March 26, 2012.

Robert C. McNally,

Director, Field External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2012–8084 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9656–1]

Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC) and EPA's Science Advisory Board (SAB)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of scientific experts from a diverse range of disciplinary areas to be considered for appointment to the Clean Air Scientific Advisory Committee (CASAC), the Science Advisory Board (SAB) and four SAB Committees described in this notice. Appointments are anticipated to be filled by the start of Fiscal Year 2013.

DATES: Nominations should be submitted in time to arrive no later than May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Nominators unable to submit nominations electronically as described below may submit a paper copy by the Designated Federal Officers for the committees, as identified below. General inquiries regarding the work of the CASAC and SAB or SAB committees may also be directed to them.

Background: Established by statute, the CASAC (42 U.S.C. 7409) and SAB

(42 U.S.C. 4365) are EPA's chartered Federal Advisory Committees that provide independent scientific and technical peer review, consultation, advice and recommendations directly to the EPA Administrator on the scientific bases for EPA's actions and programs. Members of the CASAC and the SAB constitute a distinguished body of non-EPA scientists, engineers, economists, and behavioral and social scientists that are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator for a period of three years. This notice specifically requests nominations for the CASAC, the SAB, and SAB Committees from academia, industry, state and tribal governments, research institutes, and non-governmental organizations.

Expertise Sought for CASAC: Established in 1977 under the Clean Air Act (CAA) Amendments, the chartered CASAC reviews and offers scientific advice to the EPA Administrator on technical aspects of national ambient air quality standards for criteria pollutants (ozone, particulate matter, carbon monoxide, nitrogen oxides; sulfur dioxide, and lead). As required under the CAA section 109(d), CASAC will be composed of seven members, with at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies. The SAB Staff Office is seeking nominations of experts to serve on the CASAC with demonstrated experience in the following science related to the environment: *Health sciences; medicine; public health; atmospheric sciences; modeling; and/or risk assessment.* The SAB Staff Office is especially interested in scientists with expertise described above who has knowledge and experience in *air quality relating to criteria pollutants.* For further information about the CASAC membership appointment process and schedule, please contact Dr. Holly Stallworth, DFO, by telephone at 202–564–2073 or by email at *stallworth.holly@epa.gov.*

Expertise Sought for the SAB: The SAB was established in 1978 by the Environmental Research, Development and Demonstration Act to provide independent advice to the Administrator on general scientific and technical matters underlying the Agency' policies and actions. All the work of the SAB is under the direction of the Board. The chartered SAB provides strategic advice to the EPA Administrator on a variety of EPA science and research programs, oversees and reviews all SAB committee and panel draft reports. The SAB Staff Office is seeking nominations of experts to serve on the chartered SAB in the following disciplines as they relate to the human health and the environment: *Ecological sciences and ecological assessment; economics; engineering; medicine; health sciences; pediatrics; public health; human health risk assessment, social, behavioral and decision sciences; and modeling and statistics.* The SAB Staff Office is especially interested in scientists with expertise described above who have knowledge and experience in *air quality; climate change; energy and the environment; water quality; water quantity; water re-use; ecosystem services; community environmental health; sustainability; chemical safety; green chemistry; and homeland security.* For further information about the SAB membership appointment process and schedule, please contact Dr. Angela Nugent, DFO, by telephone at 202–564–2218 or by email at *nugent.angela@epa.gov.* The SAB Staff Office is also seeking nominations for experts for four SAB Committees: The Drinking Water Committee, the Ecological Processes and Effects Committee; the Environmental Economics Advisory Committee; and the Radiation Advisory Committee.

The SAB Drinking Water Committee provides advice on the scientific and technical aspects of EPA's national drinking water program. The SAB Staff Office is seeking nominations of experts with experience on drinking water issues. Members should have one or more of the following disciplines: *Epidemiology; engineering; microbiology; and public health.* For further information about the DWC membership appointment process and schedule, please contact Mr. Thomas Carpenter, DFO, by telephone at 202–564–4885 or by email at *carpenter.thomas@epa.gov.*

The SAB Ecological Processes and Effects Committee provides advice on technical issues related to the science and research to protect and restore the health of ecosystems. The SAB Staff Office is seeking nominations of experts with demonstrated expertise in the following disciplines: *Aquatic ecology; ecological risk assessment, ecotoxicology; landscape ecology, statistics; and terrestrial ecology.* For further information about the EPEC membership appointment process and schedule, please contact Dr. Thomas Armitage, DFO, by telephone at 202–564–2155 or by email at *armitage.thomas@epa.gov.*

The SAB Environmental Economics Advisory Committee provides advice on methods and analyses related to economics, costs, and benefits of EPA environmental programs.

The SAB Environmental Economics Advisory Committee provides advice on methods and analyses related to economics, costs, and benefits of EPA environmental programs. The SAB Staff office is seeking nominations of experts in environmental economics to serve on the EEAC. For further information about the EEAC membership appointment process and schedule, please contact Dr. Holly Stallworth, DFO, by telephone at 202–564–2073 or by email at *stallworth.holly@epa.gov.*

The Radiation Advisory Committee provides advice on radiation protection, radiation science, and radiation risk assessment. The SAB Staff Office is seeking nominations of experts to serve on RAC with demonstrated expertise in the following disciplines: *dosimetry; radiation biology; radiation epidemiology; radiation fate and transport monitoring and measurement; radiological health and physical sciences; risk assessment; and statistics.* For further information about the RAC membership appointment process and schedule, please contact Dr. K. Jack Kooyoomjian, DFO, by telephone at 202–564–2064 or by email at *kooyoomjian.jack@epa.gov*

Selection Criteria for the CASAC, SAB and four SAB Committees includes:

—Demonstrated scientific credentials and disciplinary expertise in their own fields;
—Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees;
—Absence of financial conflicts of interest;
—Absence of an appearance of a lack of impartiality;
—Background and experiences that would help members contribute to the diversity of perspectives on the committee, e.g., geographic, economic, social, cultural, educational backgrounds, professional affiliations; and other considerations; and
—For the committee as a whole, consideration of the collective breadth and depth of scientific expertise; and a balance of scientific perspectives.

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) following the instructions for ''Nominating Experts to the Chemical

Assessment Advisory Committee'' provided on the SAB Web site. The form can be accessed through the ''Nomination of Experts'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* To be considered, all nominations should include the information requested. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

Nominators are asked to identify the specific committee for which nominees are to be considered. The following information should be provided on the nomination form: Contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; and a biographical sketch of the nominee indicating current position, educational background; research activities; sources of research funding; and recent service on other national advisory committees or national professional organizations. To help the Agency in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this nomination opportunity. Persons having questions about the nomination process or the public comment process described below, or who are unable to submit nominations through the SAB Web site, should contact the Designated Federal Officer for the committee, as identified above. The DFO will acknowledge receipt of nominations and in that acknowledgement will invite the nominee to provide any additional information that the nominee feels would be useful in considering the nomination, such as availability to participate as a member of the committee; how the nominee's background, skills and experience would contribute to the diversity of the committee; and any concerns the nominee has regarding membership. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab.* Public comments on this List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

Candidates invited to serve will be asked to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.*

Dated: March 29, 2012.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–8093 Filed 4–3–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012057–007.

Title: CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Working Agreement Asia to USEC and PNW–Suez/PNW & Panama Loops.

Parties: A.P. Moller-Maersk A/S and CMA CGM S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW Suite 1100; Washington, DC 20006.

Synopsis: The amendment would delete Morocco from the scope of the agreement, reflect the deployment of a sixteenth vessel, and revise the space allocations of the parties accordingly.

By Order of the Federal Maritime Commission.

Dated: March 30, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–8123 Filed 4–3–12; 8:45 am]

BILLING CODE 6730–01–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.*

AIT Ocean Systems, Inc. (NVO & OFF), 701 N. Rohlwing Road, Itasca, IL 60143, Officers: Hessel B. Verhage, Vice President, (Qualifying Individual), Daniel F. Lisowski, President, Application Type: QI Change.

Alternative Global Logistic, LLC (OFF), 8551 NW. 12th Street, Pembroke Pines, FL 33024, Officers: Sophie H. Soudai, Managing Member, (Qualifying Individual), Svi Soudai, Manager, Application Type: New OFF License.

Armada USA, LLC dba Armada Logistics (NVO), One Marine Plaza, 7701 Marine Road, Suite 209, North Bergen, NJ 07047, Officers: Mustafa Oytun Cakir, Vice President/Secretary/Treasurer/Member, (Qualifying Individual), Kenan Yalavac, President/Managing Member, Application Type: New NVO License.

Bremol, Inc. dba Molcan Freight Forwarding Services (OFF), 13501 SW. 16th Ct., Davie, FL 33325, Officers: Candace M. King, Secretary, (Qualifying Individual), Brenton J. King, President, Application Type: QI Change.

Carlo Shipping International, Inc. dba CSI Logistics (NVO & OFF), 435 Division Street, Elizabeth, NJ 07076, Officer: Carlos E. Feliu, President/Secretary/Treasurer, (Qualifying Individual), Application Type: Trade Name Change.

E and M International Transport, LLC (NVO), 4574 Swilcan Bridge Lane North, Jacksonville, FL 32224, Officer: Mary Brown, Managing Member, (Qualifying Individual), Application Type: New NVO License.

Embarque Tenares Corp. (NVO), 2249 Washington Avenue, Bronx, NY 10457, Officers: Juan A. Luna, President/Treasurer, (Qualifying Individual), Juana Garcia, Vice President/Secretary, Application Type: New NVO License.

F J Cargo Corporation (NVO), 10250 NW. 89th Ave., #10, Medley, FL 33178, Officer: Francisco J. Matos, President/Secretary/Treasurer, (Qualifying Individual), Application Type: New NVO License.

HYC Logistics, Inc. (NVO & OFF), 2600 Thousand Oaks Blvd., Suite 1350, Memphis, TN 38118, Officers: Patrick W. DePriest, Vice President Export Operations, (Qualifying Individual), Uri D. Silver, President, Application Type: QI Change.

Hydra Logistics, Inc. (NVO & OFF), 14205 Westfair West Drive, Houston, TX 77041, Officers: Afif Baltagi, President, (Qualifying Individual), Sarah Namani, Secretary, Application Type: QI Change.

Joy Cargo, Inc. (NVO & OFF), 5353 W. Imperial Hwy., #100 2FL, Los Angeles, CA 90045, Officers: AJ Terral, Vice President, (Qualifying Individual), Doo C. Kim, President/CEO, Application Type: New NVO & OFF License.

Lars Courier, Inc. dba Lars International Freight Forwarders (NVO & OFF), 8244 NW. 14th Street, Miami, FL 33126, Officer: Andres Panesso, President/Treasurer/Secretary, (Qualifying Individual), Application Type: New NVO & OFF License.

Meest-America, Inc. (NVO), 641 Dowd Avenue, Elizabeth, NJ 07201, Officers: Olga Palaychuk, Vice President, (Qualifying Individual), Rostyslav Kisil, President, Application Type: New NVO License.

National Air Cargo, Inc. (OFF), 350 Windward Drive, Orchard Park, NY 14127, Officers: Marc A. Gonzales, Maritime Brokerage Officer, (Qualifying Individual), Christopher J. Alf, Chairman/CEO, Application Type: New OFF License.

Novargo Inc. (NVO), 38 Dogwood Drive, Edison, NJ 08820, Officers: Shalva G. Pirtskhalava, President, (Qualifying Individual), David G. Pirtskhalava, Vice President, Application Type: Business Structure Change.

Pinki Enterprises, Inc. (NVO), 41–11 30th Avenue, #B, Astoria, NY 11103, Officer: Lea Molnar Dujmovic, President/Secretary/Treasurer, (Qualifying Individual), Application Type: New NVO License.

Tigers (USA) Global Logistics, Inc. dba Tigers Ocean Line (NVO & OFF), 145th Avenue & Hook Creek Blvd., Valley Stream, NY 11581, Officers: Mark Bongean, Vice President (Operations), (Qualifying Individual), Sebastian Tshackert, CEO, Application Type: Name Change.

Dated: March 30, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–8122 Filed 4–3–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Notice; Correction

SUMMARY: The Board of Governors of the Federal Reserve System published in the **Federal Register** of March 16, 2012, a document finalizing proposed revisions to the Consolidated Financial Statements for Bank Holding Companies (BHC). This document corrects typographical errors in the document.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board published in the **Federal Register** of March 16, 2012 (77 FR 15755), a document finalizing proposed revisions to the Consolidated Financial Statements for Bank Holding Companies. The document (FR Doc. 2012–6332) announced the approval of mandatory financial information collection on BHCs between on-site inspections and contained two typographical errors. In Agency Collection Activities: Announcement of Approval, FR Doc. 2012–6332, published on March 16, 2012, make the following corrections:

Final Approval Under OMB Delegated Authority of the Revision, Without Extension, of the Following Reports—[CORRECTED]

1. On page 15755, in center of the page on the second column, under the heading Final Approval Under OMB Delegated Authority of the Revision, Without Extension, of the Following Reports, lines 9 through 12, correct:

''*Estimated annual reporting hours:* 192,561 hours.'' to read ''*Estimated annual reporting hours:* 184,188 hours.'' and

''*Estimated average hours per response:* 47.15 hours.'' to read ''*Estimated average hours per response:* 45.10 hours.''

Board of Governors of the Federal Reserve System, March 29, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–8032 Filed 4–3–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10 ½%, as fixed by the Secretary of the Treasury, is certified for the quarter ended December 31, 2011. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: March 28, 2012.

Margie Yanchuk,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2012–8059 Filed 4–3–12; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is

determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10⅞%, as fixed by the Secretary of the Treasury, is certified for the quarter ended September 30, 2011. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: March 28, 2012.

Margie Yanchuk,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2012–8072 Filed 4–3–12; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–12–0856]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, at 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

National Quitline Data Warehouse (OMB No. 0920–0856, exp. 7/31/2012)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Despite the high level of public knowledge about the adverse effects of smoking, tobacco use remains the leading preventable cause of disease and death in the United States. Tobacco use results in approximately 440,000 deaths annually, including approximately 38,000 deaths from secondhand smoke exposure. Adults who smoke contribute to $92 billion annually in lost worker productivity, and die an average of 14 years earlier than nonsmokers. Although the prevalence of current smoking among adults decreased significantly since its peak in the 1960s, overall smoking prevalence among U.S. adults has remained virtually unchanged during the past five years. Large disparities in smoking prevalence continue to exist among members of racial/ethnic minority groups and individuals of low socioeconomic status.

The National Tobacco Control Program (NTCP) was established by CDC to reduce tobacco use and tobacco-related disease, disability, and death. The NTCP's four goal areas are: (1) The prevention of initiation of tobacco use among young people, (2) the elimination of nonsmokers' exposure to secondhand smoke, (3) the promotion of quitting among adults and young people, and (4) the elimination of tobacco-related disparities. Essential elements of this approach include state, community, and health systems interventions and assessments of their impact; cessation services; media campaigns designed to educate the public about the harmful effects of tobacco; surveillance; and program evaluation. Many interventions are designed to serve individuals who are at highest risk for tobacco-related health problems due to disparities among demographic subgroups in the U.S. in their tobacco use.

Quitlines are effective, population-based interventions that increase successful quitting. Quitlines provide telephone-based tobacco cessation services that help tobacco users quit through individualized, tailored counseling and self-help materials. Quitline counseling that includes counselor-initiated calls or proactive counseling has been shown to increase the odds of tobacco abstinence by approximately 60%. Tobacco cessation quitlines overcome many of the barriers to tobacco cessation classes and traditional clinics because they are free and available at the caller's convenience. They are also cost-effective because they offer multiple services centrally that may be unavailable locally. The demand for quitline services has increased over time. Unfortunately, quitlines remain under-funded and services are not available to everyone who seeks to access them. CDC estimates that 6 to 8 percent of tobacco users could potentially be reached by quitlines, however—primarily due to lack of resources—only 1 to 2 percent of tobacco users are currently using quitlines.

CDC has directly supported state quitlines since 2004, when CDC and the National Cancer Institute (NCI) created the National Network of Tobacco Cessation Quitlines Initiative to provide greater access to counseling for tobacco cessation. As part of the Initiative, NCI established a toll-free national portal number, 1–800–QUIT–NOW, which automatically transfers callers to their state quitline. Quitlines now exist in all U.S. states, the District of Columbia, and five U.S. territories.

In 2009, CDC used one-time American Recovery and Reinvestment Act (ARRA) funding to support expansion of quitline services and standardization of the client-level information collected in conjunction with those services. In 2010, CDC established the National Quitline Data Warehouse (NQDW) to compile national information about quitline services based on uniform caller intake and follow-up protocols (OMB No. 0920–0856, exp. 7/31/2012). The Minimum Data Set for this information collection was developed in collaboration with a number of stakeholders and tobacco control organizations, including the North American Quitline Consortium (NAQC). Information collected through the NQDW is being used to quantify and improve quitline services and to plan and assess the effectiveness of tobacco control programs, including the NTCP. This information collection is authorized by the Public Health Service Act.

CDC requests OMB approval to continue information collection for

three years. During this period, a number of critical tobacco control activities will be implemented, such as the Department of Health and Human Service's first National Tobacco Education Campaign and a variety of state-based activities made possible by the Affordable Care Act (ACA) funds, including further quitline enhancements. The NQDW will provide essential information for monitoring and evaluating these efforts; improving understanding of quitline promotions and caller usage patterns; developing service benchmarks; increasing the number of tobacco users who quit each year; and aiding efforts to reduce mortality, morbidity, and health care costs related to tobacco use.

The Intake Questionnaire will be administered to an estimated 730,000 callers per year across all states, the District of Columbia, and participating U.S. territories. The estimated burden for completing the Intake Questionnaire interview is ten minutes for callers who seek personal counseling or services, and one minute for callers who seek information on behalf of someone else. A seven-month Follow-up Questionnaire will be administered to an average of 28,900 callers per year. The estimated burden per response is seven minutes.

In addition, the Tobacco Control Manager for each state, district, or territory will be asked to complete a quarterly, web-based Quitline Services Questionnaire describing the services provided through their quitline. The estimated burden per response is seven minutes.

All information will be collected electronically. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Caller who contacts the Quitline on behalf of someone else.	Intake Questionnaire	230,000	1	1/60	3,833
Caller who contacts the Quitline for personal use.		500,000	1	10/60	83,333
Quitline caller who received a Quitline service.	Follow-up Questionnaire	28,900	1	7/60	3,372
Tobacco Control Manager	Quitline Services Questionnaire	52	4	7/60	24
Total					90,562

Dated: March 29, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–8089 Filed 4–3–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–12–0556]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Ron Otten, at 1600 Clifton Road, MS–D74, 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

Assisted Reproductive Technology (ART) Program Reporting System exp. 9/30/2012—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 2(a) of Public Law 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), 42 U.S.C. 263a–1(a)) requires that each assisted reproductive technology (ART) program shall annually report to the Secretary through the Centers for Disease Control and Prevention: (1) Pregnancy success rates achieved by such ART program, and (2) the identity of each embryo laboratory used by such ART program and whether the laboratory is certified or has applied for such certification under the Act. The required information is currently reported by ART programs to CDC as specified in the Assisted Reproductive Technology (ART) Program Reporting System (OMB no. 0920–0556, exp. 9/30/2012). CDC seeks to extend OMB approval for a period of three years and to implement a brief, one-time optional feedback survey to clinics for each reporting year. The revised total burden estimate includes an anticipated increase in the number of participating clinics from 430 to 440 and an increase in the average number of responses per respondent from 321 to 339. There is a 2-minute increase to the estimated burden per response.

The currently approved program reporting system, also known as the National ART Surveillance System (NASS), includes information about all ART cycles initiated by any of the ART programs in the United States. An ART cycle is considered to begin when a woman begins taking ovarian stimulatory drugs or starts ovarian monitoring with the intent of having embryos transferred. The system also collects information about the pregnancy outcome of each cycle, as well as a number of data items deemed

important to explain variability in success rates across ART programs and across individuals. Data elements and definitions currently in use reflect CDC's consultations with representatives of the Society for Assisted Reproductive Technology (SART), the American Society for Reproductive Medicine, and RESOLVE: the National Infertility Association (a national, nonprofit consumer organization), as well as a variety of individuals with expertise and interest in this field.

Respondents are the 484 ART programs in the United States. Approximately 440 clinics are expected to report an average of 339 ART cycles each. Ten percent of responding clinics will be randomly selected to participate in full validation of selected ART cycle records and an abbreviated validation of selected ART cycle records. All information is collected electronically. Respondents have the option of entering data directly into a Web-based National ART Surveillance System (NASS) interface or of transmitting system-compatible files extracted from other record systems. The ART program reporting system allows CDC to publish an annual report to Congress as specified by the FCSRCA and to provide information needed by consumers.

CDC, the data collection contractor, and partner organizations engage in ongoing dialogue to identify opportunities for improvement in NASS. During the period of this Revision request, minor changes to NASS data definitions or similar technical adjustments may be proposed through the Change Request mechanism.

Starting with 2012 data reporting year, CDC plans to implement a brief, one-time optional feedback survey to clinics for each reporting year. The purpose of this survey is to obtain insight into NASS usability issues as well as respondents' perspectives on the usefulness of the information collected.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
ART Programs	NASS	440	339	39/60	96,954
	Feedback Survey	176	1	2/60	6
Total					96,960

Dated: March 29, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–8067 Filed 4–3–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–855(O)]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Registration Application; *Use:* The CMS 855O allows a physician to receive a Medicare identification number (without being approved for billing privileges) for the sole purpose of ordering and referring Medicare beneficiaries to Medicare approved providers and suppliers. This new Medicare registration application form allows physicians who do not provide services to Medicare beneficiaries to be given a Medicare identification number without having to supply all the data required for the submission of Medicare claims. It also allows the Medicare program to identify ordering and referring physicians without having to validate the amount of data necessary to determine claims payment eligibility (such as banking information), while continuing to identify the physician's credentials as valid for ordering and referring purposes. Since the physicians and non-physician practitioners submitting this application are not enrolling in Medicare to submit claims but are only registering with Medicare as eligible to order and refer, CMS believes changing the title from Medicare Enrollment Application to Medicare Registration Application better captures the actual purpose of this form.

Where appropriate, CMS has changed all references to enrollment or enrolling to registration and registering and Medicare billing number to National Provider Identifier. CMS also added a check box to allow physicians and non-physician practitioners to withdraw from the ordering and referring registry. A section to collect information on professional certifications was added for those practitioners who are not professionally licensed. Editorial and formatting corrections were made in response to prior comments received during the approval of the current version of this application. Other minor editorial and formatting corrections were made to better clarify the purpose of this application. *Form Number:* CMS–855(O) (OCN: 0938–1135); *Frequency:* Occasionally; *Affected Public:* Individuals; *Number of Respondents:* 48,500; *Total Annual Responses:* 48,500; *Total Annual Hours:* 24,125. (For policy questions regarding this collection contact Kimberly McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of*

Information Collection: Medicare Enrollment Application; *Use:* The primary function of the CMS–855 Medicare enrollment application is to gather information from a provider or supplier that tells us who it is, whether it meets certain qualifications to be a health care provider or supplier, where it practices or renders its services, the identity of the owners of the enrolling entity, and other information necessary to establish correct claims payments. *Form Number:* CMS–855(A, B, I, R) (OCN: 0938–0685); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 440,450; *Total Annual Responses:* 440,450; *Total Annual Hours:* 856,395. (For policy questions regarding this contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *May 4, 2012*.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov*.

Dated: March 28, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–8010 Filed 4–3–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–855(S) and CMS–855(A,B,I,R); and CMS–10427]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Medicare Enrollment Application—Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Suppliers *Use:* The primary function of the CMS 855S Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) supplier enrollment application is to gather information from a supplier that tells us who it is, whether it meets certain qualifications to be a health care supplier, where it renders its services or supplies, the identity of the owners of the enrolling entity, and information necessary to establish the correct claims payment. The goal of evaluating and revising the CMS 855S DMEPOS supplier enrollment application is to simplify and clarify the information collection without jeopardizing our need to collect specific information. The majority of the revisions contained in this submission are non-substantive in nature such as spelling and formatting corrections; however, we also removed duplicate fields and obsolete questions and provided clarification and simplified the instructions for the completing the application. *Form Number:* CMS–855(S) (OCN: 0938–1056); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 43,350; *Total Annual Responses:* 43,350; *Total Annual Hours:* 113,550 (For policy questions regarding this contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application *Use:* The primary function of the CMS–855 Medicare enrollment application is to gather information from a provider or supplier that tells us who it is, whether it meets certain qualifications to be a health care provider or supplier, where it practices or renders its services, the identity of the owners of the enrolling entity, and other information necessary to establish correct claims payments. *Form Number:* CMS–855(A, B, I, R) (OCN: 0938–0685); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 440,450; *Total Annual Responses:* 440,450; *Total Annual Hours:* 856,395 (For policy questions regarding this contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* For-Profit PACE Study; *Use:* The Program of All Inclusive Care of the Elderly (PACE) aims to provide integrated care and services to the frail elderly at risk of institutionalization to enable them to remain in the community. Under the Balanced Budget Act of 1997 (BBA), the not-for-profit PACE plans were established as permanent providers under the Medicare and Medicaid programs. The BBA also mandated a demonstration of for-profit PACE plans. This study will estimate the differences in quality and access to care between the for-profit and not-for-profit PACE plans. The data collected in the survey will be used to measure the outcomes of interest-differences in access to and quality of care delivered to PACE enrollees. To measure these key outcomes, the survey will collect data on access to and satisfaction with healthcare, personal care, and transportation assistance provided by the plans. *Form Number:* CMS–10427 (OCN: 0938–New); *Frequency:* Yearly; *Affected Public:* Individuals. *Number of Respondents:* 813. *Number of Responses:* 813. *Total Annual Hours:* 447. (For policy questions regarding this collection contact Julia Zucco at 410–786–6670. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the

Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *June 4, 2012:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 28, 2012.

Martique Jones,

Director, Regulations Development Group, Division B Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–8009 Filed 4–3–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–437A and CMS–437B]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* State Agency Sheets for Verifying Exclusions from the Inpatient Prospective Payment System and Supporting Regulations in 42 CFR Parts 412.20–412.29. *Use:* For first time verification requests for exclusion from the Inpatient Prospective Payment System (IPPS), a hospital/unit must notify the Regional Office (RO) servicing the State in which it is located that it believes it meets the criteria for exclusion from the IPPS. Currently, all new inpatient rehabilitation facilities (IRFs) must provide written certification that the inpatient population it intends to serve will meet the requirements of the IPPS exclusion criteria for IRFs. They must also complete the Form CMS–437A if they are a rehabilitation unit or complete Form CMS–437B if they are a rehabilitation hospital. This information is submitted to the State Agency (SA) no later than 5 months before the date the hospital/unit would become subject to IRF–PPS.

CMS proposes to continue to use the Criteria Worksheets (Forms CMS–437A and CMS–437B) for verifying first-time exclusions from the IPPS, for complaint surveys, for its annual 5 percent validation sample, and for facility self-attestation. These forms are related to the survey and certification and Medicare approval of the IPPS-excluded rehabilitation units and rehabilitation hospitals.

For rehabilitation hospitals and rehabilitation units already excluded from the IPPS, annual onsite re-verification surveys by the SA are not required. These hospitals and units will be provided with a copy of the appropriate CMS–437 Worksheet at least 120 days prior to the beginning of its cost reporting period, so that the hospital/unit official may complete and sign an attestation statement and complete and return the appropriate CMS–437A or CMS–437B at least 120 days prior to the beginning of its cost reporting period. Fiscal Intermediaries (FIs) will continue to verify, on an annual basis, compliance with the 60 percent rule (42 CFR 412.29(b)(2)) for rehabilitation hospitals and rehabilitation units through a sample of medical records and the SA will verify the medical director requirement.

The SA will maintain the documents unless instructed otherwise by the RO. The SA will notify the RO at least 60 days prior to the end of the rehabilitation hospital's/unit's cost reporting period of the IRF's compliance or non-compliance with the payment requirements. The information collected on these forms, along with other information submitted by the IRF is necessary for determining exclusion from the IPPS. Hospitals and units that have already been excluded need not reapply for exclusion. These facilities will automatically be reevaluated yearly to determine whether they continue to meet the exclusion criteria.

In this PRA package, both forms have been revised. *Form Number:* CMS–437A and CMS–437B (OCN 0938–0986). *Frequency:* Yearly. *Affected Public:* Private Sector (Business or other for-profits). *Number of Respondents:* 1,164. *Total Annual Responses:* 1,164. *Total Annual Hours:* 291. (For policy questions regarding this collection contact Georgia Johnson at 410–786–6859. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *June 4, 2012:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number CMS–437A and CMS–437B (OCN 0938–0986), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 28, 2012.

Martique Jones,

Director, Regulations Development Group, Division B Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–8013 Filed 4–3–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–372(S), CMS–R–306, CMS–10180 and CMS–R–199]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement without change of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations in 42 CFR 440.180 and 441.300–310; *Use:* CMS is asking the States to report financial and statistical information concerning the numbers of Medicaid beneficiaries receiving waiver services, the type of services provided and the costs of those services. The information is usually taken from State Medicaid agency data processing systems. This data is summarized and may be submitted to CMS through the 372 web-based form. The report is used by CMS to compare actual data in the approved waiver estimates and, in conjunction with the waiver compliance review reports, the information provided is compared to that in the Medicaid Statistical Information System (CMS–R–284, OCN 0938–0345) report and Federal financial participation claimed on a State's Quarterly Expenditure Report (CMS–64, OCN 0938–0067), to determine whether to continue the State's home and community-based services waiver. States' estimates of cost and utilization for renewal purposes are based upon the data compiled in the CMS Form 372(S) reports. There have been no changes to the PRA package that is associated with the 60-day notice that published on January 24, 2012 (77 FR 3477); *Form Number:* CMS–372(S) (OCN 0938–0272); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 49; *Total Annual Responses:* 305; *Total Annual Hours:* 13,115. (For policy questions regarding this collection contact Ralph Lollar at 410–786–0777. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Condition of Participation—Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21 and Supporting Regulations at 42 CFR 483.350–483.376; *Use:* Psychiatric Residential Treatment Facilities are required to report deaths, serious injuries and attempted suicides to the State Medicaid Agency and the Protection and Advocacy Organization. They are also required to provide residents the restraint and seclusion policy in writing, and to document in the residents' records all activities involving the use of restraint and seclusion. There have been no changes to the PRA package that is associated with the 60-day notice that published on January 13, 2012 (77 FR 2067); *Form Number:* CMS–R–306 (OCN 0938–0833); *Frequency:* Once and Occasionally; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 376; *Total Annual Responses:* 329,500; *Total Annual Hours:* 501,750. (For policy questions regarding this collection contact Jean Close at 410–786–2804 or Melissa Musotto at 410–786–6962. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Children's Health Insurance Program (CHIP) Report on Payables and Receivables; *Use:* Collection of CHIP data and the calculation of the CHIP Incurred But Not Reported (IBNR) estimate are pertinent to CMS' financial audit. The CFO auditors have reported the lack of an estimate for CHIP IBNR payables and receivables as a reportable condition in the FY 2005 audit of CMS's financial statements. It is essential that CMS collect the necessary data from State agencies in FY 2006, so that CMS continues to receive an unqualified audit opinion on its financial statements. Program expenditures for the CHIP have increased since its inception; as such, CHIP receivables and payables may materially impact the financial statements. The CHIP Report on Payables and Receivables will provide the information needed to calculate the CHIP IBNR; *Form Number:* CMS–10180 (OMB#: 0938–0988); Frequency: Reporting—Annually; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 392. (For policy questions regarding this collection contact Michele Myers at 410–786–7911. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Report on Payables and Receivables; *Use:* The Chief Financial Officers (CFO) Act of 1990, as amended by the Government Management Reform Act (GMRA) of 1994, requires government agencies to produce auditable financial statements. Because the Centers for Medicare & Medicaid Services (CMS) fulfills its mission through its contractors and the States, these entities are the primary source of information for the financial statements. There are three basic categories of data: Expenses, payables, and receivables. The CMS–64 is used to collect data on Medicaid expenses. The CMS–R–199 collects Medicaid payable and receivable accounting data from the States. *Form Number:* CMS–R–199 (OMB#: 0938–0697); *Frequency:* Reporting—Annually; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 336. (For policy questions regarding this collection contact Michele Myers at 410–786–7911. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *May 4, 2012.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov*.

Dated: March 28, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–8011 Filed 4–3–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0288]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on Statistical Evaluation of Stability Data, VICH GL51; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#219) entitled ''Draft Guidance for Industry on Statistical Evaluation of Stability Data, VICH GL51.''

This draft guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft VICH guidance document is intended to provide recommendations on how to use stability data generated in accordance with the principles detailed in the VICH guidance entitled ''Stability Testing of New Veterinary Drug Substances and Medicinal Products, GL3(R)'' to propose a retest period or shelf life in a registration application.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 4, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mai Huynh, Center for Veterinary Medicine, (HFV–142), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 240–276–8273, *Mai.huynh@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry (#219) entitled, ''Draft Guidance for Industry on Statistical Evaluation of Stability Data, VICH GL51.'' In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, the European Medicines Evaluation Agency, the European Federation of Animal Health, the Committee on Veterinary Medicinal Products, FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Statistical Evaluation of Stability Data

The VICH Steering Committee held a meeting on November 14, 2011, and agreed that the draft guidance document entitled ''Draft Guidance for Industry on Statistical Evaluation of Stability Data, VICH GL51'' should be made available for public comment. This draft VICH guidance document is intended to provide recommendations on how to use stability data generated in accordance with the principles detailed in the VICH guidance entitled, ''Stability Testing of New Veterinary Drug Substances and Medicinal Products, GL3(R)'' to propose a retest period or shelf life in a registration application. This draft guidance describes when and how extrapolation can be considered when proposing a retest period for a drug substance or a shelf life for a veterinary medicinal product that extends beyond the period covered by available data from the stability study under the long-term storage condition.

This draft guidance addresses the evaluation of stability data that should be submitted in registration applications for new molecular entities and associated veterinary medicinal products. The draft guidance provides recommendations on establishing retest periods and shelf lives for drug substances and veterinary medicinal products intended for storage at or below ''room temperature.'' It covers stability studies using single- or multi-factor designs and full or reduced designs.

FDA and the VICH Expert Working Group will consider comments about the draft guidance document.

III. Significance of Guidance

This draft guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' In addition, guidance documents must not include mandatory language such as ''shall,'' ''must,'' ''require,'' or ''requirement,'' unless FDA is using these words to describe a statutory or regulatory requirement.

The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this draft guidance have been approved under OMB control number 0910–0032.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: March 29, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–8039 Filed 4–3–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5630–N–02]

Rental Assistance Demonstration: Extension of Public Comment Period and Clarification of Demonstration Components

AGENCY: Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On March 8, 2012, HUD published a notice in the **Federal Register** inviting public comments on the demonstration notice posted on HUD's Web site entitled ''Rental Assistance Demonstration—Partial Implementation and Request for Comments'' (Program Notice). This notice extends the due date for the submission of comments on the Program Notice. In addition, HUD is taking this opportunity to clarify the scope of the demonstration that took effect on March 8, 2012.

DATES: *Comment Due Date:* The new date for the submission of comments on the Program Notice is April 23, 2012.

Effective Date: The effective date announced in the March 8, 2012, notice is unchanged. The provisions regarding the conversion of Rent Supp and RAP properties under Section III of the Program Notice were effective on March 8, 2012. The Moderate Rehabilitation (Mod Rehab) provisions detailed in Section II of the Program Notice are not in effect until HUD reviews the public comments and issues a notice in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit comments on applicable parts of the March 8, 2012, notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. All submissions and communications must refer to ''Rental Assistance Demonstration: Notice of Web Availability and Request for Comments'' docket number FR–5630–N–01. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. Also, to expedite review of public comments, it is recommended commenters should organize their comments by specific topical areas and section numbers and label those areas accordingly.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: To assure a timely response, please electronically direct requests for further information to this email address: *rad@hud.gov*. Written requests may also be directed to the following address: Office of Public and Indian Housing—RAD Program, Department of Housing and Urban Development, 451 7th Street SW., Room 2000; Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

On March 8, 2012, at 77 FR 14029, HUD published in the **Federal Register** a notice announcing HUD's Rental Assistance Demonstration (RAD) program, which provides the

opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by public housing agencies (PHAs) and owners to private debt and equity to address immediate and long-term capital needs; the extent to which residents have increased housing choices after the conversion; and the overall impact of conversion on the subject properties. The March 8, 2012, notice advised that HUD posted on its Web site the full details of the demonstration in a Program Notice entitled ''Rental Assistance Demonstration–Partial Implementation and Request for Comments.'' HUD refers the reader to the March 8, 2012, **Federal Register** notice for detailed information about RAD, as well as to the Program Notice, posted on HUD's Web site at *www.hud.gov/rad*. This notice extends the due date for the submission of public comments on the Program Notice to April 23, 2012, and clarifies the scope of the demonstration that took effect on March 8, 2012.

II. Extension of Public Comment Due Date

The March 8, 2012, notice solicited public comment on the demonstration and established a comment due date of April 9, 2012. In order to ensure that interested members of the public have sufficient time to prepare and submit comments, HUD is extending the due date for the submission of comments on the Program Notice until April 23, 2012.

III. Clarification of Demonstration Scope

As provided in the March 8, 2012, notice and in the Program Notice, RAD consists of two components. The first component, which is covered under Sections I and II of the Program Notice for PHAs and Mod Rehab owners, respectively, allows projects funder under HUD's public housing and Mod Rehab programs to convert to long-term Section 8 rental assistance contracts. Under this first component, PHAs and Mod Rehab owners may apply to HUD to convert to one of two forms of Section 8 Housing Assistance Payment (HAP) contracts: Project-based vouchers (PBVs) or project-based rental assistance (PBRA).

The second component, which is covered under Section II of the Program Notice, for owners of Mod Rehab projects, and under Section III of the Program Notice, for owners of Rent Supplement (Rent Supp) and Rental Assistance (RAP) projects, of the Program Notice, allows projects funded under the Mod Rehab, Rent Supp and RAP programs, with a contract expiration or termination occurring after October 1, 2006, and no later than September 30, 2013, to convert tenant protection vouchers (TPVs) to PBVs.

The ''Effective Date'' section of the March 8, 2012, notice provided that the conversion of Rent Supp and RAP Properties under Section III of the Program Notice were effective on March 8, 2012.

The March 8, 2012 notice, at 77 FR 14030, following the explanation of the Section II and Section III provisions of the second component stated, inconsistent with the ''Effective Date'' provision, ''These provisions are effective immediately.''

Accordingly, this notice clarifies the scope of the sections of the demonstration that are effective on March 8, 2012, to eliminate any confusion made by the statement at the end of the explanation of the second component at 77 FR 14030. The only provisions that are effective immediately are, as provided in the ''Effective Date'' section of the notice, those of Section III of the Program Notice for the conversion of Rent Supp and RAP Properties. The Section II provisions for properties funded under Mod Rehab, which are part of the discussion of the second component, are not yet in effect.

Dated: March 30, 2012.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–8210 Filed 4–3–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2011–N215; 91400–5110–0000–7B; 91400–9410–0000–7B]

Multistate Conservation Grant Program; Priority List and Approval for Conservation Projects

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of receipt of priority list and approval of the projects.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), announce the fiscal year 2012, priority list of wildlife and sport fish conservation projects from the Association of Fish and Wildlife Agencies (AFWA). As required by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, AFWA submits a list of projects to us each year to consider for funding under the Multistate Conservation Grant program. We have reviewed the list and have awarded the grants from the list.

ADDRESSES: John C. Stremple, Multistate Conservation Grants Program Coordinator, Wildlife and Sport Fish Restoration Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4020, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: John C. Stremple, at the above address, or at (703) 358–2156 (phone) or *John_Stremple@fws.gov* (email).

SUPPLEMENTARY INFORMATION: The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Improvement Act, Pub. L. 106–408) amended the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*) and established the Multistate Conservation Grant Program. The Improvement Act authorizes us to award grants of up to $3 million annually from funds available under each of the Restoration Acts, for a total of up to $6 million annually. Projects can be funded from both funds depending on the project activities. We may award grants to projects from a list of priority projects recommended to us by the Association of Fish and Wildlife Agencies. The FWS Director, exercising the authority of the Secretary of the Interior, need not fund all projects on the list, but all projects funded must be on the list.

Grantees under this program may use funds for sport fisheries and wildlife management and research projects, boating access development, hunter safety and education, aquatic education, fish and wildlife habitat improvements, and other purposes consistent with the enabling legislation.

To be eligible for funding, a project must benefit fish and/or wildlife conservation in at least 26 States, or in a majority of the States in any one FWS Region, or it must benefit a regional association of State fish and wildlife agencies. We may award grants to a State, a group of States, or one or more nongovernmental organizations. For the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, we may award grants to the FWS, if requested by AFWA, or to a State or a group of States. Also, AFWA requires all project proposals to address its National

Conservation Needs, which are announced annually by AFWA at the same time as its request for proposals. Further, applicants must provide certification that no activities conducted under a Multistate Conservation grant will promote or encourage opposition to regulated hunting or trapping of wildlife or to regulated angling or taking of fish.

Eligible project proposals are reviewed and ranked by AFWA Committees and interested nongovernmental organizations that represent conservation organizations, sportsmen's and women's organizations, and industries that support or promote fishing, hunting, trapping, recreational shooting, bowhunting, or archery. AFWA's Committee on National Grants recommends a final list of priority projects to the directors of State fish and wildlife agencies for their approval by majority vote. By statute, AFWA then must transmit the final approved list to the FWS for funding under the Multistate Conservation Grant program by October 1 of the fiscal year.

This year, we received a list of 12 recommended projects from AFWA. We recommend all of them for funding in fiscal year 2012. The list follows:

MULTISTATE CONSERVATION GRANT PROGRAM—FY 2012 CYCLE RECOMMENDED PROJECTS

ID	Title	Submitter	PR funding [1]	DJ funding [2]	Total 2012 grant request
12–034	Multistate Conservation Grant Program Coordination.	AFWA	$145,260.00	$145,260.00	$290,520.00
12–001	Coordination of Farm Bill Program Implementation to Optimize Fish and Wildlife Benefits to the States.	AFWA	156,600.00	52,200.00	208,800.00
12–008	Coordination of the Industry, Federal and State Agency Coalition.	AFWA	152,775.00	50,925.00	203,700.00
12–028	State Fish and Wildlife Agency Coordination and Administration.	AFWA	299,359.80	299,359.80	598,719.60
12–029	State Fish and Wildlife Agency Director Travel Coordination and Administration.	AFWA	64,075.00	64,075.00	128,150.00
12–010	2011 Economic Impacts of Sportfishing	American Sportfishing Association	0.0	82,503.00	82,503.00
12–022	The Wildlife and Sport Fish Restoration Program 75th Anniversary.	Wildlife Management Institute	50,000.00	50,000.00	100,000.00
12–011	Investigating Factors Related to Hunting and Fishing License Sales Increases.	American Sportfishing Association	92,886.15	92,886.15	185,772.30
12–017	Longitudinal Evaluation of Hunting, Fishing, and Shooting Recruitment/Retention Programs.	National Wild Turkey Federation	173,172.38	173,172.38	346,344.76
12–033	Organizational Development Training for Fish Habitat Partnerships to Increase Capacity.	National Fish Habitat Action Plan Board.	0	100,000.00	100,000.00
12–021	Trailblazer Adventure Program	U.S. Sportsman Alliance Foundation.	40,000.00	40,000.00	80,000.00
12–030	Conserving Fish Habitat from Whitewater to Bluewater.	Atlantic States Marine Fisheries Commission.	0	261,440.38	261,440.38
			1,174,128.33	1,411,821.71	2,585,950.04

[1] PR Funding: Pitman-Robertson Wildlife Restoration funds.
[2] DJ Funding: Dingell-Johnson Sport Fish Restoration funds.

Dated: December 28, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–7998 Filed 4–3–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA9300000 L13400000.DS0000]

Notice of Amendment to the Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Desert Renewable Energy Conservation Plan, Including Kern, Los Angeles, San Bernardino, Inyo, Riverside, Imperial, and San Diego Counties; and Possible Land Use Plan Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Central California District, Sacramento, California and California Desert District, Moreno Valley, California intend to prepare an Environmental Impact Statement (EIS) which may include amendments to the California Desert Conservation Area (CDCA) Plan, Bishop Resource Management Plan (RMP), Caliente/Bakersfield RMP, and Eastern San Diego County RMP for the areas that are within the planning boundary of the proposed Desert Renewable Energy Conservation Plan (DRECP). These potential plan amendments will be analyzed in the DRECP Draft EIS and CDCA Plan Amendment (PA), as noticed in the **Federal Register** on November 20, 2009 (74 FR 60291) and August 29, 2011 (76 FR 45606). By this notice, the BLM is announcing the beginning of the scoping process to

solicit public comments and identify issues related to the proposed RMP amendments.

DATES: This notice initiates the public scoping process for the EIS and possible RMP amendments. Comments on issues may be submitted in writing until May 4, 2012. In order to be included in the Draft EIS/PA, all comments must be received prior to the close of the scoping period. We will provide additional opportunities for public participation upon publication of the Draft EIS/PA.

ADDRESSES: You may submit comments in writing on issues and planning criteria related to the Bishop, Caliente/Bakersfield, or Eastern San Diego plan amendments as addressed in the DRECP Draft EIS/PA by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/cdd.html.*
- *Email: DRECP@blm.gov* or *docket@energy.state.ca.us* (include ''Docket No. 09–RENEW EO–01/Scoping'' in the subject line).
- *Fax:* (916) 978–4657 or (916) 654–4421 (Attn: Kristy Chew).
- *Mail:* ATTN: Vicki Campbell, DRECP Program Manager, BLM California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, California 95825, or California Energy Commission, Dockets Office, MS–4, Docket No. 09–RENEW E0–01, Scoping Comments, 1516 Ninth St., Sacramento California 95814–5512.

Documents pertinent to this proposal may be examined at the BLM California State Office (see **ADDRESSES** above); BLM California Desert District office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046; BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, California 93308; or the BLM Bishop Field Office, 351 Pacu Lane, Suite 100, Bishop, California 93514.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Vicki Campbell, DRECP Program Manager, telephone (916) 978–4320; address BLM California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, California 95825; email *DRECP@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM, along with the California Department of Fish and Game, the California Energy Commission, and the U.S. Fish and Wildlife Service propose to amend the CDCA Plan, Bishop RMP, Caliente/Bakersfield RMP, and Eastern San Diego RMP within the DRECP planning area. The DRECP will advance State and Federal conservation goals in the desert regions of California while also facilitating the timely permitting of renewable energy projects under applicable State and Federal laws, and is intended to complement the Solar Programmatic EIS, which is currently under environmental review as well. Thus far, the agencies have identified the need to: provide conservation and management of identified species in the planning area, along with the natural communities and ecosystems that support these species, build on the Competitive Renewable Energy Zones identified by the State's Renewable Energy Transmission Initiative, while identifying the most appropriate locations in the planning area for development of utility scale renewable energy projects that will not burden existing resources, standardize mitigation and compensation requirements for energy activities in the planning area, and to streamline the permitting process of energy projects that results in greater conservation values than current methods.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives for the RMP areas and to guide the process for developing the Draft EIS/PA. The BLM has identified the following preliminary issues: special status species, mitigation measures for special status species, vegetation communities, cultural resources, special area designations, and areas of high potential for renewable energy development. These issues along with interagency guidance and cooperation have helped frame preliminary planning criteria, which will work to define the scope of the planning area. These criteria include:

- The plan amendments will be completed in compliance with FLPMA, NEPA, and all other relevant Federal law, implementing regulations, Executive Orders, Secretarial Orders, and management policies of the Department of Interior and the BLM.
- The plan amendment will recognize BLM's responsibility to manage for multiple use and sustained yield throughout the planning area.
- Although the plan amendments will only apply to BLM-managed lands, the BLM will develop and analyze in its range of alternatives, potential land use plan decisions that address a larger, landscape context, which will include considerations of private lands.
- The California Desert Conservation Area Plan Amendment will recognize the unique values and resources in the California Desert, as found by Congress in Sec. 601 of FLPMA.
- The plan amendments will be consistent with the California Natural Communities Conservation Planning Act, to the extent that the decisions reached in the NCCP are consistent with Federal law, regulation, and BLM policies regarding management of public lands.
- The plan amendment will comply with the Memorandums of Understanding between the Department of the Interior (including those agreements signed by BLM–CA) and the State of California (including those agreements signed by state agencies and commissions) and the DRECP Planning Agreement, to the extent that the direction in those documents is consistent with Federal law, regulation, and BLM policies regarding the management public lands.
- Native American Tribal consultation will be conducted in accordance with Federal law, regulation, and policy, and Tribal concerns will be given due consideration.
- Plan amendment decisions will strive to be compatible with the existing plans and policies of adjacent local, state, tribal, and federal agencies, or with changes to those policies and plans contemplated as part of the DRECP, as long as the decisions are in conformance with Federal law, regulation, and BLM policies on management of public lands.

Authorization of this proposal will require amendments of the CDCA Plan, Bishop RMP, Caliente/Bakersfield RMP, and Eastern San Diego RMP. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans predicated on the findings of the environmental review process. The BLM is integrating the land use plan amendment process with the NEPA process for this project.

The BLM will use and coordinate the NEPA commenting process to help fulfill the public involvement process under Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration, including potential impacts on Indian trust assets. Federal,

state, and local agencies, along with tribes and other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. 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.

The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft RMP/Draft EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: rangeland management, minerals and geology, outdoor recreation, paleontology, archaeology, wildlife, lands and realty, hydrology, soils, sociology and economics.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2012–8101 Filed 4–3–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF ENERGY

Western Area Power Administration

[LLNM930000 L51010000.ER0000 LVRWG11G0790 NMNM124104]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Southline Transmission Line Project in New Mexico and Arizona (DOE/EIS–0474) and Possible Land Use Plan Amendments

AGENCY: Bureau of Land Management, U.S. Department of the Interior; Western Area Power Administration, U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Las Cruces District Office, Las Cruces, New Mexico, intends to prepare an Environmental Impact Statement (EIS) analyzing the impacts of the proposed Southline Transmission Line Project (Project), a 345-kilovolt (kV) and 230-kV transmission line, and addressing associated potential land use plan amendments. This notice announces the beginning of the scoping process to solicit public comments and identify issues. Western Area Power Administration (Western) is a joint lead agency with BLM for preparing the EIS. Western is a power-marketing agency within the Department of Energy (DOE) and is proposing to participate in the Project with the applicant, Southline Transmission, LLC (Southline).

DATES: This notice initiates a 60-day public scoping process to solicit public comments and identify issues, opportunities, and concerns that should be considered in the preparation of a Draft EIS. During the scoping process, the BLM will also evaluate the need for any land use plan amendments to any of the affected Resource Management Plans (RMPs). The scoping period will end on June 4, 2012, or 15 days after the date of the last public scoping meeting, whichever is later. In order to ensure consideration in the Draft EIS, all comments must be received prior to the close of the scoping period. The BLM and Western will provide additional opportunities for public participation upon publication of the Draft EIS. The public will be notified in advance of future opportunities for participation as the EIS is prepared.

To provide the public with an opportunity to review the proposal and project information, the BLM and Western expect to hold six public meetings at various locations in New Mexico and Arizona during the public scoping period. The BLM will announce public scoping meetings through local news media, newsletters, and posting on the BLM Web site at *http://www.blm.gov/nm/southline* at least 15 days prior to each meeting.

ADDRESSES: Comments related to the proposed Project may be submitted by any of the following methods:

Web site: http://www.blm.gov/nm/southline.

Fax: (575) 525–4412.

Mail: BLM, Las Cruces District Office, Southline Transmission Project, Attention: Frances Martinez, Realty Specialist, 1800 Marquess Street, Las Cruces, New Mexico 88005.

Email: fmartine@blm.gov.

Documents pertinent to this proposal may be examined at the Las Cruces District Office or on the above Web site.

FOR FURTHER INFORMATION CONTACT: Tom Hurshman, BLM National Project Manager; telephone (970) 240–5345; email: *thurshma@blm.gov.*

For information about Western's involvement, contact Mark Wieringa, Western NEPA Document Manager; telephone (800) 336–7288 or (720) 962–7448; email: *wieringa@wapa.gov.* For general information on DOE NEPA (42 U.S.C. 4321–4347) review procedures or on the status of a NEPA review, contact Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0119, telephone (202) 586–4600 or toll free at (800) 472–2756, fax (202) 586–7031.

People who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 during normal business hours to contact the BLM Project Manager listed above. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Southline has filed a right-of-way (ROW) application with the BLM pursuant to Title V of FLPMA proposing to construct, operate, maintain, and eventually decommission a high-voltage, alternating current electric transmission line. The proposed Project would consist of two segments. The first segment would be the construction of a

new double-circuit 345-kV transmission line linking existing substations at Afton (located south of Las Cruces, New Mexico) and Apache (located south of Willcox, Arizona). This segment is approximately 225 miles long and would enable up to 1,500 megawatts (MW) of transmission capacity. The second segment is an upgrade and rebuild of approximately 130 miles of existing transmission line, providing up to 1,000 MW of increased transmission capacity between the Apache Substation and the Saguaro Substation (located northwest of Tucson, Arizona). New permanent and temporary ROW would be required for this segment. Existing transmission lines that have been identified as feasible for upgrades in this area include a Western 115-kV line and a Southwest Transmission Cooperative, Inc. 115-kV line. Approximately 40 percent of the proposed transmission line would be on public land, 30 percent would be on State land, and the remaining 30 percent would be on private land. A 0.5-mile-long portion of the rebuild segment crosses land administered by the U.S. Forest Service and 2 miles of the rebuild segment cross tribal lands of the Tohono O'odham Nation.

The transmission lines may be supported by lattice steel structures or tubular steel pole structures. Any final decision on a specific type of structure will be based on topography, structural requirements, economics, the environment, and other applicable considerations. The structures are anticipated to be constructed of galvanized steel with a height ranging from 110 to 170 feet, with an average height of 130 to 140 feet. The width of the span at the top will be approximately 40 to 60 feet. The distance between each structure would depend on site-specific characteristics but is expected to be approximately 800 to 1,500 feet, with an average of 1,000 feet for lattice steel structures and 1,200 feet for tubular steel structures. Each structure would be set on concrete foundations set into the ground. The expected permanent disturbed area per structure would be approximately 200 square feet.

The proposed Project would involve additional facilities, including the construction of one new substation in the vicinity of Columbus, New Mexico, to facilitate anticipated renewable energy generation in the area. Access roads, including improvements to existing roads, new overland access, and new unpaved roads, would be developed during construction of the line and then used for inspection and maintenance during operation. A fiber-optic telecommunication system would be included in the transmission design. Additional temporary work sites, including wire splicing and pulling sites as well as construction yards, will also be analyzed. The requested ROW width on public lands is 250 feet.

As part of its agency mission, Western routinely studies power system requirements, plans for transmission line upgrades and additions, facilitates and finances transmission projects, and constructs, owns, operates, and maintains transmission infrastructure. Such projects may be solely Western projects, or may be projects undertaken with the participation of others. Southline is proposing to upgrade approximately 130 miles of Western's existing transmission line between Saguaro and Apache substations as part of its proposed Project. Western is evaluating to what extent it will participate in the proposed Project.

Actions that result in a change in the scope of resource uses, terms and conditions, and decisions of Federal agency land use plans may require an amendment to those plans. Approval of this proposal may result in the amendment(s) of three BLM RMPs. As required by 43 CFR 1610.2(c), the BLM notifies the public of potential amendments to the following RMPs: Phoenix RMP, 1988, Safford District RMP, 1991, and Mimbres RMP, 1993. Any authorizations and actions proposed for approval in the EIS will be evaluated to determine if they conform to the decisions in the referenced land use plans. If amendments are needed, the BLM would integrate the land-use planning process as described in 43 CFR 1610 into the EIS as they proceed with NEPA review of the proposed Project. If the BLM determines that plan amendments are necessary, compliance with NEPA for any land use plan amendments would occur simultaneously with the consideration of the proposed Project.

In accordance with NEPA, DOE NEPA Implementing Procedures (10 CFR part 1021), and Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508),[1] the BLM and Western will prepare an EIS on their Federal actions and the proposed project. The BLM and Western are joint lead agencies for this EIS as defined in 40 CFR 1501.5. Agencies with jurisdiction by law or special expertise will be invited to participate as cooperating agencies in preparation of the EIS. Federal, State, and local agencies, and Indian tribes, along with other stakeholders that may be interested or affected by the BLM's and Western's decisions on this Project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM and Western to participate as a cooperating agency.

During the public scoping period, the BLM and Western will solicit public comments on behalf of all cooperating agencies regarding issues, concerns, and opportunities that should be considered in the analysis of the proposed action. Comments on issues and potential impacts, or suggestions for additional or different alternatives may be submitted to the addresses listed in the **ADDRESSES** section.

Public scoping will help determine relevant issues that can influence the scope of the environmental analysis, alternatives, and the process for developing the EIS. The BLM and Western, along with other agencies, cooperators, and individuals, have preliminarily identified the following issues that will be addressed in the EIS:

- Social and economic effects of the Project on local communities and infrastructure;
- Potential public health and safety impacts resulting from construction-related traffic and electromagnetic fields;
- Potential interference with the Fort Huachuca Electronic Proving Ground;
- Loss of habitat and direct disturbance to plant and animal species (including special and sensitive status species);
- Impacts to cultural resources, lands that contain places of traditional cultural or religious importance, and historic sites;
- New visual intrusions on the landscape that would degrade the scenic and visual quality of the area;
- Proximity of the Project to lands with wilderness characteristics;
- Impacts to National Scenic or Historic Trails, and;
- Potential impacts to military flight paths and areas used for military maneuvers.

This list is not intended to be all-inclusive or imply any predetermination of impacts.

Public meetings will be held during the scoping period. BLM, Western, and Southline staff will be available at the public meetings to explain the details of the proposed Project and to gather information from interested individuals or groups. The BLM, Western, and cooperating agencies will also provide additional opportunities for public participation upon publication of the Draft EIS.

[1] On November 16, 2011, DOE's Acting General Counsel delegated to Western's Administrator all EIS authorities.

The BLM and Western will use and coordinate the Draft EIS public review and comment period to assist the agencies in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)), as provided for in 36 CFR 800.2(d)(3). Information about historic and cultural resources within the area potentially affected by the proposed project will assist the BLM and Western in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA. Consultation with American Indian tribes will be conducted in accordance with applicable policies; tribal concerns, including impacts on Indian trust assets, will be given due consideration.

Before including addresses, phone numbers, email addresses, or other personal identifying information in comments, commenters should be aware that entire comments—including personal identifying information—may be made publicly available at any time. Requests may be made that personal identifying information be withheld from public review; however, the BLM and Western cannot guarantee that they will be able to do so.

Authority: 40 CFR 1501.7; 43 CFR 1610.2.

William W. Merhege,

Deputy State Director, Resources, Bureau of Land Management, New Mexico.

Timothy J. Meeks,

Administrator, Western Area Power Administration.

[FR Doc. 2012–8094 Filed 4–3–12; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164675]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW164675, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Equus Energy Corporation for competitive oil and gas lease WYW164675 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164675 effective December 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2012–8102 Filed 4–3–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560 L58530000 EU0000 241A; N–90450; 12–08807; MO# 4500032437; TAS: 14X5232]

Notice of Realty Action: Modified Competitive, Sealed-Bid Sale of Public Land in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer by modified competitive, sealed-bid sale, one parcel of public land totaling approximately 480 acres in the Las Vegas Valley at not less than the appraised fair market value (FMV) of $10,560,000. The parcel will be offered in a sale pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), Public Law 105–263, 112 Stat. 2343, as amended. The sale will be subject to the applicable provisions of Sections 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C 1713, and BLM land sale regulations at 43 CFR 2710.

DATES: Interested parties may submit written comments regarding the proposed sale and the environmental assessment (EA) until May 21, 2012.

Sealed bids may be mailed or delivered to the BLM Las Vegas Field Office, at the address below, beginning May 21, 2012. Sealed bids must be received by the BLM Las Vegas Field Office no later than 4:30 p.m. Pacific Time, June 4, 2012 in accordance with the sale procedures. The BLM will open the sealed bids on June 4, 2012 at the BLM Las Vegas Field Office at 10 a.m., Pacific Time.

ADDRESSES: Mail written comments to, refer questions about, or submit sealed bids to the BLM, Las Vegas Field Office Assistant Field Manager, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Manuela Johnson at email: *manuela_johnson@blm.gov* or telephone: 702–515–5224. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The parcel proposed for sale is located in the southwestern area of the City of Henderson, Nevada. It is currently encumbered by an authorized road, water pipeline, flood control facilities, and relinquished Nevada Department of Transportation mineral material site right-of-way. The subject public land is described as:

Mount Diablo Meridian

T. 23 S., R. 61 E.,
Sec. 21, N½;
Sec. 22, NW¼.

The area described contains 480 acres, more or less, in Clark County.

The map delineating the proposed sale parcel is available for public review at the BLM Las Vegas Field Office at the address above.

The general area of which encompasses this parcel was analyzed for future sale in the Las Vegas Valley Disposal Boundary Environmental Impact Statement (EIS), approved by Record of Decision on December 23, 2004. The proposed sale parcel N–

90450, is being analyzed in a site specific environmental assessment number DOI–BLM–NV–S010–2012–0017–EA. Upon publication of this notice, the EA is available at the BLM Las Vegas Field Office for public review and comments. Only written comments submitted within 45 days from publication of this notice will be considered properly filed. Submit comments at the address in the **ADDRESSES** section. 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 any 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.

This proposed modified competitive, sealed-bid sale is in conformance with the BLM Las Vegas Resource Management Plan (RMP), approved by Record of Decision on October 5, 1998. More specifically, the proposed action conforms to the RMP decision LD–1, which provides that ''Approximately 175,314 acres of public lands within the disposal areas identified on Map 2–3 are potentially available for disposal through sale, exchange, or Recreation and Public Purpose patent to provide for the orderly expansion and development of southern Nevada.''

The property was proposed for sale pursuant to the SNPLMA, when the parcel was nominated by the City of Henderson to provide for community expansion and private uses consistent with City planning. Further, the City of Henderson has requested consideration for Silver State Land LLC, a Delaware limited liability company, as the designated bidder for this property. Silver State Land LLC and the City of Henderson have developed an agreement that provides for long-term public benefits to the City and local residents. Through collaboration and partnership with the City of Henderson, Silver State Land LLC agrees to develop the property for public recreation and commercial uses approved by the City of Henderson. Silver State Land LLC proposes to build enclosed, covered stadiums to create a distinctive sports venue and mixed-use facilities. The project would provide an economic diversification for southern Nevada and is proposed to be a national and international sports complex.

After considering the City of Henderson's request, the BLM determined that a modified competitive, sealed-bid sale will be the appropriate method for disposal of this parcel. The use of the modified competitive, sealed-bid sale method is consistent with regulations at 43 CFR 2711.3–2(a). Public lands may be offered for sale utilizing modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies. Under the modified competitive bidding procedure provided in 43 CFR 2711.3–2(a)(1)(i), a designated bidder is offered the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of the modified competitive bidding procedure for this proposed sale. For this sale, Silver State Land LLC will be the designated bidder.

Sale procedures: To participate in the modified competitive, sealed-bid sale each bidder, including the designated bidder, must submit a bid guarantee deposit in the amount of $20,000 by certified check, postal money order, bank draft, or cashier's check made payable to the DOI–Bureau of Land Management, in addition to the percentage of the sealed bid amount as described below. Personal or company checks will not be accepted. Sealed bids for the sale must also include a certified check, postal money order, bank draft, or cashier's check made payable to the DOI–Bureau of Land Management in an amount not less than 20 percent of the total amount bid. For your convenience, this bid deposit amount and the bid guarantee may be combined into one form of deposit. These two payments must specify what amount goes towards the bid deposit and the bid guarantee. Sealed bid envelopes must be clearly marked on the front lower left corner with ''Sealed Bid, BLM Land Sale, N–90450.'' The sealed bid envelope must contain the $20,000 bid guarantee, the 20 percent bid deposit, and the completed BLM form, ''Certificate of Eligibility,'' stating the name, mailing address, and telephone number of the entity or person submitting the bid. Certificate of Eligibility forms are available at the BLM Las Vegas Field Office at the address listed above and on the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.* Sealed bids will be opened and recorded to determine the high bidder on June 4, 2012. The high bid among the qualified bids received will be declared.

Silver State Land LLC or their authorized representative must be present at the bid opening. Should the Silver State Land LLC appoint an authorized representative for this sale, they must provide a written, notarized, and lawfully executed document specifying the level of capacity given to the representative. The document must be signed by both Silver State Land LLC and its representative. Silver State Land LLC or its representative will have the opportunity at the bid opening to meet and accept the high bid as the purchase price. Should the Silver State Land LLC or its representative refuse to meet the declared high bid, that bidder will be declared the successful bidder in accordance with the regulations at 43 CFR 2711.3–2(c). Acceptance or rejection of any offer to purchase will be in accordance with the regulations at 43 CFR 2711.3–1(f) and (g).

All funds submitted with unsuccessful bids will be returned to the bidders or their authorized representative upon presentation of acceptable photo identification at the address above, or will be returned by certified mail. The successful bidder may elect a refund of the $20,000 bid guarantee, or may elect to apply it toward the final purchase price. The successful bidder will be allowed 180 calendar days from the date of the sale to submit the remainder of the full purchase price.

Within 30 days of the sale, the BLM will, in writing, either accept or reject all bids received. No contractual or other rights against the United States may accrue until the BLM authorized officer officially accepts the high bid offer to purchase and the full bid price is paid.

If there are no acceptable bids, the parcel may remain available for sale at a future date in accordance with competitive sale procedures without further notice.

Federal law requires that qualified bidders must be (a) a citizen of the United States 18 years of age or older; (b) A corporation subject to the laws of any State or of the United States; (c) A State, State instrumentality, or political subdivision authorized to hold real property; and (d) An entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. Where applicable, the entity shall also meet the requirements of (a) and (b) of this paragraph. United States citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the appropriate documents to the BLM within 30 days from receipt of the high-bidder letter shall result in cancellation of the sale and forfeiture of the bid deposit.

Terms and Conditions: All minerals for the parcel will be reserved to the United States in accordance with the BLM's approved Mineral Potential Report, dated January 22, 1999. Information pertaining to the reservation of minerals specific to the parcel is located in case file N–90450 and is available for public review at the BLM Las Vegas Field Office at the address listed.

The patent, when issued for sale parcel N–90450, will contain a mineral reservation to the United States.

The parcel is subject to limitations prescribed by law and regulation, and certain encumbrances in favor of third parties. Prior to patent issuance, a holder of any right-of-way within the parcel will be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or conversion to an easement. The BLM will notify valid existing right-of-way holders of record of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. In accordance with Federal regulations at 43 CFR 2807.15, once notified, each valid holder may apply for the conversion of their current authorization.

The following numbered terms, conditions, and reservations will appear on the conveyance document for this parcel:

1. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The parcel is subject to valid existing rights;

4. The parcel is subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' plans;

5. Right-of-way N–78907 for water pipeline purposes granted to Las Vegas Valley Water District, its successors or assigns pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

6. Right-of-way N–80146 for road purposes granted to the City of Henderson, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

7. Right-of-way N–80147 for drainage facility purposes granted to the City of Henderson, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

8. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws; (5) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and;

9. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of this parcel will not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA.

Unless other satisfactory arrangements are approved in advance by the BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee. Requests for all escrow instructions must be received by the BLM Las Vegas Field Office prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale.

All name changes and supporting documentation must be received no later than close of business at 4:30 p.m. Pacific Time at the BLM Las Vegas Field Office, at the address above, 30 days from the date on the written notification of acceptance of the high bid. Name changes will not be accepted after that date. To submit a name change, the high bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM Las Vegas Field Office.

The remainder of the full bid price for the parcel must be received no later than 4:30 p.m., Pacific Time, within 180 days following the day of the sale. Payment must be submitted in the form of a certified check, U.S. postal money order, bank draft, cashier's check, or made available by electronic fund transfer made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management'' to the BLM Las Vegas Field Office, at the address listed above. Personal or company checks will not be accepted.

Arrangements for electronic fund transfer to BLM for payment of the balance due must be made a minimum of 2 weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made.

The BLM will not sign any documents related to 1031 Exchange transactions.

The timing for completion of an exchange is the bidder's responsibility. The BLM cannot be a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons as may be provided by applicable law or regulations.

Upon publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the parcel identified for sale. However, land use applications may be considered after the date of the auction offering if the parcel is not sold. Encumbrances of record that may appear in the BLM public files for the parcel proposed for sale are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday, at the BLM Las Vegas Field Office, except during federally recognized holidays.

In order to determine the FMV through appraisal, certain extraordinary assumptions and hypothetical conditions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Information concerning the sale, appraisals, reservations, procedures and conditions, CERCLA, and other environmental documents are available for review at the BLM Las Vegas Field Office at the address in the **ADDRESSES** section.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director or other authorized official of the Department of the Interior who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Vanessa L. Hice,

Assistant Field Manager, Division of Lands.

[FR Doc. 2012–8097 Filed 3–30–12; 4:15 pm]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 332–528]

Used Electronic Products: An Examination of U.S. Exports; Proposed Information Collection; Comment Request; Used Electronic Products Questionnaire

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the U.S. International Trade Commission (Commission) will submit a request for approval of a questionnaire to the Office of Management and Budget for review.

DATES: To ensure consideration, written comments must be submitted on or before June 1, 2012.

ADDRESSES: Direct all written comments to Laura Bloodgood, Project Leader, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436 (or via email at *laura.bloodgood@usitc.gov*).

Additional Information: Copies of the questionnaire and supporting investigation documents may be obtained from project leader Laura Bloodgood (*laura.bloodgood@usitc.gov* or 202–708–4726) or deputy project leader Andrea Boron (*andrea.boron@usitc.gov* or 202–205–3433). Supporting documents may also be downloaded from the Commission Web site at *http://www.usitc.gov/research_and_analysis/What_We_Are_Working_On.htm.*

Purpose of Information Collection: The form is for use by the Commission in connection with Investigation No. 332–528, *Used Electronic Products: An Examination of U.S. Exports,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the United States Trade Representative (USTR). The Commission expects to deliver the results of its investigation to the USTR by February 10, 2013.

Summary of Proposal

(1) *Number of forms submitted:* 1.

(2) *Title of form:* Used Electronic Products Questionnaire.

(3) *Type of request:* New.

(4) *Frequency of use:* Industry questionnaire, single data gathering, scheduled for 2012.

(5) *Description of respondents:* U.S. firms acquiring, refurbishing, repairing, reselling, recycling, and/or exporting used electronic products in 2011.

(6) *Estimated number of respondents:* 5,000.

(7) *Estimated total number of hours to complete the form per respondent:* 2.5 hours.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Trade Representative has directed the Commission to prepare a report that (1) provides estimates and details of U.S. exports of used electronic products, and the share of exports compared to all used electronic products sold or processed in the United States, (2) describes U.S. companies that export used electronic products, and (3) describes the foreign enterprises that import used electronic products from the United States. The Commission will base its report on a review of available data and other information, including the collection of primary data through a survey of enterprises engaged in the processing of used electronic products.

The report will cover 2011 annual data, and to the extent practicable will estimate and describe the following:

a. The type, volume, and value of, and foreign markets of significance for, exports of used electronic products from the United States;

b. The forms and activities, with respect to used electronic products, of enterprises receiving U.S. exporters' shipments, most common end uses of exports in the foreign market (i.e., further processing, final disposal, etc.), and the extent of cross-border, intra-firm shipments by U.S. exporters;

c. The characteristics of used electronic products exported from the United States, including product condition (e.g., working, non-working, remanufacturable, refurbishable, repairable), composition of shipments (single product type, multiple product types), and the extent to which exports are processed (broken down or stripped), or remain intact prior to exportation;

d. The forms, activities and characteristics of domestic exporting enterprises (e.g., original equipment manufacturers, remanufacturers, refurbishers, brokers, recyclers, nonprofits, etc.) including the extent to which the exporter is foreign-invested;

e. The relative share of sales by U.S. companies of used electronic products that are (1) Exported, (2) sold to firms in the United States, (3) processed by the exporter itself, and (4) disposed of by the exporter itself; and

f. The factors affecting trade in used electronic products.

II. Method of Collection

Respondents will be mailed a letter directing them to download and fill out a form-fillable PDF questionnaire. Once complete, respondents may submit it by uploading it to a secure webserver, emailing it to the study team, faxing it, or mailing a hard copy to the Commission.

III. Request for Comments

Comments are invited on (1) whether the proposed collection of information is necessary; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The draft questionnaire and other supplementary documents may be downloaded from the USITC Web site at *http://www.usitc.gov/332528comments.*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Issued: March 30, 2012.

By order of the Commission.

James R. Holbein,

Secretary.

[FR Doc. 2012–8044 Filed 4–3–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[DN 2891]

Certain Cameras and Mobile Devices, Related Software and Firmware, and Components Thereof and Products Containing the Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Cameras and Mobile Devices, Related Software and Firmware, and Components Thereof and Products Containing the Same,* DN 2891; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of HumanEyes Technologies, Ltd. on March 29, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cameras and mobile devices, related software and firmware, and components thereof and products containing the same. The complaint names as respondents Sony Corporation of Japan; Sony Corporation of America of NY; Sony Electronics Inc. of CA; Sony Mobile Communications AB of United Kingdom; Sony Mobile Communications (USA) Inc. of GA.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by

noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2891'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 29, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–7976 Filed 4–3–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–755]

Certain Starter Motors and Alternators; Notice of Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and has issued a limited exclusion order and a cease and desist order against respondent American Automotive Parts, Inc. (''AAP'') of Niles, Illinois, which was previously found in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 19, 2011, based on a complaint filed by Remy International, Inc. and Remy Technologies, L.L.C. (collectively, ''Remy''), both of Pendleton, Indiana. 76 FR 3158 (Jan. 19, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States of certain starter motors and alternators by reason of infringement of certain claims of U.S. Patent Nos. 5,105,114 (''the '114 patent''); 5,252,878; 5,268,605 (''the '605 patent''); 5,295,404; 5,307,700; 5,315,195 (''the '195 patent''); and 5,453,648 (''the '648 patent''). The notice of investigation, as amended, named ten respondents including AAP. The complaint and notice of investigation were served on AAP on January 13, 2011. AAP failed to respond to the complaint and notice of investigation. The '114 patent was terminated from the investigation based on partial withdrawal by Remy, and all other respondents have been terminated from the investigation based on either a consent order or a settlement agreement. Claims 1 and 4 of the '605 patent, claims 1–6 of the '195 patent, and claims 1, 5, and 10 of the '648 patent were asserted against AAP.

The presiding administrative law judge (''ALJ'') issued an initial determination (''ID'') on December 22, 2011, finding AAP in default, pursuant to 19 CFR 210.13 and 210.16, because respondent did not respond to the complaint and notice of investigation, or to the ALJ's December 13, 2011 order to show cause. On January 14, 2012, the Commission issued notice of its determination not to review the ID finding AAP in default.

On February 9, 2012, the Commission issued a Notice that requested briefing from interested parties on remedy, the public interest, and bonding with respect to respondent AAP found in default. 77 FR 8898–00 (Feb. 15, 2012).

Both Remy and the Commission investigative attorney (''IA'') submitted briefing on remedy, the public interest, and bonding along with proposed orders on March 2, 2012. The IA also submitted a reply brief on March 9, 2012, containing revised orders.

The Commission found that the statutory requirements of section 337(g)(1)(A)–(E) (19 U.S.C. 1337(g)(1)(A)–(E)) were met with respect to the defaulting respondent. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission rule 210.16(c) (19 CFR 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

The Commission has determined that the appropriate form of relief is the following: (1) A limited exclusion order prohibiting the unlicensed entry of alternators that infringe one or more of claims 1 and 4 of the '605 patent, claims 1–6 of the '195 patent, or claims 1, 5, and 10 of the '648 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, AAP, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns; and (2) a cease and desist order prohibiting AAP from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for alternators that infringe one or more of claims 1 and 4 of the '605 patent, claims 1–6 of the '195 patent, or claims 1, 5, and 10 of the '648 patent.

The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not preclude issuance of the limited exclusion order or the cease and desist order. Finally, the Commission has determined that a bond of 100 percent of the entered value of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's

orders were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and 210.41).

By order of the Commission.

Issued: March 30, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8045 Filed 4–3–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on March 28, 2012, a proposed Consent Decree in *United States* v. *Forward, Inc.,* Civil Action No. 2:11–cv–00590–EFB, was lodged with the United States District Court for the Eastern District of California.

In this action the United States sought injunctive relief and civil penalties against defendant Forward, Inc., pursuant to Section 113(b) of the Clean Air Act (Act), 42 U.S.C. 7413(b), in connection with activities at the Forward Landfill in Manteca, California. The United States' complaint, filed concurrently with the Consent Decree, alleges that Forward violated the Act by operating gas extraction wells in the landfill's gas collection and control system (GCCS) in violation of the Act's New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, and in violation of the Title V permit it had received from the San Joaquin Valley Unified Air Pollution Control District (District), the United States' co-plaintiff in the action. The Consent Decree would require Forward to improve the GCCS by installing new extraction wells and closing unneeded wells, to implement specific operations and maintenance actions to minimize air intrusion and the likelihood of subsurface fires at the landfill, to replace trucks in the landfill's fleet with less polluting vehicles, and to pay a civil penalty of $200,000, to be shared with the District.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Forward, Inc.,* No. 2:11–cv–00590–EFB (E.D. Cal.), D.J. Ref. 90–5–2–1–09873.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy''(*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $9.25 payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–8033 Filed 4–3–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Humana Inc. and Arcadian Management Services, Inc.;* Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia, in *United States* v. *Humana Inc. and Arcadian Management Services, Inc.,* Civil Action No. 12-cv-00464. On March 27, 2012, the United States filed a Complaint alleging that the proposed acquisition by Humana Inc. of Arcadian Management Services, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment filed at the same time as the Complaint requires the parties to divest health plans in 51 counties and parishes in Arizona, Arkansas, Louisiana, Oklahoma, and Texas.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202 514–2481), and 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 Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–0827).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street, NW., Suite 4100, Washington, DC 20530, Plaintiff, v. *Humana Inc., 500 West Main Street, Louisville, KY 40202,* and *Arcadian Management Services, Inc., 500 12th Street, Suite 340, Oakland, CA 94607,* Defendants.

Case: 1:12-cv-00464.
Assigned to: Walton, Reggie B.
Assign. Date: 3/27/2012.
Description: Antitrust.

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil action to enjoin Humana Inc. (''Humana'') from acquiring Arcadian Management Services, Inc. (''Arcadian''). The United States alleges as follows:

1. Unless enjoined, Humana's proposed acquisition of Arcadian will substantially lessen competition in the sale of Medicare Advantage health insurance plans sold to Medicare-eligible individuals (''the relevant product market'') in forty-five counties and parishes in Arizona, Arkansas, Louisiana, Oklahoma, and Texas (''the relevant geographic markets'').

2. A Medicare Advantage plan is a health insurance product sold by a

private company to Medicare-eligible individuals (collectively, ''seniors'') that replaces traditional Medicare. Congress created the Medicare Advantage program as a private-market alternative to government-provided traditional Medicare. In establishing the Medicare Advantage program, Congress intended that vigorous competition among private Medicare Advantage insurers, such as Humana and Arcadian, would lead those insurers to offer seniors a wider array of health insurance choices, and richer and more affordable benefits than traditional Medicare does, and be more responsive to seniors. On August 24, 2011, Humana agreed to acquire Arcadian in a transaction valued at approximately $150 million (the ''transaction'').

3. Humana and Arcadian together account for 40 to 100 percent of the enrollment in individual Medicare Advantage plans in each of the relevant geographic markets. In these markets, individual Medicare Advantage plans account for more than $700 million in annual commerce.

4. The proposed acquisition will significantly lessen competition among Medicare Advantage plans and eliminate substantial head-to-head competition between Humana and Arcadian in the provision of such plans in the relevant geographic markets. The competition between Humana and Arcadian in the relevant geographic markets has significantly benefited thousands of seniors. Humana's and Arcadian's plans in the relevant geographic markets offer seniors significantly greater benefits than those available under traditional Medicare, likely resulting in substantial healthcare cost savings for seniors selecting either of those companies' plans. The proposed acquisition will end that competition, eliminating the pressure that these close competitors place on each other to maintain attractive benefits, low premiums, and high-quality healthcare.

5. Because the proposed acquisition likely would substantially reduce competition in the sale of individual Medicare Advantage plans in the relevant geographic markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, the Court should permanently enjoin this transaction.

I. Jurisdiction, Venue, and Interstate Commerce

6. The United States brings this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

7. Humana and Arcadian are engaged in interstate commerce and in activities substantially affecting interstate commerce. They sell insurance that covers enrollees when they travel across state lines; purchase health-care services from providers in various states; and receive payments from enrollees in various states. Defendants also purchase health-care products and services, such as pharmaceuticals, in interstate commerce.

8. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25; and 28 U.S.C. 1331, 1337(a), and 1345.

9. Defendants have consented to personal jurisdiction in this District. The Court also has personal jurisdiction over Defendants under Section 12 of the Clayton Act, 15 U.S.C. 22.

10. Defendants have consented to venue in this District. Venue is also proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391.

II. The Defendants and the Proposed Transaction

11. Humana is a corporation organized and existing under the laws of Delaware and has its principal place of business in Louisville, Kentucky. A leading health insurer in the United States, Humana provides health insurance and other services to more than 17 million people nationwide. In 2010, Humana reported revenues of approximately $33.6 billion.

12. In the relevant geographic markets, Humana sells Medicare Advantage Private Fee-For-Service (''PFFS''), Health Maintenance Organization (''HMO''), and Preferred Provider Organization (''PPO'') plans under the Humana Gold Choice, Humana Gold Plus, HumanaChoice, and Humana Reader's Digest Healthy Living Plan names. Humana is one of the largest Medicare Advantage providers in the United States, with almost 1.8 million Medicare Advantage members. Approximately 35,000 seniors are enrolled in individual Humana Medicare Advantage plans in the relevant geographic markets.

13. Arcadian is a corporation organized and existing under the laws of Delaware and has its principal place of business in Oakland, California. Arcadian sells Medicare HMO plans and focuses on secondary, non-urban, and underserved markets. It has approximately 62,000 Medicare Advantage members in fifteen states. In 2010, Arcadian had revenues of $622 million.

14. Arcadian sells Medicare Advantage plans through its wholly-owned subsidiaries, Desert Canyon Community Care in Arizona; Arkansas Community Care and Texarkana Community Care in Arkansas; Arcadian Community Care in Louisiana; Arcadian Health Plan in Oklahoma; and Texas Community Care and Texarkana Community Care in Texas. Over 14,700 people in the relevant geographic markets are enrolled in individual Arcadian Medicare Advantage plans.

15. Humana and Arcadian each have well-established managed-care healthcare networks that they use to provide services to enrollees in the relevant geographic markets. In addition, Humana and Arcadian each have an established brand and positive reputation in the relevant geographic markets.

III. The Medicare Advantage Insurance Market

16. The federal government provides and facilitates the provision of health insurance to millions of Medicare-eligible citizens through two types of programs: traditional Medicare and Medicare Advantage. Under traditional Medicare, a beneficiary receives coverage for inpatient healthcare services in hospitals and other facilities under Medicare Part A and can elect to receive coverage for physician and outpatient healthcare services under Part B. For Part A, the government generally charges no monthly premium if the beneficiary was in the workforce and paid Medicare taxes. For Part B, the government deducts a monthly premium ($99.90 for most beneficiaries) from the beneficiary's Social Security checks. In addition, the beneficiary must pay deductibles and/or coinsurance for doctor visits and hospital stays. If a beneficiary wants to limit traditional Medicare's out-of-pocket costs, the beneficiary can purchase a Medicare Supplement plan for an additional monthly premium. To receive prescription drug coverage, seniors enrolled in traditional Medicare can purchase a Medicare prescription drug plan (Medicare Part D) for an additional monthly premium.

17. Medicare Advantage plans, unlike traditional Medicare, are offered by private insurance companies. Medicare Advantage plans provide all of the medical insurance coverage that seniors receive under traditional Medicare and also usually limit out-of-pocket costs and include drug coverage. These plans also generally provide benefits beyond what traditional Medicare provides, often including coverage for vision, hearing, dental, and wellness programs.

However, most Medicare Advantage plans have a more limited healthcare provider network than traditional Medicare. Limited networks help Medicare Advantage insurers lower their costs and offer richer benefits than traditional Medicare.

18. An insurance company that seeks to offer a Medicare Advantage plan in a county or parish must submit a bid to the Centers for Medicare and Medicaid Services (''CMS'') for each Medicare Advantage plan that it intends to offer. The bid must provide the insurer's anticipated costs per member to cover required Medicare Part A and Part B benefits. CMS actuaries compare these costs, including an anticipated profit margin, to a Medicare benchmark that reflects, in part, the government's likely cost of covering the beneficiaries. Through 2011, if the insurer's bid for Medicare benefits was lower than the benchmark, the Medicare program retained 25 percent of the savings and required that the insurer use the other 75 percent (''the rebate'') to provide supplemental benefits or lower premiums. Accordingly, a plan with lower projected costs would offer more benefits to seniors and be more attractive. As of 2012, the rebate will vary based on performance as measured through CMS's Medicare star rating system, such that insurers will receive a greater fraction of the rebate the better their performance. Therefore, Medicare Advantage plans compete for enrollment by lowering costs, lowering premiums, increasing benefits, and improving performance.

19. Medicare Advantage enrollees can be either group or individual enrollees. Group enrollees are generally retirees who enroll in a Medicare Advantage plan chosen by their former employer or another group. Individual enrollees directly choose their Medicare Advantage plan from among the plans that CMS has approved for the county or parish in which they live.

IV. Relevant Product Market

20. Most successful Medicare Advantage plans, including those in the relevant geographic markets, offer substantially richer benefits at lower costs to enrollees than traditional Medicare does with or without a Medicare Supplement or Medicare Prescription Drug Plan, including lower copayments, lower coinsurance, caps on total yearly out-of-pocket costs, prescription drug coverage, and supplemental benefits that traditional Medicare does not cover, such as dental and vision coverage, and health club memberships. Seniors enrolled in Medicare Advantage plans also often value that they can receive all of these benefits through a single plan and that Medicare Advantage plans manage care in ways that traditional Medicare does not.

21. Consequently, a small but significant increase in Medicare Advantage plan premiums or reduction in benefits is unlikely to cause a sufficient number of seniors to switch to traditional Medicare such that the price increase or reduction in benefits would be unprofitable. Accordingly, the relevant product market is no broader than the sale of individual Medicare Advantage plans, which is a line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

V. Relevant Geographic Markets and Market Concentration

22. Seniors may only enroll in Medicare Advantage plans that CMS has approved for the county or parish in which they live. Consequently, they could not turn to Medicare Advantage plans offered outside the county or parish in which they live in response to a small but significant increase in price in Medicare Advantage plans.

23. The following forty-five counties and parishes are relevant geographic markets within which to assess the likely effects of the transaction, and all are ''sections of the country'' within the meaning of Section 7 of the Clayton Act: Mohave and Yavapai Counties in Arizona; Columbia, Conway, Crawford, Franklin, Hempstead, Howard, Lafayette, Little River, Logan, Miller, Nevada, Pope, Scott, Sebastian, Sevier, and Yell Counties in Arkansas; Allen, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Claiborne, De Soto, Jefferson Davis, Red River, and Webster Parishes in Louisiana; Adair, Delaware, Haskell, Le Flore, McCurtain, Ottawa, and Sequoyah Counties in Oklahoma; and Bowie, Cass, Deaf Smith, Gregg, Harrison, Henderson, Potter, Randall, and Titus Counties in Texas.

24. If consummated, the merger would give Humana market shares ranging from 40 to 100 percent in the forty-five relevant geographic markets. *See* Appendix B.

25. According to the Herfindahl-Hirschman Index (''HHI''), a measure of concentration commonly relied on by the courts and antitrust agencies to measure market concentration (defined and explained in Appendix A), the transaction would significantly increase the market concentration for the relevant product in each of the relevant geographic markets, almost all of which are already highly concentrated. The increases in concentration would range from 312 points in Pope County, Arkansas, to 4928 points in Sequoyah County, Oklahoma, with all of the increases substantially higher than the 200 points (*see* Appendix B) presumed likely to enhance market power in highly concentrated markets under the antitrust agencies' *Horizontal Merger Guidelines. See* U.S. Dep't of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010).

26. Defendants' market shares in the relevant geographic markets have generally increased in recent years, as some competitors have exited these markets or stopped offering certain competing products.

VI. Anticompetitive Effects

27. The proposed transaction likely would substantially lessen competition in the sale of individual Medicare Advantage plans in the relevant geographic markets. The transaction would end the substantial head-to-head competition between Humana and Arcadian to convince seniors to enroll in each company's Medicare Advantage plans in the relevant geographic markets. In each market, Humana and Arcadian compete against each other by offering plans with frequently low or no premiums, reducing copayments, eliminating deductibles, lowering annual out-of-pocket maximum costs, managing care, improving drug coverage, offering desirable benefits, and making their provider networks more attractive to potential members.

VII. Absence of Countervailing Factors

28. If Defendants complete the proposed transaction, the loss of this competition would likely result in higher premiums and reduced benefits for seniors enrolled in Medicare Advantage plans in the relevant geographic markets.

29. Competition from existing Medicare Advantage plans and new entrants is unlikely to prevent anticompetitive effects in each relevant geographic market. Entrants face substantial cost, reputation, and distribution disadvantages that will likely make them unable to prevent Humana from profitably raising premiums or reducing benefits in the relevant geographic markets.

VIII. Violations Alleged

30. The proposed transaction likely would substantially lessen competition in the sale of Medicare Advantage health insurance in each of the relevant geographic markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

31. The proposed transaction would likely have the following effects in each relevant geographic market:

a. Substantially lessening competition in the sale of Medicare Advantage insurance;

b. eliminating competition between Humana and Arcadian in the sale of Medicare Advantage insurance; and

c. increasing premiums or reducing benefits for Medicare Advantage insurance to less competitive levels than would prevail absent the acquisition.

IX. Prayer for Relief

32. The United States requests that this Court:

a. Adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. preliminarily and permanently enjoin the defendants from carrying out the proposed transaction or from entering into or carrying out any other agreement, understanding, or plan, the effect of which would be to bring the Medicare Advantage businesses of Humana and Arcadian under common ownership or control;

c. award the United States its costs in this action; and

d. award the United States such other relief as the Court may deem just and proper.

Dated this 27th day of March 2012.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/Sharis A. Pozen
Sharis A. Pozen (DC Bar #446732),
Acting Assistant Attorney General for Antitrust

/s/Leslie C. Overton
Leslie C. Overton (DC Bar #454493)
Deputy Assistant Attorney General

/s/Patricia A. Brink
Patricia A. Brink
Director of Civil Enforcement

/s/Joshua H. Soven
Joshua H. Soven (DC Bar #436633)
Chief, Litigation I Section

/s/Peter J. Mucchetti
Peter J. Mucchetti (DC Bar #463202)
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/s/Adam Gitlin
Adam Gitlin *
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* Attorney of Record.

Herfindahl-Hirschman Index

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

The agencies generally consider markets in which the HHI is between 1,500 and 2,500 points to be moderately concentrated, and consider markets in which the HHI is in excess of 2,500 points to be highly concentrated. *See* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

RELEVANT GEOGRAPHIC MARKETS

[As of March 2012]

County	Post-merger share (percent)	HHI Post-merger	Increase in HHI
Mohave, AZ	82.3	6980	3386
Yavapai, AZ	40.8	5091	407
Columbia, AR	56.0	4732	1421
Conway, AR	55.0	3906	376
Crawford, AR	63.8	4514	1563
Franklin, AR	47.8	3539	549
Hempstead, AR	55.7	5064	1218
Howard, AR	58.1	4576	1681
Lafayette, AR	68.3	5668	1993
Little River, AR	82.1	7066	3292
Logan, AR	59.7	4263	1080
Miller, AR	73.8	5836	1931
Nevada, AR	58.9	5158	1139
Pope, AR	44.1	4055	312
Scott, AR	52.1	3545	984
Sebastian, AR	57.9	3882	1133
Sevier, AR	84.1	7326	3474
Yell, AR	40.3	3075	610
Allen, LA	78.5	6622	1310
Beauregard, LA	100.0	10000	4789
Bienville, LA	49.3	3721	1189
Bossier, LA	93.3	8748	848
Caddo, LA	92.7	8642	1626
Calcasieu, LA	100.0	10000	3217
Claiborne, LA	42.0	3523	535
De Soto, LA	100.0	10000	3648
Jefferson Davis, LA	88.7	8000	1746
Red River, LA	45.0	3803	926
Webster, LA	84.1	7323	1385
Adair, OK	60.1	5204	1799

RELEVANT GEOGRAPHIC MARKETS—Continued

[As of March 2012]

County	Post-merger share (percent)	HHI Post-merger	Increase in HHI
Delaware, OK	100.0	10000	3887
Haskell, OK	58.6	4666	1688
Le Flore, OK	100.0	10000	4632
McCurtain, OK	80.6	6691	2325
Ottawa, OK	100.0	10000	1512
Sequoyah, OK	100.0	10000	4928
Bowie, TX	82.5	7019	3305
Cass, TX	81.3	6962	3285
Deaf Smith, TX	66.7	5556	1636
Gregg, TX	73.7	5783	2668
Harrison, TX	86.4	7652	3590
Henderson, TX	68.0	5197	2224
Potter, TX	72.6	5776	2197
Randall, TX	75.0	5928	1421
Titus, TX	75.8	6331	2198

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Humana Inc. and Arcadian Management Services, Inc., Defendants.*

Case: 1:12–cv–00464.
Assigned To: Walton, Reggie B.
Assign. Date: 3/27/2012.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on March 27, 2012, seeking to enjoin Humana Inc. (''Humana'') from acquiring Arcadian Management Services, Inc. (''Arcadian''), alleging that the acquisition likely would substantially lessen competition in the sale of individual Medicare Advantage plans in forty-five counties and parishes in Arizona, Arkansas, Louisiana, Oklahoma, and Texas (''the relevant geographic markets''), in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The loss of competition from the acquisition likely would result in higher premiums and reduced benefits and services in these markets.

At the same time that the United States filed the Complaint, the United States also filed an Asset Preservation Stipulation and Order (''Stipulation'') and proposed Final Judgment, which will eliminate the anticompetitive effects that likely would result from the transaction by requiring the Defendants to divest Medicare Advantage business in each relevant geographic market. Under the Stipulation, the Defendants must ensure that the assets to be divested continue to be operated as ongoing, economically viable, and competitive Medicare Advantage offerings until accomplishment of the divestitures that the proposed Final Judgment requires.

The United States and the Defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Defendant Humana is a leading health insurer in the United States, providing health insurance and other services to more than 17 million people nationwide. In 2010 Humana reported revenues of approximately $33.6 billion.

Humana is one of the largest Medicare Advantage providers in the United States, with almost 1.8 million Medicare Advantage members. Humana provides health insurance to approximately 35,000 Medicare Advantage enrollees in the relevant geographic markets alleged in the Complaint. In the relevant geographic markets, Humana sells Medicare Advantage plans under the Humana Gold Choice, Humana Gold Plus, HumanaChoice, and Humana Reader's Digest Healthy Living Plan names.

Arcadian sells Medicare Advantage HMO plans and focuses on secondary, non-urban, and underserved markets. It has approximately 62,000 Medicare Advantage members in fifteen states. In 2010 it had revenues of $622 million.

Arcadian provides health insurance to over 14,700 Medicare Advantage enrollees in the relevant geographic markets. Humana and Arcadian each have well-established managed-care networks that they use to provide services to enrollees in these markets. In addition, each has an established brand and positive reputation in the relevant geographic markets.

On August 24, 2011, Humana and Arcadian entered into a merger agreement whereby Humana agreed to acquire all of the outstanding shares of Arcadian. Humana and Arcadian valued the transaction at approximately $150 million.

B. Medicare Advantage Insurance

The federal government provides and facilitates the provision of health insurance to millions of Medicare-eligible citizens through two types of programs: traditional Medicare and Medicare Advantage. Under traditional Medicare, a beneficiary receives coverage for inpatient healthcare services in hospitals and other facilities under Medicare Part A and can elect to receive coverage for physician and outpatient healthcare services under Part B. For Part A, the government generally charges no monthly premium if the beneficiary was in the workforce and paid Medicare taxes. For Part B, the government deducts a monthly premium ($99.90 for most beneficiaries) from the beneficiary's Social Security checks. In addition, for doctor visits and hospital stays, the beneficiary must pay deductibles, coinsurance, or both. If a

beneficiary wants to limit these potentially high out-of-pocket costs, the beneficiary can purchase a separate Medicare Supplement plan for an additional monthly premium. To receive prescription drug coverage, seniors enrolled in traditional Medicare can purchase a Medicare prescription drug plan (Medicare Part D) for an additional monthly premium.

Medicare Advantage plans, unlike traditional Medicare, are offered by private insurance companies. Medicare Advantage plans provide all of the medical insurance coverage that seniors receive under traditional Medicare and also usually limit out-of-pocket costs and include drug coverage. These plans also generally provide benefits beyond what traditional Medicare provides, often including coverage for vision, hearing, dental, and wellness programs. However, most Medicare Advantage plans have a more limited healthcare provider network than traditional Medicare, and limited networks help Medicare Advantage insurers lower their costs and offer richer benefits than traditional Medicare.

An insurance company that seeks to offer a Medicare Advantage plan in a county must submit a bid to the Centers for Medicare and Medicaid Services (''CMS'') for each Medicare Advantage plan that it intends to offer. The bid must provide the insurer's anticipated costs to cover the required Medicare Part A and Part B benefits for a member. CMS actuaries compare these costs, including an anticipated profit margin, to a Medicare benchmark that reflects, in part, the government's likely cost of covering the beneficiaries. Through 2011, if the insurer's bid for Medicare benefits was lower than the benchmark, the Medicare program retained 25 percent of the savings and the insurer was required to use the other 75 percent (''the rebate'') to provide supplemental benefits or lower premiums. Accordingly, a plan with lower projected costs would offer more benefits to seniors and be more attractive. As of 2012, the rebate will vary based on performance as measured through CMS's Medicare star rating system, such that insurers will receive a greater fraction of the rebate the better their performance. Therefore, Medicare Advantage plans compete for enrollment by lowering costs, lowering premiums, increasing benefits, and improving performance.

Medicare Advantage enrollees can be either group or individual enrollees. Group enrollees are generally retirees who enroll in a Medicare Advantage plan chosen by their former employer or another group. Individual enrollees directly choose their Medicare Advantage plan from among the plans that CMS has approved for the county or parish in which they live.

C. Relevant Markets

1. The Relevant Product Market Is No Broader Than the Sale of Individual Medicare Advantage Health Insurance

The Complaint alleges that the relevant product market is no broader than the sale of Medicare Advantage health insurance to individuals. Most successful Medicare Advantage plans, including those in the relevant geographic markets, offer substantially richer benefits at lower costs to enrollees than traditional Medicare does with or without a Medicare Supplement or Medicare prescription drug plan, including lower copayments, lower coinsurance, caps on total yearly out-of-pocket costs, prescription drug coverage, and supplemental benefits that traditional Medicare does not cover, such as dental and vision coverage, and health club memberships. Seniors enrolled in Medicare Advantage plans also often value that they can receive all of these benefits through a single plan and that Medicare Advantage plans manage care in ways that traditional Medicare does not.

Consequently, a small but significant increase in Medicare Advantage plan premiums or reduction in benefits is unlikely to cause a sufficient number of seniors in the relevant geographic markets to switch to traditional Medicare such that the price increase or reduction in benefits would be unprofitable. Accordingly, the relevant product market is no broader than the sale of individual Medicare Advantage plans and is a line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. The Relevant Geographic Markets Are County or Parish Markets

Seniors may enroll only in Medicare Advantage plans that CMS approves for the county or parish in which they live. Consequently, they could not turn to Medicare Advantage plans offered outside the county or parish in which they live in response to a small but significant increase in premiums or a reduction in benefits. Accordingly, each of following forty-five counties and parishes is a relevant geographic market and a section of the country within the meaning of Section 7 of the Clayton Act: Mohave and Yavapai Counties in Arizona; Columbia, Conway, Crawford, Franklin, Hempstead, Howard, Lafayette, Little River, Logan, Miller, Nevada, Pope, Scott, Sebastian, Sevier, and Yell Counties in Arkansas; Allen, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Claiborne, De Soto, Jefferson Davis, Red River, and Webster Parishes in Louisiana; Adair, Delaware, Haskell, Le Flore, McCurtain, Ottawa, and Sequoyah Counties in Oklahoma; and Bowie, Cass, Deaf Smith, Gregg, Harrison, Henderson, Potter, Randall, and Titus Counties in Texas.

3. The Defendants' Shares in Medicare Advantage Are High in the Relevant Geographic Markets

The market for Medicare Advantage plans is already highly concentrated in almost all of the relevant geographic markets and would become significantly more concentrated as a result of the proposed acquisition. If consummated, the merger would give Humana market shares ranging from 40 to 100 percent in the relevant geographic markets, resulting in highly concentrated markets, as shown below.[1] Collectively, the individual Medicare Advantage plans in these areas account for over $700 million in annual commerce.

[1] The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. The agencies generally consider markets in which the HHI is in excess of 2,500 points to be highly concentrated. *See* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

RELEVANT GEOGRAPHIC MARKETS

[As of March 2012]

County	Post-merger share (percent)	HHI Post-merger	Increase in HHI
Mohave, AZ	82.3	6980	3386
Yavapai, AZ	40.8	5091	407
Columbia, AR	56.0	4732	1421
Conway, AR	55.0	3906	376
Crawford, AR	63.8	4514	1563
Franklin, AR	47.8	3539	549
Hempstead, AR	55.7	5064	1218
Howard, AR	58.1	4576	1681
Lafayette, AR	68.3	5668	1993
Little River, AR	82.1	7066	3292
Logan, AR	59.7	4263	1080
Miller, AR	73.8	5836	1931
Nevada, AR	58.9	5158	1139
Pope, AR	44.1	4055	312
Scott, AR	52.1	3545	984
Sebastian, AR	57.9	3882	1133
Sevier, AR	84.1	7326	3474
Yell, AR	40.3	3075	610
Allen, LA	78.5	6622	1310
Beauregard, LA	100.0	10000	4789
Bienville, LA	49.3	3721	1189
Bossier, LA	93.3	8748	848
Caddo, LA	92.7	8642	1626
Calcasieu, LA	100.0	10000	3217
Claiborne, LA	42.0	3523	535
De Soto, LA	100.0	10000	3648
Jefferson Davis, LA	88.7	8000	1746
Red River, LA	45.0	3803	926
Webster, LA	84.1	7323	1385
Adair, OK	60.1	5204	1799
Delaware, OK	100.0	10000	3887
Haskell, OK	58.6	4666	1688
Le Flore, OK	100.0	10000	4632
McCurtain, OK	80.6	6691	2325
Ottawa, OK	100.0	10000	1512
Sequoyah, OK	100.0	10000	4928
Bowie, TX	82.5	7019	3305
Cass, TX	81.3	6962	3285
Deaf Smith, TX	66.7	5556	1636
Gregg, TX	73.7	5783	2668
Harrison, TX	86.4	7652	3590
Henderson, TX	68.0	5197	2224
Potter, TX	72.6	5776	2197
Randall, TX	75.0	5928	1421
Titus, TX	75.8	6331	2198

D. The Acquisition Likely Would Substantially Lessen Competition in the Sale of Individual Medicare Advantage Plans in Each Relevant Geographic Market

The proposed transaction likely would substantially lessen competition in the sale of individual Medicare Advantage plans and end the substantial head-to-head competition between Humana and Arcadian to convince seniors to enroll in each company's Medicare Advantage plans in the relevant geographic markets. That competition has benefited thousands of seniors.

In each market, Humana and Arcadian compete against each other by offering plans with frequently low or no premiums, reducing copayments, eliminating deductibles, lowering annual out-of-pocket maximum costs, managing care, improving drug coverage, offering desirable benefits, and making their provider networks more attractive to potential members. If Defendants complete the proposed transaction, the loss of this competition likely would result in higher premiums and reduced benefits for seniors enrolled in Medicare Advantage plans in the relevant geographic markets.

Competition from existing Medicare Advantage plans and new entrants is unlikely to prevent anticompetitive effects in each relevant geographic market. Entrants face substantial cost, reputation, and distribution disadvantages that will likely make them unable to prevent Humana from profitably raising premiums or reducing benefits in the relevant geographic markets.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Assets

The proposed Final Judgment is designed to eliminate the anticompetitive effects identified in the Complaint by requiring the Defendants to divest Arcadian's individual Medicare Advantage business in 34 of the 45 relevant geographic markets, and Humana's individual Medicare

Advantage business in 11 of them (collectively ''the Divestiture Assets'') to one or more acquirers approved by, and on terms acceptable to, the United States. Specifically, the divestitures will eliminate the anticompetitive effects alleged in the Complaint by requiring the Defendants to divest one or more Medicare Advantage plans in each relevant geographic market to an acquirer that will compete vigorously with the merged Humana-Arcadian. The divestitures are designed to allow the acquirer, or acquirers, of the assets to offer uninterrupted care to members of Arcadian's and Humana's divested Medicare Advantage plans.

The Divestiture Assets include all of Arcadian's and Humana's rights and obligations under the relevant Arcadian or Humana contracts with CMS. The lines of business to be divested cover approximately 12,700 individual Medicare Advantage beneficiaries. In addition to the plans in the forty-five relevant geographic markets, the Divestiture Assets include Arcadian plans in five counties and one parish where Arcadian has either one percent or no enrollment and where the Complaint does not allege likely anticompetitive effects: Johnson County in Arkansas; Cameron Parish in Louisiana; Pushmataha County in Oklahoma; and Armstrong, Carson, and Oldham Counties in Texas. These plans are in areas contiguous to and under the same CMS contract and plan ID as plans in the relevant geographic markets. The Divestiture Assets include these additional plans because doing so makes them more administrable and will facilitate the divestiture of the plans in the relevant geographic markets.

The Divestiture Assets exclude enrollment in Medicare Advantage Special Needs Plans. Enrollment in Special Needs Plans is limited to seniors who are institutionalized, dually eligible for Medicare and Medicaid benefits, or afflicted by severe or disabling chronic conditions. The divestiture of these plans is unnecessary to eliminate the transaction's likely anticompetitive effects because the Defendants' enrollment in Special Needs Plans accounts for only 1.4% of their combined individual Medicare Advantage membership in the markets where divestitures are required.

The Defendants must satisfy the United States that a viable competitor will replace Arcadian's competitive presence in the sale of individual Medicare Advantage plans in each of the forty-five relevant geographic markets identified in the Complaint. The divestitures must be (1) made to an acquirer that has the intent and capability—including the necessary managerial, operational, technical, and financial capability—to compete effectively in the sale of Medicare Advantage products in the market, or markets, in question, and (2) accomplished so as to satisfy the United States that none of the terms of any agreement between Humana and any acquirer gives Humana the ability to interfere with the acquirer's ability to compete effectively. The proposed Final Judgment also provides that the divestiture of the Divestiture Assets may be made to one or more acquirers, provided that in each instance the United States is satisfied that the Divestiture Assets will remain viable and the divestitures will remedy the anticompetitive harm alleged in the Complaint.

B. Selected Provisions of the Proposed Final Judgment

In addition to the requirements discussed above, the following specific provisions of the proposed Final Judgment will enable the acquirer to compete promptly and effectively in the relevant geographic markets for individual Medicare Advantage plans.

1. Provider-Network Contracts

Sections IV.G through IV.K ensure that the acquirer of the assets divested in each relevant geographic market (and the five additional counties and one additional parish discussed above) will have a healthcare provider network sufficient to compete vigorously and minimize any network disruption from the divestiture. To compete effectively in the sale of Medicare Advantage plans, an insurer needs a network of healthcare providers contracted at competitive rates because hospital and physician expenses constitute the large majority of an insurer's costs. By requiring Humana to assist the acquirer in establishing a cost-competitive provider network, Sections IV.G through IV.K will enable the acquirer to compete as effectively as Humana and Arcadia before the proposed transaction.

In particular, Section IV.G requires, at the acquirer's option, that the Defendants assign the acquirer all Arcadian contracts with healthcare providers in all of the relevant geographic markets where those contracts are freely assignable, except Columbia, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier Counties in Arkansas, and Bowie, Cass, and Titus Counties in Texas (collectively, ''the Texarkana Area,'' discussed further below). Where those contracts are not freely assignable, the Defendants must use their best efforts to obtain any necessary provider consents to assignment of the Arcadian contracts and assign those contracts to the Acquirer after obtaining the necessary consents. To further ensure that the Acquirer has an adequate network, Section IV.H imposes the same obligation with respect to providers that provide health-care services in a county or parish contiguous to a divestiture county or parish, but that receive the bulk of their Arcadian contract payments from Arcadian members in the divestiture area, also at the acquirer's option.

In addition, to ensure that the acquirer of the assets related to the Texarkana Area has the same providers in its network as Humana currently does and on terms that are equal to Humana's terms, Section IV.K of the Final Judgment requires Humana to lease access to two of its wholly-owned provider networks, ChoiceCare and LifeSynch, to the acquirer of the divestiture assets in the Texarkana Area's relevant geographic markets. Humana's Medicare Advantage plans in the Texarkana Area currently use these networks to access providers. Section IV.K requires Humana to lease to the acquirer access to these networks on non-discriminatory terms until December 31, 2014. This time period and the enrollment that comes with the divestiture should enable the acquirer to develop its own provider network.

2. Quick Divestiture

Section IV of the proposed Final Judgment is designed to ensure that the divestitures occur quickly, and in a manner consistent with applicable regulatory requirements. Section IV.A requires that the Defendants complete the divestitures within sixty days of the filing of the Complaint, with the granting of possible extensions in the sole discretion of the United States and not to exceed ninety days total. If (1) the Defendants have filed all necessary applications or requests for government approval within five days after the date that the United States informs the Defendants that it does not object to a proposed divestiture, and (2) an order or other dispositive action on such applications has not issued or become effective before the end of the period permitted for divestiture, Section IV.B extends the divestiture period until five business days after the approval is received.

3. Branding

The Final Judgment also recognizes the importance of branding to a company's ability to compete effectively

in the sale of Medicare Advantage plans. Section IV.M provides that upon completing the divestiture and through December 31, 2014, the Defendants may not use the Arcadian brand for any type of Medicare Advantage plan, other than a Special Needs Plan, in any of the fifty-one counties and parishes (including the five additional counties and one additional parish discussed above) except those in the Texarkana Area. In addition, Section IV.N allows the acquirer to use the Arcadian brand in any of the fifty-one counties and parishes except those in the Texarkana Area for up to twelve months after divestiture with the United States' approval. Section IV.O allows the acquirer to make reasonable transitional use of the Humana brand in the Texarkana Area.

4. CMS Regulatory Process

Section IV also requires that the Defendants transfer the Divestiture Assets in a manner consistent with CMS rules and regulations, and that the Defendants maintain the viability of those assets in the interim through the CMS bidding process. Specifically, Section IV.S requires Defendants to work with CMS to ensure that the divestiture process satisfies any CMS concerns about network disruption and adheres to rules and regulations regarding novations. Section IV.X provides that if Defendants fail to divest the Divestiture Assets by May 15, 2012, Humana will prepare and submit to CMS, in the ordinary course of business and consistent with past practice, subject to actuarially reasonable adjustment, all necessary filings for the Divestiture Assets including Medicare Advantage Plan bids for 2013, so that the Divestiture Assets remain viable, ongoing Medicare Advantage offerings. CMS's annual Medicare Advantage bid cycle necessitates this provision because plan proposals for the upcoming year must be submitted by no later than June of the current year.

5. Divestiture Trustee and Monitoring Trustee

Section V provides for the appointment, if necessary, of a trustee to sell the Divesture Assets and thereby also encourages a quick, effective divestiture in this matter. Section V.A provides that, if the Defendants have not divested the Divestiture Assets within the time period specified in Section IV, the Court will appoint a trustee selected by the United States to carry out any divestitures the Defendants have not completed. Defendants must pay the trustee's costs and expenses, and the trustee's commission will provide an incentive based on the price, terms, and speed of the divestiture. Once the trustee is appointed, the trustee will file monthly reports with the Court and the United States explaining his or her efforts to accomplish the divestiture. Section V.G provides that if the trustee has not accomplished the divestiture by November 21, 2012, the trustee and the United States will make recommendations to the Court, which will enter such orders as it deems appropriate in order to carry out the purpose of the trust. This may include extending the trust or the term of the trustee's appointment by a period requested by the United States.

As soon as the filing of the Complaint, the United States may also appoint a monitoring trustee, subject to the approval by the Court, which will insure against deterioration of the Divestiture Assets until their divestiture. The monitoring trustee will have the power and authority to monitor Defendants' compliance with the Final Judgment and Stipulation and such powers as the Court may deem appropriate, and Defendants can object to that trustee's actions only for malfeasance. This trustee will serve at Humana's expense and on such terms and conditions as the United States approves, and the Defendants must assist the trustee in fulfilling its obligations. The monitoring trustee will file monthly reports and will serve until the divestiture is complete and any agreements for transitional support services have expired.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, Humana, and Arcadian have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought a judicial order enjoining Humana's acquisition of Arcadian. The United States is satisfied, however, that divestiture of the assets described in the proposed Final Judgment will preserve competition for the sale of individual Medicare Advantage plans in the relevant geographic markets. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by 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.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), 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.'').[2]

Under the APPA, a court considers, 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).[3] 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 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 Commc'ns,* 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, 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

[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] *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'''').

explained: ''[t]he 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.[4]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Dated this 27th day of March 2012.

Respectfully submitted,

/s/Adam Gitlin

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United States District Court for the District of Columbia

United States of America, *Plaintiff* v. Humana Inc. and Arcadian Management Services, Inc., *Defendants.*

Case: 1:12–cv–00464.
Assigned To: Walton, Reggie B.
Assign. Date: 3/27/2012.
Description: Antitrust.

[Proposed] Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on March 27, 2012, and Plaintiff and Defendants, Humana Inc. and Arcadian Management Services, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestitures of certain rights and assets by Defendants to ensure that competition is not substantially lessened in the sale of Medicare Advantage Plans to Medicare beneficiaries in the Arcadian Plan Areas and Texarkana Area as described below;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required by this Final Judgment can and will be made, and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions of this Final Judgment;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity or entities to which the Divestiture Assets are divested.

B. ''Amarillo Plan'' means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Amarillo Area under CMS Contract ID H4529, Plan ID 27 or such other contract and plan identification number as CMS assigns to such plan.

C. ''Arcadian'' means Defendant Arcadian Management Services, Inc., a Delaware corporation with its headquarters in Oakland, CA, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

D. ''Arcadian CMS Plans'' means the Amarillo Plan, Arizona Plans, Eastern Oklahoma Plan, Fort Smith Plan, Lake Charles Plan, Longview-Marshall Plan, and Shreveport Plan.

E. ''Arcadian Contracted Provider'' means a health-care provider contracted with Arcadian to provide or arrange for health services under an Arcadian CMS Plan as of March 1, 2012.

F. ''Arcadian Contracts'' means the CMS contracts pursuant to which the Arcadian CMS Plans are administered.

G. ''Arcadian Plan Areas'' means the Amarillo Area (Armstrong, Carson, Deaf Smith, Oldham, Potter, and Randall Counties in Texas), Eastern Oklahoma Area (Adair, Delaware, Haskell, Le Flore, McCurtain, Ottawa, Pushmataha, and Sequoyah Counties in Oklahoma), Longview-Marshall Area (Gregg, Harrison, and Henderson Counties in Texas), Arizona Area (Mohave and Yavapai Counties in Arizona), Shreveport Area (Bienville, Bossier, Caddo, Claiborne, De Soto, Red River, and Webster Parishes in Louisiana), Lake Charles Area (Allen, Beauregard, Calcasieu, Cameron, and Jefferson Davis Parishes in Louisiana), and Fort Smith Area (Conway, Crawford, Franklin, Johnson, Logan, Pope, Scott, Sebastian, and Yell counties in Arkansas).

H. ''Arizona Plans'' means the individual Medicare Advantage Plans offered by Arcadian solely insofar as such plan serves enrollees in the Arizona Area under CMS Contract ID H0320, Plan IDs 5 and 6 or such other contract and plan identification numbers as CMS assigns to such plan.

I. ''Broker'' means any independent insurance agent, general agent, producer, or broker who facilitates the sale of health-insurance plans to individuals or groups.

J. ''CMS'' means the Centers for Medicare and Medicaid Services, an agency within the U.S. Department of Health and Human Services.

K. ''Divestiture Assets'' means all of Arcadian's rights and obligations under the Arcadian Contracts with respect to the Arcadian CMS Plans, and all of Humana's rights and obligations under the Texarkana Contracts with respect to the Texarkana CMS Plans, including the right to offer Medicare Advantage plans to individual enrollees pursuant to the bids filed with CMS for the contract year in effect as of the closing of the divestiture of the Divestiture Assets, and the right to receive from CMS a per member per month capitation payment in exchange for providing or arranging

[4] *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) ¶ 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.'').

for the benefits enumerated in the bids; and copies of all business, financial and operational books, records, and data, both current and historical, that primarily relate to the Arcadian Contracts or Texarkana Contracts. Where books, records, or data primarily relate to the Arcadian CMS Plans or Texarkana CMS Plans, but not solely to these Plans, Defendants must provide excerpts relating to these Plans. Nothing herein requires Defendants to take any action prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

L. ''Duplicate'' means a contract with identical terms to a contract with an Arcadian Contracted Provider, except for those terms that identify (i) the contract's effective date and (ii) the Medicare Advantage organization or the entity contracting on behalf of the Medicare Advantage organization.

M. ''Eastern Oklahoma Plan'' means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Eastern Oklahoma Area under CMS Contract ID H4125, Plan ID 1 or such other contract and plan identification number as CMS assigns to such plan.

N. ''Fort Smith Plan'' means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Fort Smith Area under CMS Contract ID H5700, Plan ID 9 or such other contract and plan identification number as CMS assigns to such plan.

O. ''Health-care provider'' means any person or entity that contracts with Arcadian or Humana to provide or arrange for the provision of any health-care service, including hospitals, physician groups, laboratories, ambulatory surgical centers, nursing facilities, pharmacies, and other providers of health-care services.

P. ''Humana'' means defendant Humana Inc., a Delaware corporation with its headquarters in Louisville, Kentucky, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their respective directors, officers, managers, agents, and employees.

Q. ''Lake Charles Plan'' means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Lake Charles Area under CMS Contract ID H7179, Plan ID 2 or such other contract and plan identification number as CMS assigns to such plan.

R. ''Longview-Marshall Plan'' means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Longview-Marshall Area under CMS Contract ID H4529, Plan ID 30 or such other contract and plan identification number as CMS assigns to such plan.

S. ''Medicare Advantage Plan'' means Medicare Advantage health maintenance organization plans, Medicare Advantage preferred provider organization plans, and Medicare Advantage private fee-for-service plans, as defined in 42 U.S.C. § 1395w–28.

T. ''Shreveport Plan'' means the individual Medicare Advantage Plan offered by Arcadian solely insofar as such plan serves enrollees in the Shreveport Area under CMS Contract ID H7179, Plan ID 2 or such other contract and plan identification number as CMS assigns to such plan.

U. ''Texarkana Area'' means Columbia, Hempstead, Howard, Lafayette, Little River, Miller, Nevada, and Sevier Counties in Arkansas, and Bowie, Cass, and Titus Counties in Texas.

V. ''Texarkana Contracts'' means the CMS contracts pursuant to which the Texarkana CMS Plans are administered.

W. ''Texarkana CMS Plans'' means the individual Medicare Advantage Plans offered by Humana solely insofar as such plan serves enrollees in the Texarkana Area under CMS Contract ID H2944, Plan IDs 13, 197, and 204; Contract ID H4520, Plan ID 6; Contract ID H7188, Plan IDs 3 and 6; and Contract ID H8145, Plan IDs 120 and 122, or such other contract and plan identification numbers as CMS assigns to such plans.

X. ''Transaction'' means the merger contemplated by the Agreement and Plan of Merger dated as of August 24, 2011, by and among Humana, Humsol, Inc., and Arcadian.

III. Applicability

A. This Final Judgment applies to each Defendant and any other person in active concert or participation with any Defendant who receives actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants must require the purchaser(s) to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed to divest the Divestiture Assets in a manner consistent with this Final Judgment to one or more Acquirers acceptable to the United States, in its sole discretion, within sixty calendar days after the filing of the Complaint in this matter. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety days total and must notify the Court in such circumstances.

B. Defendants must obtain all regulatory approvals necessary for such divestitures as expeditiously as possible. If applications for approval have been filed with the appropriate governmental units within five calendar days after the United States has provided written notice, pursuant to Section 0, that it does not object to a proposed divestiture, but these required approvals have not been issued or become effective before the end of the period permitted for divestiture, the period for divestiture shall be extended until five business days after all necessary government approvals have been received. With respect to this Section IV.B, an application for CMS approval will be deemed to have been filed when Defendants have given CMS advance notice of a possible change in ownership pursuant to 42 CFR 422.550(b), provided that Defendants timely submit all materials required by CMS for approval.

C. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase that the divestitures are being made pursuant to this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to reasonable confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except information and documents subject to the attorney-client privilege or the attorney work-product privilege. Defendants must make available such information to the United States at the same time that such information is made available to prospective Acquirers.

D. Defendants must permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and access to any and all financial, operational, or other documents and information as is customarily provided as part of a due diligence process for a transaction of this type.

E. Defendants may not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

F. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Section V, must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in the sale of Medicare Advantage Plans in the Divestiture Areas. The divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestitures will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment: (1) Must be made to Acquirer(s) that, in the United States' sole judgment, each have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the sale of Medicare Advantage Plans in the Divestiture Areas; and (2) must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Defendants and any Acquirer gives Defendants the ability to interfere with the Acquirer's ability to compete effectively.

G. At the Acquirer's option, Defendants must (1) assign to the Acquirer or, if acceptable to the Arcadian Contracted Provider, arrange for entry into a Duplicated contract for the Acquirer's benefit, all of the Arcadian contracts with Arcadian Contracted Providers that provide or arrange for the provision of health services in an Arcadian Plan Area where those contracts are freely assignable; and (2) for such contracts that are not freely assignable, use their best efforts to obtain any necessary provider consents to assignment or to entry into a Duplicated contract for the Acquirer's benefit and assign those contracts to the Acquirer after obtaining the necessary consents or deliver such Duplicated contracts as applicable.

H. At the Acquirer's option, for each Arcadian Contracted Provider not subject to Section IV.G, that provides or arranges for the provision of health-care services in a county or parish contiguous to an Arcadian Plan Area, where at least fifty percent of the services provided under the health-care provider's Arcadian contract are provided to members of the Arcadian CMS Plans who reside in a single Arcadian Plan Area (as measured by 2011 claims payments), Defendants must (1) assign to the Acquirer or, if acceptable to the Arcadian Contracted Provider, arrange for entry into a Duplicated contract for the Acquirer's benefit, all such contracts that are freely assignable; and (2) for such contracts that are not freely assignable, use their best efforts to obtain any necessary provider consents to assignment or to entry into a Duplicated contract for the Acquirer's benefit, and assign them to the Acquirer after obtaining the necessary consents or deliver such Duplicated contracts as applicable.

I. The requirements of Sections IV.G and IV.H do not apply to Arcadian Contracted Providers that provide or arrange in three or more states for durable medical equipment, pharmacy and pharmacy benefit management services, transplant services, dental care, vision care, clinical laboratory services, home health services, prosthetics and orthotics, and rehabilitation services.

J. At the Acquirer's option, Defendants must assist and facilitate the negotiation of and entry into agreements between the Acquirer and such Arcadian Contracted Providers as account for substantially all of the health-care services to members of the Arcadian CMS Plans that are provided through an Arcadian contract, and on terms substantially as favorable as those in the Arcadian contract as of March 1, 2012.

K. At the Acquirer's option, Humana must contract through December 31, 2014, to provide access to Humana's ChoiceCare and LifeSynch provider networks in the States of Arkansas and Texas to the Acquirer of the Texarkana CMS Plans for members of the Texarkana CMS Plans. The contract terms may not be less favorable than the terms on which Humana's own Medicare Advantage plans access ChoiceCare and LifeSynch, and Humana may not charge any administrative, network access, leasing, or other fee to the Acquirer greater than the fees that Humana charged itself for access to ChoiceCare and LifeSynch as of December 31, 2011. Humana may not contract with the Acquirer to provide access to ChoiceCare and LifeSynch for the members of the Texarkana CMS Plans after December 31, 2014, unless the United States consents. Humana may not interfere with the Acquirer's efforts to contract independently with health-care providers participating in ChoiceCare and LifeSynch.

L. Defendants must provide to the Acquirer, the United States, and any Monitoring Trustee, information relating to the personnel primarily involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment to those persons. Defendants may not interfere with any negotiations by the Acquirer to employ, and must waive all noncompete agreements for, any of those persons. For a period of two years from the filing of the Complaint in this matter, Defendants may not solicit to hire any such person who was hired by any Acquirer, unless the Acquirer has notified such person that the Acquirer does not intend to continue to employ the person.

M. Upon completing the divestitures and through December 31, 2014, Defendants may not use any Arcadian brand, or any substantially similar brand, name, or logo, for any type of Medicare Advantage plan of Defendants in the Arcadian Plan Areas, with the exception of any Arcadian Special Needs Plan, as defined in 42 U.S.C. 1395w–28(b)(6). Defendants may use the Arcadian brand or any substantially similar brand, name, or logo, for any Arcadian Special Needs Plan in the Arcadian Plan Areas.

N. At the Acquirer's option, and subject to approval by the United States, Defendants will allow the Acquirer to license and use the Arcadian brand, and any substantially similar brand, name, or logo, with the Divestiture Assets for twelve months upon completing the divestitures, and solely in the Arcadian Plan Areas.

O. At the Acquirer's option, and subject to approval by the United States, Humana will allow the Acquirer to license and use the Humana brand, or any substantially similar brand, name, or logo, for a period of up to three months after the effective date of the divestiture to such Acquirer (or any such longer period as CMS shall require) solely for the purpose of communicating to enrollees and prospective enrollees the transition from Humana's CMS Texarkana Plans to the Acquirer, and solely in the Texarkana Area. Humana may place reasonable limitation on the use of materials bearings its brand, including prior submission of materials containing Humana's brand, name or logo, to Humana for review and approval, which such approval shall not unreasonably be withheld. Nothing in this provision shall supersede any CMS marketing guidelines or regulations concerning Medicare Advantage plans.

P. At the Acquirer's option, and subject to approval by the United States,

Defendants will provide transitional support services for medical and prescription drug claims processing, appeals and grievances, call-center support, enrollment and eligibility services, access to form templates, disease management, Medicare risk-adjustment services, quality-assurance services, and such other transition services that are reasonably necessary for the Acquirer to operate the Divestiture Assets. Defendants may not provide such transitional support services for more than twelve months from the date of the completion of the divestitures unless the United States approves.

Q. To ensure an effective transition and transfer of enrollees in the Arcadian CMS Plans and Texarkana CMS Plans, Defendants must cooperate and work with the Acquirer in transition planning and implementing the transfer of the Divestiture Assets.

R. Defendants will communicate and cooperate fully with the Acquirer to promptly identify and obtain all consents, approvals, and novations of government agencies necessary to divest the Divestiture Assets.

S. Defendants will communicate and cooperate fully with the Acquirer to work in good faith with CMS to implement a novation process that is efficient and adheres to CMS's requirements requiring notices to plan members so as to minimize any potential disruption and confusion to enrollees in the Arcadian CMS Plans and Texarkana CMS Plans.

T. Humana must warrant to the Acquirer that, since the date of its acquisition of Arcadian, Humana has operated the Divestiture Assets in all material respects in accordance with the requirements of the Arcadian Contracts and the Texarkana Contracts.

U. Defendants may not take any action having the effect of delaying the authorization or scheduling of health-care services provided to enrollees in the Arcadian CMS Plans or Texarkana CMS Plans in a manner inconsistent with Defendants' past practice with respect to the Arcadian CMS Plans or Texarkana CMS Plans.

V. Defendants may not make any material change to the customary terms and conditions upon which they do business with respect to the Arcadian CMS Plans that would be expected, individually or in the aggregate, to have a materially adverse effect on the Arcadian CMS Plans. Defendants may not make any material change to the customary terms and conditions upon which they do business with respect to the Texarkana CMS Plans that would be expected, individually or in the aggregate, to have a materially adverse effect on the Texarkana CMS Plans.

W. Defendants must identify the top ten Brokers with respect to the Arcadian CMS Plans and the Texarkana CMS Plans along with the corresponding number of enrollees produced by each such Broker. Defendants will introduce the Acquirer to any such Broker for the purpose of the Acquirer having an opportunity, at the Acquirer's option, to negotiate an agreement with the Broker to market and sell the Arcadian CMS Plans or Texarkana CMS Plans after the completion of the divestitures.

X. If Defendants fail to divest the Divestiture Assets by May 15, 2012, Humana must prepare and submit to CMS, in the ordinary course of business and consistent with past practice, subject to actuarially reasonable adjustment, all necessary filings for the Arcadian CMS Plans and the Texarkana CMS Plans, including Medicare Advantage Plan bids for 2013, so that the Divestiture Assets remain viable, ongoing Medicare Advantage offerings.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested some or all of the Divestiture Assets within the time period specified in Section 0, Defendants must notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of any Divestiture Assets not already divested.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestitures to one or more Acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections 0, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section 0.0 of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any professionals and agents, who shall be solely accountable to the Divestiture Trustee, that are reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

C. Defendants may not object to a sale by the Divestiture Trustee authorized by this Order on any ground other than the Divestiture Trustee's malfeasance. Defendants must convey any such objections in writing to the United States and the Divestiture Trustee within ten calendar days after the Divestiture Trustee has provided the notice required under Section 0.

D. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Defendants, on such terms and conditions as the United States approves, and must account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants must assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, and Defendants must develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants may not interfere with or impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee must file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent that such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and must describe in detail each contact with any

such person. The Divestiture Trustee must maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment by November 21, 2012, the Divestiture Trustee must promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent that the report contains information that the Divestiture Trustee deems confidential, the report shall not be filed in the public docket of the Court. The Divestiture Trustee must at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, must notify the United States and any Monitoring Trustee of any proposed divestiture required by Section 0 or V of this Final Judgment. If the Divestiture Trustee is responsible, it must similarly notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee must furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States must provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section 0 or Section V may not be consummated. Upon objection by Defendants under Section V.0, a divestiture proposed under Section V may not be consummated unless approved by the Court.

VII. Financing

Defendants may not finance all or any part of any purchase made pursuant to Section 0 or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestitures required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants may not take any action that would jeopardize any divestiture ordered by this Court.

IX. Appointment of Monitoring Trustee

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by this Court and shall have such powers as this Court deems appropriate. Subject to Section IX.D of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Humana any professionals and agents reasonably necessary in the Monitoring Trustee's judgment. These persons shall be solely accountable to the Monitoring Trustee.

C. Defendants may not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Defendants must convey any such objections in writing to the United States and the Monitoring Trustee within ten calendar days after the action taken by the Monitoring Trustee giving rise to Defendants' objection.

D. The Monitoring Trustee and any persons retained by the Monitoring Trustee pursuant to Section IX.B shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any professionals and agents retained by the Monitoring Trustee must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities.

E. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

F. Defendants must assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. The Monitoring Trustee and any professionals and agents retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants may not interfere with or impede the Monitoring Trustee's accomplishment of its responsibilities.

G. After its appointment, the Monitoring Trustee must file monthly reports with the United States and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

H. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either Section 0 or Section V of this Final Judgment and any agreement(s) for transitional support services described in Section 0 herein have expired. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently, the United States may appoint a substitute Monitoring Trustee in the same manner as provided in this Section. The Monitoring Trustee appointed pursuant to this Final

Judgment may be the same person or entity appointed as a Divestiture Trustee pursuant to Section 0 of this Final Judgment.

X. Affidavits and Records

A. Within twenty calendar days of the filing of the Complaint in this matter, and every thirty calendar days thereafter until the divestitures have been completed under Section 0 or V, Defendants must deliver to the United States and any Monitoring Trustee an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit must include the name, address, and telephone number of each person who, during the preceding thirty calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and must describe in detail each contact with any such person during that period. Each such affidavit must also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, must be made within fourteen calendar days of receipt of such affidavit.

B. Within twenty calendar days of the filing of the Complaint in this matter, Defendants must deliver to the United States and any Monitoring Trustee an affidavit that describes in reasonable detail all actions that Defendants have taken and all steps that Defendants have implemented on an ongoing basis to comply with Section 0 of this Final Judgment. Defendants must deliver to the United States and any Monitoring Trustee an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen calendar days after the change is implemented.

C. Defendants must keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require that Defendants provide hard copy and electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding these matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports, or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. The United States shall not divulge any information or documents obtained by the means provided in this section to any person other than an authorized representative of the executive branch of the United States, which includes CMS, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States must give Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than grand jury proceedings).

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment provided, however, that this Final Judgment does not prohibit Defendants from offering Medicare Advantage Plans in the ordinary course of business otherwise in conformity with this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

Date

United States District Judge

[FR Doc. 2012–8070 Filed 4–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Standard on Asbestos in Construction

ACTION: Notice.

SUMMARY: On March 30, 2012, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Standard on Asbestos in Construction'' to the Office of Management and Budget (OMB) for review and approval for continued use, in accordance with the Paperwork

Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before May 1, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on March 31, 2012 or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The information collection requirements of the Standard on Asbestos in Construction require employers to train workers about hazards to asbestos, to monitor worker exposure, to provide medical surveillance, and maintain accurate records of worker exposure to asbestos. These records will be used by employers, workers and the Government to ensure that workers are not harmed by exposure to asbestos in the workplace. Years of exposure to asbestos can cause numerous disabling or fatal diseases, including asbestosis, a disease in which lung scarring (fibrosis) impairs breathing and causes death from respiratory or heart failure; lung cancer; mesothelioma, a cancerous tumor that spreads rapidly in the cells of membranes covering the lungs and body organs; and gastrointestinal cancer. The standard protects workers from adverse health effects from occupational exposure to asbestos.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0134. The current OMB approval is scheduled to expire on March 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 25, 2012 (77 FR 3798).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0134. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Asbestos in Construction Standard.

OMB Control Number: 1218–0134.

Affected Public: Private Sector—Business or Other For-Profits; Federal Government; State, Local, or Tribal Government.

Total Estimated Number of Respondents: 249,534.

Total Estimated Number of Responses: 48,469,358.

Total Estimated Annual Burden Hours: 4,929,794.

Total Estimated Annual Other Costs Burden: $28,816,390.

Dated: March 23, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–8083 Filed 4–3–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Safety and Health State Plans

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Occupational Safety and Health State Plans,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before May 4, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Occupational Safety and Health Act of 1970 (the Act) section 18 encourages States to assume responsibility for the development and enforcement of State occupational safety and health standards through the mechanism of an approved State plan. Absent a plan approved by the OSHA, States are

preempted from asserting enforcement jurisdiction over any occupational safety and health issue with respect to which a Federal standard has been promulgated. Section 18 establishes the basic criteria for State plan approval; provides for the discretionary exercise of concurrent Federal enforcement jurisdiction after initial plan approval until such time as the State has demonstrated that it is meeting the approval criteria in actual operation (final State Plan approval), at which point Federal enforcement jurisdiction may be relinquished; provides that State standards and enforcement must be, and continue to be, at least as effective as the Federal program including any changes thereto; and requires OSHA to make a continuing evaluation of the manner in which the State is implementing its program and to take action to withdraw plan approval should there be a failure to substantially comply with any provision of the State plan. States choosing to operate OSHA-approved State plans must provide information to document their programs are at least as effective as the Federal OSHA program. In order to obtain and maintain State Plan approval, a State must submit various documents to OSHA describing its program structure and operation, including any modifications thereto as they occur, in accordance with the identified regulations.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0247. The current OMB approval is scheduled to expire on March 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on November 28, 2012 (76 FR 72980).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0247. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Occupational Safety and Health State Plans.

OMB Control Number: 1218–0247.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 28.

Total Estimated Number of Responses: 1,264.

Total Estimated Annual Burden Hours: 11,196.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 23, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–8082 Filed 4–3–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service, Labor.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO). The ACVETEO will discuss Department of Labor's Veterans' Employment and Training Services' (VETS) core programs and new initiatives regarding efforts that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for persons or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green (202) 693–4734. Time constraints may limit the number of outside participants/presentations. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Wednesday, April 18, 2012 by contacting Mr. Gregory Green (202) 693–4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

Date and Time: Wednesday, April 25, 2012, beginning at 9:30 a.m. and ending at approximately 4:30 p.m. (E.S.T.).

ADDRESSES: Department of Labor, 200 Constitution Ave. NW., Room S4215A&B, Washington, DC 20210. ID is required to enter the building.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy L. Hogan, Designated Federal Official, Advisory Committee on Veterans' Employment, Training and Employer Outreach, (202) 693–4700, or Mr. Gregory Green (202) 693–4734.

SUPPLEMENTARY INFORMATION: ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, as amended.

The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary of Labor for Veterans' Employment and Training (VETS), with respect to outreach activities and employment and training needs of Veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Signed in Washington, DC, this 30th day of March, 2012.

John K. Moran,

Deputy Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2012–8119 Filed 4–3–12; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program, FY 2012

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and solicitation for Grant Applications (SGA) for Targeted Topic Training, and Targeted Topic Training and Educational Materials Development Grants.

Funding Opportunity No.: SHTG–FY–12–01.

Catalog of Federal Domestic Assistance No.: 17.502.

SUMMARY: This notice announces availability of approximately $1.2 million for Susan Harwood Training Program Grants under the following categories: Targeted Topic Training, and Training and Educational Materials Development Grants.

DATES: Grant applications must be received electronically by the Grants.gov system no later than 4:30 p.m., E.T., on Thursday, May 17, 2012, the application deadline date.

ADDRESSES: The complete Susan Harwood Training Grant Program solicitation for grant applications and all information needed to apply for this funding opportunity are available at the Grants.gov Web site, *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: Questions regarding this solicitation for grant applications should be emailed to *HarwoodGrants@dol.gov* or directed to Kimberly Mason, Program Analyst, or Jim Barnes, Director, Office of Training and Educational Programs, at 847–759–7700 (note this is not a toll-free number). To obtain further information on the Susan Harwood Training Grant Program, visit the OSHA Web site at: *https://www.osha.gov,* select the ''Training'' tab, and then select ''Susan Harwood Training Grant Program.''

Authority: Section 21 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670), Pub. L. 111–117, and Pub. L. 112–10.

Signed at Washington, DC, on March 30, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–8091 Filed 4–3–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–025]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Patent Application No. 11/935,545; NASA Case No. KSC–13088 entitled ''Chemochromic Detector for Sensing Gas Leakage and Process for Producing Same,'' to the University of Central Florida, having its principal place of business at 12201 Research Parkway, Suite 501, Orlando, FL 32826–3246. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/*.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2012–8076 Filed 4–3–12; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0027]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Billing Instructions for NRC Cost Type Contracts.

2. *Current OMB approval number:* 3150–0109.

3. *How often the collection is required:* Monthly and on occasion.

4. *Who is required or asked to report:* NRC Contractors.

5. *The estimated number of annual respondents:* 34.

6. *An estimate of the number of hours needed annually to complete the requirement or request:* 618.

7. *Abstract:* In administering its contracts, the NRC Division of Contracts provides billing instructions for its contractors to follow in preparing invoices. These instructions stipulate

the level of detail in which supporting data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs are in accordance with the contract terms and conditions.

Submit, by June 4, 2012, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, 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 submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Comments submitted should reference Docket No. NRC–2012–0027. You may submit your comments by any of the following methods:

Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2012–0027.

Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 29th day of March, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–8034 Filed 4–3–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1030, 72–56; 50–338 and 50–339: NRC–2012–0084]

Independent Spent Fuel Storage Installation, Virginia Electric and Power Company: North Anna Power Station Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of an environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Jennie Rankin, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3268; Fax number: (301) 492–3342; email: *jennivine.rankin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC or Commission) is considering issuance of a one-time exemption to Virginia Electric and Power Company (Dominion or licensee) pursuant to 10 CFR 72.7 from the requirements of 10 CFR 72.212(b)(3) and the portion of 72.212(b)(11) which requires compliance with the terms, conditions, and specifications of the CoC. Dominion submitted its exemption request by letter dated July 21, 2011, as supplemented September 28, 2011. Dominion has loaded spent nuclear fuel into Transnuclear, Inc. (TN) NUHOMS® HD Storage System (HD–32PTH) dry storage casks, under the Certificate of Compliance (CoC or Certificate) No. 1030, Amendment No. 0. The licensee inadvertently reversed the upper and lower zones while preparing the dry shielded canister (DSC) loading maps. This resulted in twelve fuel assemblies being loaded into seven DSCs with decay heat greater than the levels specified in the CoC. Dominion requests a one-time exemption to the 10 CFR part 72 requirements to continue storage of the affected DSCs with serial numbers DOM–32PTH–004–C, –005–C, –007–C, –010–C, –013–C, –019–C and GBC–32PTH–011–C in their current condition at the Independent Spent Fuel Storage Installation (ISFSI) associated with the operation of Dominion's nuclear power reactors, North Anna Power Station Units 1 and 2, located in Louisa County, Virginia.

II. Environmental Assessment (EA)

Identification of Proposed Action: The CoC is the NRC approved design for each dry storage cask system. The proposed action would grant Dominion a one-time exemption from the requirements of 10 CFR 72.212(b)(3) and from the portion of 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC, to the extent necessary to enable Dominion to continue storage of the seven DSCs in their current condition at the ISFSI associated with North Anna Power Station Units 1 and 2. These regulations specifically require storage of spent nuclear fuel under a general license in dry storage casks approved under the provisions of 10 CFR part 72, and compliance with the terms and conditions set forth in the CoC for each dry spent fuel storage cask used by an ISFSI general licensee.

The TN NUHOMS® HD dry cask storage system CoC provides requirements, conditions and operating limits in Attachment A, Technical Specifications (TS). The TS restrict the decay heat in lower Zone ''1a'' locations to ≤ 1.05 kW and the upper Zone ''1b'' locations to ≤ 0.8 kW. The applicant inadvertently reversed the upper and lower zones while preparing the DSC loading maps. This resulted in twelve fuel assemblies being loaded into seven DSCs (serial numbers DOM–32PTH–004–C, –005–C, –007–C, –010–C, –013–C, –019–C and GBC–32PTH–011–C) with decay heat greater than specified in the CoC. The maximum decay heat of the misloaded fuel assemblies at the time of loading was 0.859 kW, which exceeded the Zone ''1b'' limit mentioned above by 59 watts. Currently, the twelve affected fuel assemblies have been in storage for a minimum of 1.3 years and have decayed to meet the required decay heat limits of the CoC.

The proposed action would grant Dominion a one-time exemption from the requirements of 10 CFR 72.212(b)(3) and the portion of 72.212(b)(11) which requires compliance with the terms, conditions, and specifications of a CoC, in order to allow continued storage of the seven affected DSCs in their current condition. This exemption approval is only valid for DSCs with serial numbers DOM–32PTH–004–C, –005–C, –007–C, –010–C, –013–C, –019–C and GBC–32PTH–011–C, at the North Anna Power Station ISFSI.

Need for the Proposed Action: Dominion requested this exemption in order to continue storage of seven as-loaded DSCs containing twelve fuel assemblies which exceeded the CoC decay heat limits at the time of loading. Dominion, with the assistance of TN, has provided an evaluation and thermal analysis which shows that the affected DSCs remain bounded by the system's design basis limits and that the continued storage of the fuel in the as-loaded configuration is safe.

Dominion has considered an alternative to the proposed action, which would correct the condition by reloading the affected DSCs to be in compliance with CoC No. 1030. This would involve retrieving each of the DSCs from their Horizontal Storage Modules (HSM), unloading the spent fuel assemblies from the DSC, performing inspections of various DSC components, reloading the spent fuel assemblies into the used DSC or a new DSC (if there was damage noted on the used DSC) in accordance with CoC No. 1030, performing the DSC closing procedures, and transferring the DSC back to the ISFSI for re-insertion into the HSM.

Dominion estimates this alternative action of loading and unloading operations would increase personnel exposures by 250 mRem per affected DSC. In addition, Dominion states the alternative to the proposed action would generate radioactive contaminated material and waste during loading and unloading operations and disposal of the used DSCs if the DSCs were damaged during the unloading process. The licensee estimates the alternative to the proposed action would cost an estimated $300,000 for unloading and reloading operations of each affected DSC and also necessitate additional fuel handling operations. If the DSC was damaged during unloading, the licensee estimates an additional $1,000,000 for purchase of a new DSC and $200,000 for disposal of the used DSC.

The proposed action is necessary to document the acceptability and safety basis for storage of the DSCs in the as-loaded configuration, thus precluding the need to unload the seven DSCs.

Environmental Impacts of the Proposed Action: The NRC staff has determined that the proposed action would not endanger life or property. The potential impact of using the NUHOMS® HD dry cask storage system was initially presented in the Environmental Assessment (EA) for the rulemaking to add the TN NUHOMS® HD Horizontal Modular Storage System for Irradiated Nuclear Fuel to the list of approved spent fuel storage casks in 10 CFR 72.214 (71 FR 25740, dated May 2, 2006 (Direct Final Rule), and 71 FR 71463, dated December 11, 2006 (Final Rule)).

The licensee submitted TN Calculation No. 10494–174, which performed bounding thermal analysis using ANSYS finite element software to evaluate the misloading events. The licensee concluded the maximum fuel cladding temperature for the as loaded DSCs remained below the fuel cladding temperature limit used in the Updated Safety Analysis Report dated October 2, 2009. The NRC staff performed an independent safety evaluation of the proposed exemption and determined that loading of the spent nuclear fuel with higher than allowable decay heat loads did not exceed the structural and shielding design basis and that the fuel cladding temperatures are below the temperature limit at the time of loading. The fuel assemblies have since decayed to meet the CoC limits. There are no changes being made in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure as a result of the proposed activities. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The proposed action only affects the requirements associated with the fuel assemblies already loaded into the casks and does not affect non-radiological plant effluents, or any other aspects of the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: Because there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact were not evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action which would involve reloading the affected DSCs as described previously. Denial of the exemption would result in an increase in radiological exposure to workers, a small potential for radioactive releases to the environment due to radioactive material handling, additional opportunities for accidents, and increased cost to the licensee. Therefore, the NRC staff has determined that approving the proposed action has a lesser environmental impact than denying the proposed action.

Agencies and Persons Consulted: The environmental assessment associated with this exemption request was sent to Ms. Ellie Irons of the Virginia Department of Environmental Quality in the Office of Environmental Impact Review, by letter dated November 14, 2011 (ML113180477). The state response was received by a letter dated December 14, 2011 (ML120030312). The letter states that the proposed action is unlikely to have significant effects on ambient air quality, historic resources, surface waters, and wetlands. The letter also states that it is unlikely to adversely affect species of plants or insects listed by state agencies as rare, threatened, or endangered. Furthermore, the Virginia Department of Health considered the alternative to the proposed action of reloading the casks presents several risks, namely additional radiation exposure to workers and potential accidents that may lead to dispersal of radiation to the environment. Thus, the Virginia Department of Health states that it supports the exemption without reservation. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action will not affect listed species or a critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting the one-time exemption from the requirements of 10 CFR 72.212(b)(3) and the portion of 72.212(b)(11) which requires compliance with the terms, conditions, and specifications of the CoC in order to allow Dominion to store spent fuel assemblies in DSCs with serial numbers DOM–32PTH–004–C, –005–C, –007–C, –010–C, –013–C, –019–C and GBC–32PTH–011–C in the as-loaded configuration at the ISFSI associated with North Anna Power Station Units 1 and 2, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted and that a finding of no significant impact is appropriate.

IV. Further Information

In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The request for exemption dated July 21, 2011 (ML11208C453), as supplemented September 28, 2011 (ML11286A143), was docketed under 10 CFR 50, Docket Nos. 50–338 and 50–339, and under 10 CFR 72, Docket No. 72–56. These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or (301) 415–4737, or by email to *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 26th day of March, 2012.

Jennie Rankin,

Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–8114 Filed 4–3–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1030, 72–55, 50–280 and 50–281; NRC–2012–0085]

Independent Spent Fuel Storage Installation, Virginia Electric and Power Company, Surry Power Station Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of an environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Jennie Rankin, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3268; Fax number: (301) 492–3342; email: *jennivine.rankin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC or Commission) is considering issuance of a one-time exemption to Virginia Electric and Power Company (Dominion or licensee) pursuant to 10 CFR 72.7 from the requirements of 10 CFR 72.212(b)(3) and the portion of 72.212(b)(11) which requires compliance with the terms, conditions, and specifications of the CoC. Dominion submitted its exemption request by letter dated July 21, 2011, as supplemented September 28, 2011. Dominion has loaded spent nuclear fuel into Transnuclear, Inc. (TN) NUHOMS® HD Storage System (HD–32PTH) dry storage casks, under the Certificate of Compliance (CoC or Certificate) No. 1030, Amendment No. 0. The licensee inadvertently reversed the upper and lower zones while preparing the dry shielded canister (DSC) loading maps. This resulted in five fuel assemblies being loaded into four DSCs with decay heat greater than the levels specified in the CoC. Dominion requests a one-time exemption to the 10 CFR Part 72 requirements to continue storage of the affected DSCs with serial numbers DOM–32PTH–001–C, –002–C, –003–C, and –009–C in their current condition at the Independent Spent Fuel Storage Installation (ISFSI) associated with the operation of Dominion's nuclear power reactors, Surry Power Station Units 1 and 2, located in Surry County, Virginia.

II. Environmental Assessment (EA)

Identification of Proposed Action: The CoC is the NRC approved design for each dry storage cask system. The proposed action would grant Dominion a one-time exemption from the requirements of 10 CFR 72.212(b)(3) and from the portion of 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC, to the extent necessary to enable Dominion to continue storage of the four DSCs in their current condition at the ISFSI associated with Surry Power Station Units 1 and 2. These regulations specifically require storage of spent nuclear fuel under a general license in dry storage casks approved under the provisions of 10 CFR part 72, and compliance with the terms and conditions set forth in the CoC for each dry spent fuel storage cask used by an ISFSI general licensee.

The TN NUHOMS® HD dry cask storage system CoC provides requirements, conditions and operating limits in Attachment A, Technical Specifications (TS). The TS restrict the decay heat in lower Zone ''1a'' locations to ≤ 1.05 kW and the upper Zone ''1b'' locations to ≤ 0.8 kW. The applicant inadvertently reversed the upper and lower zones while preparing the DSC loading maps. This resulted in five fuel assemblies being loaded into four DSCs (serial numbers DOM–32PTH–001–C, –002–C, –003–C, and –009–C) with decay heat greater than specified in the CoC. The maximum decay heat of the misloaded fuel assemblies at the time of loading was 0.806 kW, which exceeded the Zone ''1b'' limit mentioned above by six watts. Currently, the five affected fuel assemblies have been in storage for a minimum of 2.5 years and have decayed to meet the required decay heat limits of the CoC.

The proposed action would grant Dominion a one-time exemption from the requirements of 10 CFR 72.212(b)(3) and the portion of 72.212(b)(11) which requires compliance with the terms, conditions, and specifications of a CoC, in order to allow continued storage of the four affected DSCs in their current condition. This exemption approval is only valid for DSCs with serial numbers DOM–32PTH–001–C, –002–C, –003–C, and –009–C, at the Surry Power Station ISFSI.

Need for the Proposed Action: Dominion requested this exemption in order to continue storage of four as-loaded DSCs containing five fuel assemblies which exceeded the CoC decay heat limits at the time of loading. Dominion, with the assistance of TN, has provided an evaluation and thermal analysis which shows that the affected DSCs remain bounded by the system's design basis limits and that the continued storage of the fuel in the as-loaded configuration is safe.

Dominion has considered an alternative to the proposed action, which would correct the condition by reloading the affected DSCs to be in compliance with CoC No. 1030. This would involve retrieving each of the DSCs from their Horizontal Storage Modules (HSM), unloading the spent fuel assemblies from the DSC, performing inspections of various DSC components, reloading the spent fuel assemblies into the used DSC or a new DSC (if there was damage noted on the used DSC) in accordance with CoC No. 1030, performing the DSC closing procedures, and transferring the DSC back to the ISFSI for re-insertion into the HSM.

Dominion estimates this alternative action of loading and unloading operations would increase personnel exposures by 250 mRem per affected DSC. In addition, Dominion states the alternative to the proposed action would generate radioactive contaminated

material and waste during loading and unloading operations and disposal of the used DSCs if the DSCs were damaged during the unloading process. The licensee estimates the alternative to the proposed action would cost an estimated $300,000 for unloading and reloading operations of each affected DSC and also necessitate additional fuel handling operations. If the DSC was damaged during unloading, the licensee estimates an additional $1,000,000 for purchase of a new DSC and $200,000 for disposal of the used DSC.

The proposed action is necessary to document the acceptability and safety basis for storage of the DSCs in the as-loaded configuration, thus precluding the need to unload the four DSCs.

Environmental Impacts of the Proposed Action: The NRC staff has determined that the proposed action would not endanger life or property. The potential impact of using the NUHOMS® HD dry cask storage system was initially presented in the Environmental Assessment (EA) for the rulemaking to add the TN NUHOMS® HD Horizontal Modular Storage System for Irradiated Nuclear Fuel to the list of approved spent fuel storage casks in 10 CFR 72.214 (71 FR 25740, dated May 2, 2006 (Direct Final Rule), and 71 FR 71463, dated December 11, 2006 (Final Rule)).

The licensee submitted TN Calculation No. 10494–174, which performed bounding thermal analysis using ANSYS finite element software to evaluate the misloading events. The licensee concluded the maximum fuel cladding temperature for the as loaded DSCs remained below the fuel cladding temperature limit used in the Updated Safety Analysis Report dated October 2, 2009. The NRC staff performed an independent safety evaluation of the proposed exemption and determined that loading of the spent nuclear fuel with higher than allowable decay heat loads did not exceed the structural and shielding design basis and that the fuel cladding temperatures are below the temperature limit at the time of loading. The fuel assemblies have since decayed to meet the CoC limits. There are no changes being made in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure as a result of the proposed activities. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The proposed action only affects the requirements associated with the fuel assemblies already loaded into the casks and does not affect non-radiological plant effluents, or any other aspects of the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: Because there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact were not evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action which would involve reloading the affected DSCs as described previously. Denial of the exemption would result in an increase in radiological exposure to workers, a small potential for radioactive releases to the environment due to radioactive material handling, additional opportunities for accidents, and increased cost to the licensee. Therefore, the NRC staff has determined that approving the proposed action has a lesser environmental impact than denying the proposed action.

Agencies and Persons Consulted: The environmental assessment associated with this exemption request was sent to Ms. Ellie Irons of the Virginia Department of Environmental Quality in the Office of Environmental Impact Review, by letter dated November 14, 2011 (ML113180499). The state response was received by letter dated December 14, 2011 (ML120030312). The letter states that the proposed action is unlikely to have significant effects on ambient air quality, historic resources, surface waters, and wetlands. The letter also states that it is unlikely to adversely affect species of plants or insects listed by state agencies as rare, threatened, or endangered. Furthermore, the Virginia Department of Health considered the alternative to the proposed action of reloading the casks presents several risks, namely additional radiation exposure to workers and potential accidents that may lead to dispersal of radiation to the environment. Thus, the Virginia Department of Health states that it supports the exemption without reservation. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action will not affect listed species or a critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting the one-time exemption from the requirements of 10 CFR 72.212(b)(3) and the portion of 72.212(b)(11) which requires compliance with the terms, conditions, and specifications of the CoC in order to allow Dominion to store spent fuel assemblies in DSCs with serial numbers DOM–32PTH–001–C, –002–C, –003–C, and –009–C in the as-loaded configuration at the ISFSI associated with Surry Power Station Units 1 and 2, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted and that a finding of no significant impact is appropriate.

IV. Further Information

In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action are publicly available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The request for exemption dated July 21, 2011 (ML11208B629), as supplemented September 28, 2011 (ML11286A115), was docketed under 10 CFR part 50, Docket Nos. 50–280 and 50–281, and under 10 CFR 72, Docket No. 72–55. These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or (301) 415–4737, or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of March, 2012.

For the Nuclear Regulatory Commission.

Jennie Rankin,

Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–8111 Filed 4–3–12; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Proposed Information Collection; Comment Request

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Review Commission (OSHRC) invites the public and other Federal agencies to comment on a proposed information collection concerning participation in conventional proceedings as part of our review of the OSHRC Settlement Part program. OSHRC will submit the proposed information collection request to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Written comments must be submitted on or before June 4, 2012.

ADDRESSES: Submit all written comments, identified by the title ''Paperwork Reduction Act Information Collection—Conventional Proceedings'', by mail or hand delivery to John X. Cerveny, Deputy Executive Secretary, Occupational Safety and Health Review Commission, 1120 20th Street NW., Washington, DC 20036–3457, by fax to 202–606–5050, or by email to *pracomments@oshrc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for information or copies of the proposed information collection instrument should be directed to John X. Cerveny, Deputy Executive Secretary, Occupational Safety and Health Review Commission, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457; Telephone (202) 606–5706; email address: *pracomments@oshrc.gov.*

SUPPLEMENTARY INFORMATION: OSHRC's Settlement Part program, codified at 29 CFR 2200.120, is designed to encourage settlements on contested citations issued by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) and to reduce litigation costs. The program requires employers who receive job safety or health citations that include proposed penalties of $100,000 or more in total to participate in formal settlement talks presided over by an OSHRC Administrative Law Judge. If settlement efforts fail, the case would continue under OSHRC's conventional proceedings, usually before a judge other than the one who presided over the settlement proceedings.

OSHRC has submitted for OMB review a proposed information collection from participants in the Settlement Part program. A copy of that information collection request (ICR) with applicable supporting documentation may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* or by contacting John X. Cerveny, Deputy Executive Secretary, Occupational Safety and Health Review Commission, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457; Telephone (202) 606–5706; email address: *pracomments@oshrc.gov.*

OSHRC proposes to conduct a second voluntary survey of employer, Department of Labor (OSHA) personnel (decision makers), Authorized Employee Representatives, and their representatives, including attorneys, who personally participated in OSHRC cases between February 15, 2011 and June 30, 2012, where a total proposed penalty between $50,000 and $99,999 was involved and where OSHRC Settlement Part Process procedures were not used. The cases would include those settled by the parties without an OSHRC judge conducting a face-to-face settlement proceeding, as well as any cases within the above dollar range that went to a trial on the merits. These cases would be considered part of a control group. Participant responses will be used for comparative purposes and to facilitate our understanding of the efficacy of the Settlement Part program. The proposed information collection instrument is a written survey consisting of a series of questions to determine participants' level of satisfaction with OSHRC processes and outcomes. They are intended to take a respondent no more than 30 minutes to complete. The respondents may skip any questions that they do not feel comfortable answering, and are permitted to comment further on their experiences at the end of the questionnaire.

OSHRC will submit the proposed information collection to the Office of Management and Budget for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OSHRC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they also will become a matter of public record.

OMB Control Number: Not applicable, new request.

Form Number: Not applicable.

Type of Review: Regular submission (new information collection).

Title: Survey of Participants in OSHRC Conventional Proceedings where between $50,000 and $99,999 is at issue.

Description: Information collection required to evaluate the Review Commission's Settlement Part process.

Affected Public: Employer and Department of Labor (OSHA) personnel (decision makers), Authorized Employee Representatives, and their representatives, including attorneys, who have personally participated in OSHRC cases between February 15, 2011 and June 30, 2012, where a total proposed penalty between $50,000 and $99,999 was involved and where OSHRC Settlement Part Process procedures were not used.

Estimated Number of Respondents: 500.

Estimated Time per Response: 30 minutes.

Estimated Total Reporting Burden: 250 hours.

Obligation To Respond: Voluntary.

Dated: March 30, 2012.

Debra Hall,

Acting Executive Director.

[FR Doc. 2012–8124 Filed 4–3–12; 8:45 am]

BILLING CODE 7600–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30014; File No. 812–13778]

Sunwest Rollover Member LLC; Notice of Application

March 29, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for exemption under the Investment Company Act of 1940 (the ''Act'').

SUMMARY: *Summary of Application:* Sunwest Rollover Member LLC (''Applicant'') requests an order of the Commission pursuant to sections 6(c) and 6(e) of the Act exempting it from all provisions of the Act and the rules thereunder, except sections 9, 17(a), 17(d) and 17(e), section 31, as modified herein (''Modified Section 31''), and sections 36 through 53 of the Act and the rules thereunder. Applicant would be exempt until the earlier of August 5, 2015 or such time as it no longer meets the definition of an investment company under the Act.

DATES: *Filing Dates:* The application was filed on May 28, 2010, and amended on June 17, 2010, June 28, 2010, July 8, 2010, October 8, 2010, February 22, 2011, September 6, 2011, and March 22, 2012.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 23, 2012 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicant, 2300 SW First Avenue, Suite 200, Portland, OR 97201–5047.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations

1. Applicant is a Delaware limited liability company formed for the purpose of holding equity interests (''Rollover Equity Interests'') in BRE/SW Portfolio LLC (''Blackstone LLC''),[1] a Delaware limited liability company, to resolve the bankruptcy of Sunwest (as defined below). Applicant is managed by a three-person board of managers (''Board of Managers'') elected by the members of Applicant.[2] Although Applicant is authorized to exist until December 31, 2020, Applicant expects that Blackstone LLC will have a limited life of up to five years from its acquisition of the Sunwest Assets (as defined below) and similarly also expects to liquidate and dissolve by August 5, 2015.

2. Blackstone LLC was formed to acquire substantially all of the core assets (consisting of more than 140 senior living facilities throughout the United States) (collectively, the ''Sunwest Assets'') of ''Sunwest,'' a group of related entities formerly involved in the acquisition, development, design, construction, financing, insuring and operation of senior living and other properties nationwide, along with miscellaneous other related assets and operations.[3]

3. Prior to 2008, Sunwest operated 290 facilities and was one of the largest assisted living providers in the United States. Sunwest financed the acquisition and development of its senior living and other properties through various means, including the sale to investors of tenant-in-common interests (''TIC Investors'') and limited liability company interests (''LLC Investors'') in properties owned by Sunwest.[4] On December 1, 2008, Stayton SW Assisted Living, L.L.C., one of the Sunwest entities (''Debtor''), initiated its bankruptcy case (''Bankruptcy Case'') with the filing of a voluntary petition under Chapter 11 of Title 11 of the United States Code.

4. On March 2, 2009, the Commission filed a complaint in the U.S. District Court for the District of Oregon (''District Court'') alleging that Sunwest Management Inc. committed violations of the federal securities laws in the offering of interests in Sunwest.[5] On March 10, 2009, the District Court entered an order in the SEC Enforcement Action granting an injunction and appointing a receiver over the Sunwest entities. On December 22, 2009, the District Court entered an order providing that all assets and liabilities of Sunwest were consolidated into the Bankruptcy Case, that equitable title to real estate held by Sunwest was consolidated into Debtor's bankruptcy estate, and that Debtor had the right to convey title to, or interests in, real property pursuant to a confirmed plan of reorganization or other order of the District Court.

5. On January 15, 2010, the Debtor and Blackstone LLC entered into the PSA providing for the sale or contribution of substantially all of the core assets of Sunwest, including the interests in the properties owned by the TIC Investors and the LLC Investors, to Blackstone LLC or a successful bidder who placed a higher bid at the ensuing auction. After the bid deadline established for such auction expired, the District Court entered its order identifying and approving Blackstone LLC as the successful bidder and purchaser under the PSA. The Blackstone Acquisition closed on August 5, 2010.

6. Applicants state that due to the complex and unusual capital structure of Sunwest, outright sale of the Sunwest Assets to Blackstone LLC likely would have resulted in adverse income tax consequences to numerous Sunwest Investors. Applicant states that, to address tax consequences and certain valuation concerns of Sunwest Investors, the PSA and the Debtor's plan of reorganization provided that the consideration paid by Blackstone LLC in acquiring the Sunwest Assets would, at the election of Sunwest Investors, take the form of a combination of cash and/or issuance of Rollover Equity Interests. Sunwest Investors who elected to receive interests in the Applicant contributed their interests in the Sunwest Assets and the bankruptcy estate to Applicant in exchange for, at their election: Applicant's common units or preferred units.[6] Applicant in

[1] Applicant states that the Rollover Equity Interests consist of common interests and class A preferred units, each as defined in the limited liability company agreement governing Blackstone LLC (''Blackstone LLC Agreement'').

[2] Applicant's limited liability company agreement requires that two of the three members of the Board of Managers are not ''interested persons'' as defined in the Act.

[3] The acquisition of the Sunwest Assets by Blackstone LLC is referred to herein as the ''Blackstone Acquisition.'' The Blackstone Acquisition is governed by the terms and conditions of an Agreement of Purchase, Sale and Contribution dated as of January 15, 2010, and amended on February 12, 2010, March 25, 2010 and July 13, 2010 (''PSA'').

[4] The TIC Investors and the LLC Investors are referred to herein, collectively, as ''Sunwest Investors.''

[5] *SEC* v. *Sunwest Management, Inc., et al.,* Civil Action No. CV 09–6056 HO (''SEC Enforcement Action'').

[6] Applicant states that no Sunwest Investor was required to receive interests in Applicant; only

Continued

turn contributed the property interests to Blackstone LLC. The terms of Applicant's common units and preferred units mirror the terms of the Rollover Equity Interests that are held by Applicant.[7]

7. Applicant states that its assets consist exclusively of the Rollover Equity Interests and the following short-term instruments pending distributions to Applicant's members or disbursements in payment of Applicant's obligations: (a) General obligations of the United States, or its agencies and instrumentalities; and/or (b) deposit accounts with banks, which accounts are insured by the Federal Deposit Insurance Corporation or an equivalent insuring organization (collectively, the ''Temporary Investments'').[8]

8. Applicant states that the District Court has been actively involved in all aspects of the Debtor's reorganization, including the development of Applicant's capital structure and the terms of the Blackstone Acquisition.[9] In addition, committees of unsecured creditors and TIC Investors were established in 2009 to represent the interests of Sunwest Investors and creditors, and representatives of these committees considered and discussed numerous alternative methods of maximizing the value of Sunwest Investors' interests in Sunwest, including development of a stand-alone plan of reorganization and the acquisition of Sunwest properties by third parties. The Blackstone Acquisition was eventually determined to be the most favorable alternative available to Sunwest Investors and creditors. Applicant states that the negotiations which led to both the structure of Applicant and the terms of the PSA with Blackstone LLC were protracted, conducted at arm's-length, and actively participated in by Sunwest Investors and their representatives, counsel, investment bankers and other advisors.

9. The Blackstone LLC Agreement permits Blackstone LLC's board of directors to approve a proposal by BRE/SW Member LLC (a member of Blackstone LLC, ''BREA'') to request that its members, including Applicant, make additional capital contributions if BREA determines in good faith: (a) That Blackstone LLC requires additional capital to meet its financial obligations; or (b) that raising additional capital for additional investment purposes is advisable and in the best interests of Blackstone LLC; provided, however, such additional investments shall not include additional facilities unless they are contiguous or adjacent to ''properties'' (defined in the Blackstone LLC Agreement to include specified assisted living, memory care and skilled nursing facilities) existing as of the date of the Blackstone LLC Agreement. In addition, Applicant's limited liability company agreement permits Applicant to raise capital only for the purpose of paying Applicant's expenses or responding to a capital request from Blackstone LLC.[10] Any offering by Applicant, whether to pay its expenses or to raise capital in response to a capital call from Blackstone LLC, must be conducted in compliance with federal and state securities laws.[11] In any event, Applicant believes it is unlikely that Applicant or Blackstone LLC will request any additional capital.

Applicant's Analysis

1. Applicant requests an order of the Commission pursuant to sections 6(c) and 6(e) of the Act exempting it from all provisions of the Act and the rules thereunder, except sections 9, 17(a), 17(d) and 17(e), Modified Section 31, and sections 36 through 53 of the Act and the rules thereunder. Applicant requests relief until the earlier of August 5, 2015 or such time as Applicant no longer meets the definition of an investment company under the Act.

2. Applicant states that it meets the definition of an investment company, as defined in section 3(a)(1)(C) of the Act, because: (a) Applicant has acquired investment securities (i.e., interests in Blackstone LLC) having a value exceeding 40% of the value of Applicant's total assets; and (b) none of the exemptions or exceptions specified in the Act apply to Applicant in its current form. Applicant states that, if the Commission does not issue the requested relief, Applicant may be required to devote scarce financial and other resources to comply with provisions of the Act that Applicant argues are not relevant or necessary under Applicant's circumstances. Applicant also states that, although it was formed as a limited liability company rather than a liquidating trust, in terms of its structure and function, as well as the policies underlying the Act, Applicant is indistinguishable from liquidating trusts and other entities that have been granted similar exemptions by the Commission in the past.[12] Applicant states that it is structured with the goal of liquidating the Sunwest Assets in an orderly manner and distributing the liquidation proceeds to its investors.

3. Section 6(c) provides that the Commission may by order upon application exempt any person or persons, or any transaction or transactions, from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of the Act. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, shall apply to the company and other persons dealing with the company as if such company were a registered investment company.

4. Applicant states that it will be subject to all of section 31 and the rules thereunder, except that rule 31a–1(a) will be modified to require retention of the documents that constitute the record forming the basis for the quarterly unaudited financial statements and the annual audited financial statements that Applicant will provide to its members, rather than the documents forming the

Sunwest Investors who voluntarily elected to receive interests in Applicant became members of Applicant. In addition, Applicant states that neither the common interests nor class A preferred units that constitute the Rollover Equity Interests were over-subscribed, so certain over-subscription procedures developed in the Bankruptcy Case did not become applicable.

[7] Applicant also issued a third class of securities to certain founders of Sunwest (''Sunwest Founders'') that consists of contingent non-voting profits interests (''Profits Interests''). The Profits Interests entitle Sunwest Founders to receive a portion of Applicant's earnings if total distributions and payments to Sunwest's general unsecured creditors and Sunwest Investors (not including Sunwest Founders) aggregate in excess of $500 million. Applicant states that it is unlikely that the Profits Interests will ever have value.

[8] Applicant's sole source of revenue is and will continue to be its investment in Blackstone LLC (other than any income from Temporary Investments).

[9] Applicant will continue to be subject to the jurisdiction of the District Court.

[10] Applicant does not anticipate that there will be significant distributions to Applicant in the initial years of operation of Blackstone LLC, but that Applicant will have significant administrative, compliance and similar expenses. Therefore, Blackstone LLC has agreed to reimburse Applicant $400,000 each year, and the Debtor has agreed to loan Applicant up to a total of $2 million to permit Applicant to pay its expenses.

[11] Applicant states that, if it were to sell any additional securities, the securities would be sold to Applicant's members and not to third parties. Applicant states that an offering likely would be made only to accredited investors under Rule 506 of Regulation D under the Securities Act of 1933 and all members of Applicant received notice of such a possibility before electing to invest in Applicant.

[12] Drexel Burnham Lambert Group Inc., Investment Company Act Release Nos. 18643 (April 1, 1992) (notice) and 18675 (April 24, 1992) (order) and LTV Aerospace Creditors Liquidating Trust, Investment Company Act Release Nos. 19596 (July 26, 1993) (notice) and 19648 (August 24, 1993) (order).

basis for the financial statements that would be filed pursuant to section 30 of the Act. Under the requested relief, Applicant will provide to its members: (i) Annual audited financial statements prepared in accordance with generally accepted accounting principles and rule 1–02(d) of Regulation S–X; and (ii) unaudited quarterly financial statements prepared in accordance with generally accepted accounting principles.

5. Applicant contends that the following factors, among others, are appropriate grounds for the requested relief, particularly in view of the provisions of the Act that will apply to Applicant: (i) Sunwest Investors who were eligible to receive interests in Applicant, their counsel, investment bankers and other advisors, as well as the District Court and its appointed mediators, were active participants in designing and determining Applicant's structure; (ii) Applicant will continue to be subject to the jurisdiction of the District Court; (iii) transferability of Applicant's securities is severely restricted; [13] (iv) Applicant has a limited life and will liquidate upon the liquidation of Blackstone LLC; and (v) Applicant will not be engaged in the business of investing, reinvesting or trading in securities, and the only securities that Applicant may hold are its interests in Blackstone LLC and Temporary Investments pending distributions to Applicant's members or disbursements in payment of Applicant's obligations.

6. Accordingly, Applicant believes that the issuance of the order pursuant to sections 6(c) and 6(e) is appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

Applicant agrees that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Applicant will not own or hold securities other than: (a) Interests in Blackstone LLC and (b) Temporary Investments.

2. Applicant will not offer additional securities to its members, except in connection with capital requests from Blackstone LLC or to pay its expenses.

3. If Applicant sells additional securities, such securities would be sold at a price equal to or greater than the net asset value of the securities at the time of the offering.

[13] Among other restrictions, Applicant states that it will limit transfers to transfers among members or affiliates of members.

4. Applicant's governing documents will not be amended to permit Applicant's securities to be freely tradable.

5. Applicant will provide to its members: (a) Quarterly unaudited financial statements prepared in accordance with generally accepted accounting principles and (b) annual audited financial statements prepared in accordance with generally accepted accounting principles and rule 1–02(d) of Regulation S–X.

6. Applicant will be exempt until the earlier of August 5, 2015 or such time as Applicant no longer meets the definition of an investment company under the Act.

7. Applicant will not hold itself out as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8061 Filed 4–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

eMax Worldwide, Inc.; Order of Suspension of Trading

April 2, 2012.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of eMax Worldwide, Inc. (CIK: 0000830519) because there is a lack of current and accurate information concerning its securities. eMax Worldwide, Inc. has failed to make periodic filings with the Commission and has more than 300 shareholders of record. eMax Worldwide, Inc. is quoted on OTC Markets Group Inc. under the ticker EMXC.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of eMax Worldwide, Inc. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of eMax Worldwide, Inc. is suspended for the period from 9:30 a.m. EDT on April 2, 2012, through 11:59 p.m. EDT on April 16, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66679; File No. SR–FICC–2012–03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to Expand the One-Pot Cross-Margining Program With New York Portfolio Clearing, LLC to Certain ''Market Professionals''

March 29, 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 March 20, 2012, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed change as described in Items I and II below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to certain rules of the Government Securities Division (''GSD'') of the Fixed Income Clearing Corporation (''FICC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC is proposing to expand its existing one-pot cross-margining program with New York Portfolio

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by FICC.

Clearing, LLC (''NYPC'') [4] (''Proprietary Cross-Margining Program'') to include eligible positions held by GSD Netting Members and NYPC Clearing Members for certain ''market professionals.'' [5]

Overview

In its present form, the Proprietary Cross-Margining Program is limited to cross-margining of proprietary accounts. Specifically, from NYPC's perspective, only a member's proprietary or ''house'' account is eligible for cross-margining; from GSD's perspective, all accounts maintained by GSD for its Netting Members are deemed proprietary.[6] The proposed rule filing expands the Proprietary Cross-Margining Program to non-proprietary accounts carried by participating GSD Netting Members on behalf of ''Market Professionals'' (''Market Professional Cross-Margining Program''). The proposed rule change defines ''Market Professional'' as an entity, other than a ''non-customer,'' [7] that is a member of a designated contract market and that actively trades for its own account products that are eligible under the cross-margining agreement between FICC and NYPC (''FICC–NYPC Cross-Margining Agreement'') [8] for cross-margining (''Eligible Products'').[9] Positions and collateral held for Market Professionals will be maintained in accounts that are distinct from both proprietary cross-margining accounts and non-cross-margining accounts.[10]

As with the current Proprietary Cross-Margining Program, the proposed Market Professional Cross-Margining Program would be available to GSD Netting Members that carry accounts of Market Professionals and that are also clearing members of NYPC (individually a ''Joint Member'') or that have an affiliate that is a clearing member of NYPC (individually an ''Affiliated Member''). Members do not have to be participating in the Proprietary Cross-Margining Program in order to participate in the proposed Market Professional Cross-Margining Program (or vice versa).

The proposed rule change necessitates revisions to the FICC–NYPC Cross-Margining Agreement, which are described in detail below. Additional participant agreements have been added as appendices to the FICC–NYPC Cross-Margining Agreement for this purpose.

Segregation and Liquidation Considerations

The proposed Market Professional Cross-Margining Program addresses concerns regarding segregation and liquidation procedures under the Commodity Exchange Act (''CEA''),[11] Title 11 of the United States Code (''Bankruptcy Code'') [12] and the Securities Investor Protection Act (''SIPA'').[13] The CEA requires that the property of customers must be segregated from the proprietary property of a futures commission merchant. Because Market Professionals are considered ''customers'' under CFTC regulations, the cross-margined positions of the Market Professionals and all property related thereto must be segregated from the cross-margined positions and property of the GSD Netting Member that carries their accounts.

Under the proposed rule filing, each GSD Netting Member electing to participate in the Market Professional Cross-Margining Program must execute a Cross-Margining Participant Agreement for Market Professional Accounts (see Appendix C and Appendix D of the proposed Amended and Restated FICC–NYPC Cross-Margining Agreement) and must establish a separate cross-margining account for the benefit of Market Professionals for whom it carries cross-margined positions (''Market Professional Cross-Margining Account''). GSD Netting Members and NYPC Clearing Members who establish Market Professional Cross-Margining Accounts must also obtain the consent of each Market Professional whose cross-margined positions are carried in such account to the commingling of the Market Professional's assets with those of other electing Market Professionals of the same GSD Netting Member and NYPC Clearing Member (or permitted margin affiliate at NYPC); provided, however, that consistent with the requirements of CFTC Regulation 39.13(g)(8)(i) (gross margin for customer accounts), the positions of a Market Professional cleared by FICC will only be cross-margined with the derivatives positions of the same Market Professional cleared by NYPC. Moreover, because Section 4d(a)(2) of the CEA prohibits commingling futures and securities in the absence of a CFTC rule, regulation or order to the contrary, it will be necessary for NYPC to obtain from the CFTC an order stating that

[4] *See* Securities Exchange Act Release No. 34–63986 (February 28, 2011), 76 FR 12144 (March 4, 2011).

[5] The NYPC–FICC ''market professional'' cross-margining program aims to closely replicate the Options Clearing Corporation (''OCC'')-Chicago Mercantile Exchange (''CME'') cross-margining program, which was first approved in 1989 (Securities Exchange Act Release No. 34–27296 (September 26, 1989), 54 FR 41195 (October 5, 1989)) and was expanded in 1991 to include market professionals (Securities Exchange Act Release No. 34–29991 (November 26, 1991), 56 FR 61458 (December 3, 1991)). Since that time, the Commission has approved several similar ''market professional'' cross-margining programs, including most recently in 2008. They include: OCC-Intermarket Clearing Corporation (''ICC'') Securities Exchange Act Release No. 34–30041 (December 5, 1991), 56 FR 68424 (December 12, 1991); OCC–ICC–CME Securities Exchange Act Release No. 34–32534 (June 28, 1993), 58 FR 36234 (July 6, 1993); OCC-Board of Trade Clearing Corporation Securities Exchange Act Release No. 34–32681 (July 27, 1993), 58 FR 41302 (August 3, 1993) ; OCC-Kansas City Board of Trade Clearing Corporation (''KCBOT'') Securities Exchange Act Release No. 34–32708 (August 2, 1993), 58 FR 42586 (August 10, 1993); OCC–ICC–Commodity Clearing Corporation (''CCC'') Securities Exchange Act Release No. 34–33272 (December 2, 1993), 58 FR 64997 (December 10, 1993); OCC–ICC, OCC–ICC–CME, OCC–KCBOT Securities Exchange Act Release No. 34–36819 (February 7, 1996), 61 FR 5594 (February 13, 1996); OCC–CME–Securities Exchange Act Release No. 34–38584 (May 8, 1997), 62 FR 26602 (May 14, 1997); and OCC–ICE Clear U.S. Securities Exchange Act Release No. 34–57118 (January 9, 2008), 73 FR 2970 (January 16, 2008).

[6] The GSD does not have segregated accounts for Netting Members' customers. In contrast, NYPC currently maintains both proprietary and segregated customer accounts for its Clearing Members in compliance with applicable Commodity Futures Exchange Commission (''CFTC'') regulations. Only NYPC Clearing Members' proprietary accounts at NYPC are eligible for participation in the Proprietary Cross-Margining Program. The present proposal would introduce a third type of account at NYPC that NYPC Clearing Members may maintain, *i.e.,* the Market Professional account. The present proposal also introduces a second type of account at GSD, *i.e.,* the Market Professional account.

[7] Consistent with previously approved market professional cross-margining programs, FICC's rules define the term ''Non-Customer'' to mean GSD Netting Members and other persons whose accounts with GSD Netting Members would not be the accounts of ''customers'' within the meaning of SEC Rules 8c–1 and 15c2–1.

[8] The FICC–NYPC Cross-Margining Agreement was approved by the Commission as part of FICC's Rule Filing No. SR–FICC–2010–09. *See* note 4, *supra.*

[9] As defined in the FICC–NYPC Cross-Margining Agreement, the term ''Eligible Products'' includes U.S. Government securities, securities of U.S. federal agencies and U.S. Government-sponsored enterprises, financing products and certain mortgage-backed securities cleared by FICC, and futures contracts and options on futures contracts, including U.S. dollar-denominated interest rate and fixed income futures contracts and options on futures contracts, cleared by NYPC. Formal inclusion of options on futures in the program will be the subject of a separate rule filing with the Commission.

[10] As described above, GSD Netting Members who wish to participate in the Market Professional Cross-Margining Program will need to open an additional account for their Market Professionals. Likewise, NYPC Clearing Members wishing to participate in the program will need to open an additional account for their Market Professionals, which will be required to be separate and distinct from both their proprietary and segregated customer accounts.

[11] 7 U.S.C. 1–27f as amended.

[12] 11 U.S.C. 101–1532 as amended.

[13] 15 U.S.C. 78aaa–78lll as amended.

Eligible Products that are cleared by FICC and property received by a participating GSD Netting Member to margin, guarantee, or secure trades or positions in or accruing as a result of such Eligible Products may be commingled in a Market Professional Cross-Margining Account with Eligible Products cleared by NYPC and with property received by a participating NYPC Clearing Member to margin, guarantee, or secure trades or positions in or accruing as a result of such Eligible Products that would otherwise be required by the CFTC to be segregated under the CEA.

FICC has established procedures to facilitate the segregation of the funds and securities deposited or received by GSD Netting Members regarding their Market Professional cross-margining activity. For example, each GSD Netting Member must establish separate bank accounts for the purpose of making daily funds-only settlement of its proprietary cross-margining activity and for the purpose of making daily funds-only settlement of its Market Professional cross-margining activity. In addition, FICC and NYPC will establish and use separate bank accounts for paying and collecting cash margin and funds-only settlement amounts resulting from members' proprietary cross-margining activities and for paying and collecting such amounts resulting from members' market professional cross-margining activity. FICC will not permit the netting of obligations arising out of a GSD Netting Member's proprietary cross-margining activity with those arising out of its Market Professional cross-margining activity.

FICC has also taken steps to assure the segregation of securities that are deposited with FICC or its agents to satisfy Clearing Fund requirements in Market Professional Cross-Margining Accounts and proprietary cross-margining accounts. For example, FICC and NYPC will establish and use separate custody accounts to hold securities deposited as margin by members for proprietary cross-margining activity and to hold securities deposited as margin by members for Market Professional cross-margining activity.

FICC's proposal also addresses the potential for conflict between SIPA, Subchapter IV of chapter 7 of the Bankruptcy Code,[14] and corresponding CFTC bankruptcy regulations,[15] in the event of the liquidation and distribution of the property and funds of a GSD Netting Member that is a registered broker-dealer.[16] To establish uniform results in the event of the bankruptcy or liquidation of a broker-dealer GSD Netting Member under SIPA, FICC will require each Netting Member that chooses to participate in the Market Professional Cross-Margining Program to require that the GSD Netting Member's participating Market Professionals agree that in the event of the bankruptcy or liquidation of the GSD Netting Member carrying its cross-margined positions, the Market Professional will subordinate its cross-margining related claims to the claims of the firm's non-cross-margining customers.[17] Similarly, each participating Market Professional must acknowledge that all of the assets carried in a GSD Netting Member's Market Professional Cross-Margining Account on the Market Professional's behalf will not be deemed ''customer property'' for purposes of SIPA or give rise to any claim thereunder. This means that in the event of a GSD Netting Member bankruptcy, all claims to assets in cross-margining accounts will be determined under Subchapter IV of chapter 7 of the Bankruptcy Code and applicable CFTC regulations. FICC believes these measures reduce the possibility that assets in a GSD Netting Member's Market Professional Cross-Margining Account will be subject to two conflicting schemes of distribution.

In the event of a default of a member that chooses to participate in the Market Professional Cross-Margining Program, FICC and NYPC will follow the remedies outlined in the FICC–NYPC Cross-Margining Agreement to liquidate or transfer the proprietary and Market Professional Cross-Margining Accounts. Any deficit in the Market Professional Cross-Margining Account would, absent a deficit in any NYPC segregated customer account of the defaulting member, be offset against any credit in any proprietary cross-margining account of the defaulting member. Non-cross-margining accounts at NYPC would be liquidated or transferred pursuant to NYPC procedures as they exist today. FICC and NYPC will not offset a credit in a Market Professional Cross-Margining Account with a deficit in a proprietary cross-margin account or with any other account FICC or NYPC maintains for the defaulting member. Thus, any surplus in the Market Professional Cross-Margining Account will be returned to the member or its representative.

In the event of a member bankruptcy, the Bankruptcy Code exempts FICC and NYPC from the automatic stay and permits FICC and NYPC to liquidate any assets held for the insolvent member[18] and offset those assets against the member's liabilities.[19] Assets of the member held in the Market Professional Cross-Margining Account will only be set-off against related Market Professional cross-margining liabilities. Any assets remaining after such a set-off will be transferred to the bankruptcy trustee for administration and distribution.[20]

If a member becomes insolvent, the Securities Investor Protection Corporation (''SIPC'') may and probably will file for a protective decree under SIPA.[21] SIPC will then appoint a trustee charged with liquidating the bankrupt estate, consistent with SIPA. Under SIPA, the trustee must, to the extent not inconsistent with SIPA, administer the assets of the member held as a commodity broker in accordance with the Bankruptcy Code's commodity broker liquidation requirements and applicable CFTC regulations.[22] Even if SIPC does not exercise its power to seek appointment of a trustee and SIPA does not apply to the liquidation, a Market Professional's claims to assets in the Market Professional Cross-Margining Account will be determined in accordance with the Bankruptcy Code's commodity broker liquidation scheme

[14] 11 U.S.C. 761–767.

[15] 17 CFR part 190.

[16] Some Market Professionals could be deemed to be ''customers'' under SIPA and Exchange Act Rule 15c3–3. Consistent with previously approved cross-margining programs, however, Market Professionals will be required to agree to subordinate their claims, in the event of the bankruptcy of a GSD Netting Member or an NYPC member, to the claims of other customers. *See* Securities Exchange Act Release No. 34–29991 (November 26, 1991), 56 FR 61458 (December 3, 1991) n.23.

[17] Under SIPA, SIPC satisfies the claims of ''customers'' against insolvent broker-dealers up to predetermined limits. 15 U.S.C. 78fff–3. Under SIPA, however, the term ''customer'' does not include any person to the extent that such person has a claim for cash or securities which, by agreement, is subordinated to the claims of any or all creditors of the debtor. 15 U.S.C. 78lll(2)(C)(ii). Because a Market Professional will be required to subordinate its cross-margin related claims against a GSD Netting Member to those of the GSD Netting Member's non-cross-margining customers, it will not fall within the protections afforded by SIPA. *See* Securities Exchange Act Release No. 34–29991 (November 26, 1991), 56 FR 61458 (December 3, 1991) n.24.

[18] 11 U.S.C. 555, 556, 560, and 561.

[19] 11 U.S.C. 362(b)(6), 362(b)(17), 362(b)(27), and 561.

[20] In the situation where an Affiliated Member becomes insolvent, assets in the Market Professional Cross-Margin Accounts of FICC and NYPC will be set-off by FICC and NYPC against related liabilities in such accounts.

[21] 11 U.S.C. § 742.

[22] 15 U.S.C. 78fff–1(b) states in part: ''To the extent consistent with the provisions of this chapter or as otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee in a case under chapter 7 of Title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7''.

contained in Subchapter IV of chapter 7 and applicable CFTC regulations.

Generally, applicable sections of the Bankruptcy Code and CFTC regulations provide for the trustee to distribute ''customer property'' [23] pro rata among ''customers'' [24] according to account class and generally give priority to customer claims over all others, except those dealing with the administration of the bankrupt estate.[25] Also, assuming the trustee does not transfer customer accounts to another firm and determines to liquidate customer accounts, the trustee will distribute customer property to the claimants.[26] If there is a shortfall in the Market Professional Cross-Margining Account and there is no shortfall or a lesser shortfall in the non-cross-margining customer account, Market Professionals will have a claim against the Market Professional Cross-Margining Account and will be able to claim against the non-cross-margining customer account only after all non-cross-margining customer claims have been satisfied. If the shortfall in the non-cross-margining customer account is equal to or greater than the shortfall in the Market Professional Cross-Margining Account, the two accounts will be combined and Market Professionals and non-cross-margining customers will share on a pro rata basis.[27]

Proposed Changes to the FICC–NYPC Cross-Margining Agreement

In addition to certain technical corrections and conforming changes, the FICC–NYPC Cross-Margining Agreement would be substantively amended as described below in order to incorporate the proposed Market Professional Cross-Margining Program. Capitalized terms used in this section have the meanings given to them in the FICC–NYPC Cross-Margining Agreement.

Recitals

The Recitals to the FICC–NYPC Cross-Margining Agreement would be amended to describe the proposed expansion of the existing FICC–NYPC Cross-Margining Agreement to provide for the cross-margining of the accounts of Market Professionals, and also to reflect the fact that the current FICC–NYPC Cross-Margining Agreement was executed on March 4, 2011, after receipt of the necessary regulatory approvals by FICC and NYPC.

Section 1. Definitions

Section 1(f) (Available Assets) and Section 1(tt) (Margin)

The ''Available Assets'' definition would be amended to include as assets available in the event of a default any margin posted to the Defaulting Member's Proprietary Cross-Margining Account, as well as any margin posted to the Defaulting Member's Market Professional Cross-Margining Account. The ''Margin'' definition would be similarly amended to include original margin, option premiums and other margin collateral held by or for the account of FICC or NYPC to secure the obligations of a Cross-Margining Participant's Proprietary Cross-Margining Account and/or its Market Professional Cross-Margining Account.

The ''Available Assets'' definition would be further amended to clarify that, consistent with the distributional convention established in Appendix B to Part 190 of the CFTC's Regulations, the NYPC Guaranty Fund deposits of a Defaulting Member would first be applied to any deficit in the Customer Funds Account of the Defaulting Member carried by NYPC, and then, after any such deficit has been completely satisfied, to any Cross-Margin Loss in the Defaulting Member's Market Professional Cross-Margining Account carried by NYPC, and then finally to any Cross-Margin Loss in the Defaulting Member's Proprietary Cross-Margining Account carried by NYPC.

Section 1(t) (Cross-Margin Gain) and Section 1(u) (Cross-Margin Loss)

For ease of reference and to facilitate understanding of the loss allocation mechanism in the event of the liquidation of the cross-margined positions carried for a Defaulting Member by FICC and NYPC, the definitions of Cross-Margin Gain and Cross-Margin Loss would become a new subsection (b) of Section 7 of the FICC–NYPC Cross-Margining Agreement (Suspension and Liquidation of Cross-Margining Participant).

Section 1(y) (Customer Funds Account)

The term ''Segregated Funds Account'' in the existing FICC–NYPC Cross-Margining Agreement would be replaced by the term ''Customer Funds Account'' and modified in order to clearly distinguish non-cross-margining ''customer'' accounts established by NYPC from both Market Professional Cross-Margining Accounts and Proprietary Cross-Margining Accounts.

Section 1(ww) (Market Professional)

As described above, consistent with previously approved cross-margining programs, the term ''Market Professional'' would be defined as an entity, other than a ''Non-Customer'' (described below), that is a member of a designated contract market and that actively trades for its own account Eligible Products that are eligible for cross-margining under the FICC–NYPC Cross-Margining Agreement.

Section 1(bbb) (Non-Customer)

As described above, ''Non-Customers'' would be excluded from the definition of a Market Professional. With respect to a GSD Netting Member, the term ''Non-Customer'' would be defined as such GSD Netting Member or other person whose account with such GSD Netting Member would not be the account of a ''customer'' within the meaning of SEC Rules 8c–1 and 15c2–1.

Section 1(sss) (Securities Custody Account) and 1(uuu) (Settlement Account)

For ease of reference, the term ''Cross-Margining Securities Account'' would be replaced with the term ''Securities Custody Account'' and would be expanded to include a custody account to hold Margin in the form of securities deposited by a Cross-Margining Participant in respect of a Proprietary Cross-Margining Account or a Market Professional Cross-Margining Account. Similarly, the definition of ''Settlement Account'' would be expanded to include a bank account established to hold cash Margin deposited by a Cross-Margining Participant in respect of a Proprietary Cross-Margining Account or a Market Professional Cross-Margining Account.

Section 2. Participation

Section 2(a) would be amended and Section 2(b) and 2(c) would be added in order to accommodate the additional documentation required to establish a Set of Market Professional Cross-Margining Accounts by either a Joint Clearing Member or by a Clearing Member and its Cross-Margining Affiliate.

Section 5. Forms of Margin; Holding Margin

Section 5(b) would be amended to reflect the fact that separate Settlement Accounts and Securities Custody Accounts would be maintained for proprietary and Market Professional cross-margining activity.

Section 5(c) would be amended to allow FICC and NYPC to hold cash and securities posted with respect to cross-

[23] As defined in 11 U.S.C. 761(10) and 17 CFR 190.01(n).

[24] As defined in 11 U.S.C. 761(9).

[25] 11 U.S.C. 766(h); *see* 17 CFR 190.08.

[26] *See generally* 11 U.S.C.§ 766 and 17 CFR 190.08.

[27] *See* 17 CFR part 190, Appendix B (Framework 1).

margining activity in either separate accounts or, consistent with previously approved cross-margining programs, joint accounts titled in the names of FICC and NYPC.

Section 7. Suspension and Liquidation of Cross-Margining Participant

Section 7(a) would be amended to clarify that the positions and Margin of a Defaulting Member may be liquidated or transferred to one or more non-defaulting Clearing Members. A new Section 7(b) would be added to define ''Cross-Margin Gain'' and ''Cross-Margin Loss,'' as described above. New Section 7(b) would also make clear that in calculating its Cross-Margin Gain (or Cross-Margin Loss) or Net Gain (or Net Loss) FICC and NYPC would be required to make separate calculations with respect to the Defaulting Member's Proprietary Cross-Margining Account and its Market Professional Cross-Margining Account.

Section 7(g) would be amended to provide that to the extent that pursuant to the loss allocation prescribed in Section 7, both FICC and NYPC owe payments to each other, *i.e.,* one clearing organization owes a payment with respect to the Proprietary Cross-Margining Account of a Defaulting Member and the other owes a payment with respect to the Defaulting Member's Market Professional Cross-Margining Account, those two payments may be netted and setoff against each other.

Proposed Changes to Clearing Member Agreements

The FICC–NYPC Cross-Margining Agreement is solely between FICC and NYPC. Members of FICC and of NYPC that wish to participate in the Cross-Margining Program must become party to a Clearing Member Cross-Margining Agreement which, among other things, reflects the Clearing Member's agreement to be bound by the Rules applicable to cross-margining and to the provisions of the FICC–NYPC Cross-Margining Agreement (''Clearing Member Agreements''). Capitalized terms used in this section have the meanings given to them in the proposed Clearing Member Agreements.

The current FICC–NYPC Cross-Margining Agreement includes two forms of Clearing Member Agreement—one for joint Clearing Members (*i.e.,* entities that are members of both FICC and NYPC), the other for Clearing Members that are Affiliates of each other (*i.e.,* a Clearing Member of either FICC or NYPC that directly or indirectly controls, is controlled by, or under common control with a Clearing Member of the other Clearing Organization). Those agreements, which are set forth as Appendix A and Appendix B to the FICC–NYPC Cross-Margining Agreement, would be renamed as Clearing Member Cross-Margining Agreement (Joint Clearing Member—Proprietary Accounts) and Clearing Member Cross-Margining Agreement (Affiliated Clearing Members—Proprietary Accounts), and references in those agreements to a ''Member'' would be replaced with references to a ''Clearing Member'' for consistency with the terminology used in the FICC–NYPC Cross-Margining Agreement.

The Clearing Member Agreements for Proprietary Accounts are proposed to be further modified to make clear that a Set of Proprietary Cross-Margining Accounts would be combined and treated as a single account for purposes of calculating Margin. This change is reflective of the current practice of the Clearing Organizations pursuant to the Cross-Margining Agreement and is proposed to be set out solely for purposes of clarity.

The Clearing Member Agreements would additionally be modified to reflect the practice of the Clearing Organizations regarding the use of Clearing Data (as that term is defined in the Clearing Member Cross-Margining Agreements). Specifically, the Clearing Member Agreements would be modified to provide that Clearing Data may only be disclosed (i) to an Affiliated Clearing Member, where applicable, (ii) in accordance with the provisions of Section 10 of the Cross-Margining Agreement, and (iii) in aggregated form, provided that such aggregated Clearing Data does not identify of the Clearing Member or Affiliated Clearing Members, as applicable, as the source thereof.

The termination provisions of the Clearing Member Agreements for Proprietary Accounts would also be modified to make clear that the required acknowledgment of a Clearing Member's termination of the Agreement will be given by the Clearing Organizations promptly after the two Business Day notice period required by the Clearing Member Agreements. The termination provisions would additionally be modified to make explicit that a Clearing Member's continuing obligations under the Clearing Member Agreements and the Cross-Margining Agreement survive the termination of the Clearing Member Agreement only to the extent those obligations arose prior to such termination.

Finally, the Clearing Member Cross-Margining Agreement (Affiliated Clearing Members—Proprietary Accounts) is proposed to be amended to include a waiver of the Clearing Members' and the Clearing Organizations' right to jury trial in any dispute arising in connection with that agreement. A comparable provision already is included in the Clearing Member Cross-Margining Agreement (Joint Clearing Member—Proprietary Accounts). The remaining revisions to the Clearing Member Agreements for Proprietary Accounts are non-substantive or conforming.

While it is anticipated that some Clearing Members will elect to participate in cross-margining for their Proprietary Accounts and also act as Clearing Member for Market Professionals, a Clearing Member could elect to act in only one of those capacities. The Clearing Member Agreements in Appendices A and B to the FICC–NYPC Cross-Margining Agreement, therefore, would be complemented by a Clearing Member Cross-Margining Agreement (Joint Clearing Member—Market Professional Accounts) and Clearing Member Cross-Margining Agreement (Affiliated Clearing Members—Market Professional Accounts), respectively, and a Clearing Member that elected to maintain a Set of Proprietary Cross-Margining Accounts and a Set of Market Professional Cross-Margining Accounts would be required to enter into Clearing Member Cross-Margining Agreements for both its Proprietary Accounts and for its Market Professional Accounts.

The proposed Clearing Member Agreements for Market Professional Accounts (Appendices C and D to the FICC–NYPC Cross-Margining Agreement) are based upon the Clearing Member Agreements for Proprietary Accounts, but have been modified as appropriate. For example, the Clearing Member Agreements for Market Professional Accounts would make explicit that the Set of Market Professional Cross-Margining Accounts that would be established by the Clearing Organizations for a Clearing Member are to be limited to transactions and positions established by Market Professionals who have signed a Market Professional Agreement for Cross-Margining in the form set forth as Exhibit A to Appendices C and D, respectively.[28]

[28] Similar to the Clearing Member Agreements for Proprietary Accounts, the Clearing Member Agreements for Market Professional Accounts would require the Clearing Member to pledge, for itself and for each Market Professional on whose behalf positions are carried in a Set of Market Professional Cross-Margining Accounts, the positions and Margin in the Set of Market Professional Cross-Margining Accounts. Consistent therewith and with the Clearing Member

Continued

The Market Professional Agreements are derived from the form of Market Professional's Agreement for Cross-Margining that has previously been approved by the Commission.[29] The FICC–NYPC Market Professional Agreements differ from the forms of agreement that have previously been approved in that they would be modified to reference the Eligible Products that are available for cross-margining under the FICC–NYPC Cross-Margining Agreement. The FICC–NYPC Market Professional Agreements additionally would be modified to reference the definitions of the term ''Market Professional'' that would be set forth in the Rules of FICC and NYPC, and to require a Market Professional to represent and warrant that it does, in fact, qualify as such. Moreover, the FICC–NYPC Market Professional Agreements would be amended to provide that, consistent with the requirements of CFTC Regulation 39.13(g)(8)(i) (gross margin for customer accounts), the positions of a Market Professional cleared by FICC will only be cross-margined with the derivatives positions of the same Market Professional cleared by NYPC. The only other substantive change from the form of agreement previously approved by the Commission would be the elimination of a provision that would have conditioned the effectiveness of the Market Professional Agreements on the receipt of all necessary approvals by the Commission and the CFTC. FICC believes that a provision of this nature is unnecessary, given that FICC and NYPC will not permit Clearing Members to enter into Market Professional Agreements until all necessary regulatory approvals have been obtained.

Proposed FICC Rule Changes

In addition to the proposed changes to the FICC–NYPC Cross-Margining Agreement, FICC is proposing the following GSD rule changes to effectuate the Market Professional Cross-Margining Program. Capitalized terms used in this section have the meanings given to them in the GSD Rules.

Rule 1 (Definitions)

New definitions are being added for the following terms: ''Market Professional,'' ''Market Professional Agreement for Cross-Margining,'' ''Market Professional Cross-Margining Account,'' ''Non-Customer,'' ''NYPC Market Professional Account,'' and ''NYPC Proprietary Account'' (which retains the current definition of ''NYPC Account''). ''NYPC Account,'' an existing term, is now proposed to be amended to encompass the two new terms of ''NYPC Market Professional Account'' and ''NYPC Proprietary Account.'' In addition, changes are proposed to the following definitions to reference the concepts associated with the Market Professional Cross-Margining Program: ''Account,'' ''Cross-Margining Affiliate,'' ''Cross-Margining Agreement'' and ''Margin Portfolio.'' A technical change is being proposed to the definition of ''Cross-Margining Payment.''

Rule 3 (On-Going Membership Requirements)

FICC is proposing to amend Section 11 of Rule 3, which covers additional accounts requested by Members, to provide for the opening of market professional accounts and to make clear that such accounts must meet the requirements of the Cross-Margining Agreement and the GSD Rules (as with all other accounts carried by FICC for its Members).

Rule 4 (Clearing Fund and Loss Allocation)

FICC is proposing to amend Section 1b and Section 2 of Rule 4 to provide that the market professional account will have its own Clearing Fund calculations separate from the main account of the Netting Member, and that the rules applicable to the Clearing Fund calculations and the requirements of the Required Fund Deposit also apply Clearing Fund calculations and Required Fund Deposits associated with the market professional accounts.

Rule 13 (Funds-Only Settlement)

FICC is proposing to amend Section 1 and Section 5a to provide that funds-only settlement amounts will be calculated separately for the member's market professional account and that net-net funds only credits/debits will also apply to the market professional accounts of a Member (or its permitted margin affiliate) across FICC and NYPC, as is the case currently with the proprietary accounts.

Rule 22A (Procedures for When the Corporation Ceases To Act)

FICC is proposing to amend Section 2 of Rule 22A to provide that a liquidation gain in a Netting Member's proprietary account will be used to offset any resulting liquidation loss in such Member's Market Professional Cross-Margining Account.

Rule 29 (Release of Clearing Data)

FICC is proposing to amend Rule 29 to make clear that a Member's Clearing Data will be released to a futures clearing organization (FCO) with which FICC has a Cross-Margining Arrangement and that such data will include data regarding the Member's market professional customers.

Rule 43 (Cross-Margining Arrangements)

FICC is proposing to amend Rule 43 to provide for the requirement for Netting Members who wish to participate in the Market Professional Cross-Margining Program to execute the appropriate participation agreements which are appended to the FICC–NYPC Cross-Margining Agreement as discussed above.

FICC believes the proposed change is consistent with Section 17A of the Act and the rules and regulations thereunder because it will facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities and contracts of sale for future delivery by providing for the cross-margining of members' Market Professionals' positions held at FICC and NYPC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

Agreements for Proprietary Accounts, the Clearing Member Agreements for Market Professional Accounts would include representations and warranties by the Clearing Member to the effect that it has the power to grant the foregoing security interest and that it is the sole owner of or otherwise has the right to transfer collateral to the Clearing Organizations.

[29] *See* Exhibits 5F and 5G to Release No. 34–57118 (January 9, 2008) (Options Clearing Corporation—ICE Clear US market professional cross-margining); *see also* Securities Exchange Act Release No. 34–29991(November 26, 1991), 56 FR 61458 (December 3, 1991) (Options Clearing Corporation—Chicago Mercantile Exchange market professional cross-margining).

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.

Electronic Comments

• Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or Send an email to *rule-comments@sec.gov*. Please include File Number SR–FICC–2012–03 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2012–03. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/ficc/SR_FICC_2012_03.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2012–03 and should be submitted on or before April 25, 2012.

[30] 17 CFR 200.30–3(a)(12).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8042 Filed 4–3–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66680; File Nos. SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129]

Self-Regulatory Organizations; BATS Exchange, Inc.; BATS Y–Exchange, Inc.; NASDAQ OMX BX, Inc.; Chicago Board Options Exchange, Incorporated; C2 Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; The NASDAQ Stock Market LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; National Stock Exchange, Inc.; NASDAX OMX PHLX LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Disapprove Proposed Rule Changes Relating to Trading Halts Due to Extraordinary Market Volatility

March 29, 2012.

On September 27, 2011, each of BATS Exchange, Inc. (''BATS''), BATS Y–Exchange, Inc. (''BYX''), NASDAQ OMX BX, Inc. (''BX''), Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Incorporated (''C2''), Chicago Stock Exchange, Inc. (''CHX''), EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), National Stock Exchange, Inc. (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), NYSE Arca, Inc. (''NYSE Arca''), and NASDAQ OMX PHLX LLC (''Phlx'') 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] proposed rule changes (the ''SRO Proposals'') to amend certain of their respective rules relating to trading halts due to extraordinary market volatility. The SRO Proposals were published for comment in the **Federal Register** on October 4, 2011.[3] The Commission received seven comment letters on the SRO Proposals.[4]

On November 17, 2011, the Commission extended the time period in which to either approve the SRO Proposals, disapprove the SRO Proposals, or to institute proceedings to determine whether to disapprove the SRO Proposals, to December 30, 2011.[5] On December 28, 2011, the Commission instituted proceedings to determine whether to approve or disapprove the SRO Proposals.[6] The Commission thereafter received an additional three comment letters on the SRO Proposals.[7]

Section 19(b)(2) of the Act[8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65437 (September 28, 2011), 76 FR 61466; 65428 (September 28, 2011), 76 FR 61435; 65429 (September 28, 2011), 76 FR 61432; 65433 (September 28, 2011), 76 FR 61453; 65438 (September 28, 2011), 76 FR 61447; 65426 (September 28, 2011), 76 FR 61460; 65431 (September 28, 2011), 76 FR 61425; 65440 (September 28, 2011), 76 FR 61444; 65430 (September 28, 2011), 76 FR 61429; 65425 (September 28, 2011), 76 FR 61438; 65435 (September 28, 2011), 76 FR 61416 ; 65436 (September 28, 2011), 76 FR 61450; 65427 (September 28, 2011), 76 FR 61457; 65432 (September 28, 2011), 76 FR 61422; 65439 (September 28, 2011), 76 FR 61463; 65434 (September 28, 2011), 76 FR 61419 (collectively, the ''Notices'').

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association, dated October 27, 2011; Letter to Commission, from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated October 25, 2011; Letter to Elizabeth M. Murphy, Secretary, Commission, from Craig S. Donohue, CME Group, Inc., dated October 25, 2011; Letter to Elizabeth M. Murphy, Secretary, Commission, from Commissioner Bart Chilton, Commodity Futures Trading Commission, dated October 25, 2011; Letter to Elizabeth M. Murphy, Secretary, Commission, from Richard H. Baker, President and CEO, Managed Funds Association, dated October 25, 2011; Letter from Suzanne H. Shatto, dated October 20, 2011; Letter from Mark Roszak, dated October 4, 2011.

[5] *See* Securities Exchange Act Release No. 65770 (November 17, 2011), 76 FR 72492 (November 23, 2011).

[6] *See* Securities Exchange Act Release No. 66065 (December 28, 2011), 77 FR 316 (January 4, 2012) (''Order Instituting Proceedings'').

[7] *See* letters to Elizabeth Murphy, Secretary, Commission, from Timothy Quast, Managing Director, ModernIR, dated January 20, 2012; Craig S. Donohue, Chief Executive Officer, CME Group, Inc., dated January 25, 2012, and Ann L. Vlcek, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association, dated February 7, 2012.

[8] 15 U.S.C. 78s(b)(2).

SRO Proposals not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the SRO Proposals, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The SRO Proposals were published for notice and comment in the **Federal Register** on October 4, 2011. April 1, 2012 is 180 days from that date, and May 31, 2012 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the SRO Proposals so that it has sufficient time to consider the SRO Proposals and the issues raised in the comment letters that have been submitted in connection with the SRO Proposals. Specifically, as the Commission noted in the Order Instituting Proceedings, the SRO Proposals raise issues including the potential interaction between the mechanisms for moderating volatility in individual securities and those for moderating volatility market-wide. In addition, the Commission is also considering commenters' concerns with the details of the SRO Proposals, including whether only the Level III circuit breaker should halt trading after 3:25 p.m. and whether the market-wide circuit breakers should be triggered if a significant number of volatility moderators for individual securities are triggered.[9]

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates May 31, 2012, as the date by which the Commission shall either approve or disapprove the SRO Proposals.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8060 Filed 4–3–12; 8:45 am]

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[9] *See* Order Instituting Proceedings, *supra* note 6 at 318, 319.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66681; File No. SR–FINRA–2011–035]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments Nos. 1, 2 and 3, To Adopt FINRA Rules 2210 (Communications With the Public), 2212 (Use of Investment Companies Rankings in Retail Communications), 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings), 2214 (Requirements for the Use of Investment Analysis Tools), 2215 (Communications With the Public Regarding Security Futures), and 2216 (Communications With the Public About Collateralized Mortgage Obligations (CMOs)) in the Consolidated FINRA Rulebook

March 29, 2012.

I. Introduction

On July 14, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210–1 and 2210–3 through 2210–8 as FINRA Rules 2210 and 2212 through 2216, and to delete paragraphs (a)(1), (i), (j) and (l) of Incorporated NYSE Rule 472, Incorporated NYSE Rule Supplementary Material 472.10(1), (3), (4) and (5) and 472.90, and Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11. The proposed rule change was published for comment in the **Federal Register** on August 3, 2011.[3] The Commission received nine comment letters in response to the Original Proposal.[4] On October 31, 2011, FINRA filed Amendment No. 1 to the proposed rule change and a letter responding to comments.[5] In order to solicit additional input from interested parties on the issues presented in FINRA's proposed rule change, on November 1, 2011, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act, to determine whether to approve or disapprove FINRA's proposal as modified by Amendment No. 1.[6] The Commission received seven comment letters in response to the Notice and Proceedings Order.[7] On December 22, 2011, FINRA filed Amendment No. 2 to the proposed rule change and a letter responding to comments.[8] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 64984 (July 28, 2011), 76 FR 46870 (August 3, 2011) (''Original Proposal''). The comment period closed on August 24, 2011.

[4] *See* letter from Peter J. Mougey, Public Investors Arbitration Bar Association, dated August 23, 2011 (''PIABA August Letter''); letter from Oscar S. Hackett, BrightScope, Inc., dated August 23, 2011 (''BrightScope August Letter''); letter from Z. Jane Riley, The Leaders Group, Inc., dated August 24, 2011 (''TLGI August Letter''); letter from Dorothy M. Donohue, Investment Company Institute, dated August 24, 2011 (''ICI August Letter''); letter from Sandra J. Burke, Vanguard, dated August 24, 2011 (''Vanguard August Letter''); letter from Alexander C. Gavis, Fidelity Investments, dated August 24, 2011 (''Fidelity August Letter''); letter from David T. Bellaire, Esq., Financial Services Institute, Inc., dated August 24, 2011 (''FSI August Letter''); letter from John Polanin and Claire Santaniello, Securities Industry and Financial Markets Association, dated August 24, 2011 (''SIFMA August Letter''); and letter from Yoon-Young Lee, Wilmer Hale LLP, on behalf of Citigroup Global Markets, Inc., Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., JP Morgan Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., LLC, and UBS Securities LLC, dated August 26, 2011 (''Wilmer August Letter''). Comment letters are available at www.sec.gov.

[5] *See* letter from Joseph P. Savage, FINRA, dated October 31, 2011 (''October Response Letter''). The text of proposed Amendment No. 1 and FINRA's Response Letter are 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. FINRA's Response Letter is also available on the Commission's Web site at *http://www.sec.gov.*

[6] *See* Exchange Act Release No. 65663 (November 1, 2011), 76 FR 68800 (November 7, 2011) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings SR–FINRA–2011–035) (''Notice and Proceedings Order''). The comment period closed on December 7, 2011.

[7] *See* letter from Melissa Callison, Vice President, Compliance, Charles Schwab & Co., Inc., dated December 7, 2011 (''Schwab December Letter''); letter from Alexander C. Gavis, Vice President & Associate General Counsel, Fidelity Investments, dated December 7, 2011 (''Fidelity December Letter''); letter from David T. Bellaire, General Counsel and Director of Government Affairs, Financial Services Institute, dated December 7, 2011 (''FSI December Letter''); letter from Dorothy M. Donohue, Senior Associate Counsel, Investment Company Institute, dated December 7, 2011 (''ICI December Letter''); letter from John Polanin and Claire Santaniello, Co-Chairs, Compliance and Regulatory Policy Committee of the Securities Industry and Financial Markets Association, dated December 7, 2011 (''SIFMA December Letter''); letter from Sandra J. Burke, Principal, Vanguard, dated December 7, 2011 (''Vanguard December Letter''); and letter from Jeremiah McGair, Attorney, Wolverine Execution Services, LLC, dated December 7, 2011 (''Wolverine Letter''). Comment letters are available at *www.sec.gov.*

[8] Joseph P. Savage, FINRA, dated December 22, 2011 (''December Response Letter''). The text of proposed Amendment No. 2 and FINRA's Response Letter are available on FINRA's Web site *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room. FINRA's Response Letter is also available on the Commission's Web site at *http://www.sec.gov.*

Commission published notice of Amendment No. 2 on December 23, 2011,[9] and the Commission received two comment letters in response to Amendment No. 2.[10] On March 6, 2012, FINRA filed Amendment No. 3 to the proposed rule change and a letter responding to comments.[11] The Commission is publishing this Notice and Order to solicit comment on Amendment No. 3 and to approve the proposed rule changes, as modified by Amendments Nos. 1, 2, and 3, on an accelerated basis.

II. Description of Proposal

As described in the Original Proposal, FINRA is proposing to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210–1 and 2210–3 through 2210–8 as FINRA Rules 2210 and 2212 through 2216, and to delete paragraphs (a)(1), (i), (j) and (l) of Incorporated NYSE Rule 472, Incorporated NYSE Rule Supplementary Material 472.10(1), (3), (4) and (5) and 472.90, and Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11 as part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook'').[12]

The proposed rule change would create a new FINRA Rule 2210 that would encompass, subject to certain changes, the provisions of current NASD Rules 2210 and 2211, NASD Interpretive Materials 2210–1 and 2210–4, and the provisions of Incorporated NYSE Rule 472 that do not pertain to research analysts and research reports. Each of the other Interpretive Materials that follow NASD Rule 2210 would receive its own FINRA rule number and would adopt the same communication categories used in proposed FINRA Rule 2210.[13]

Proposed FINRA Rule 2210 would reduce the number of defined categories of communication from six (in the current rule) to three and would set forth requirements governing pre-use principal approval of communications, recordkeeping, filing with FINRA's Advertising Regulation Department (the ''Department'') and content standards. The definitions of the three communication categories (''institutional communications,'' ''retail communication,'' and ''correspondence'') are important because the principal approval, filing and content standards apply differently to each category.

The remaining proposed rules establish guidelines and restrictions governing: the use of investment companies rankings in retail communications (proposed FINRA Rule 2212); the use of bond mutual fund volatility ratings (proposed FINRA Rule 2213); the use of investment analysis tools (proposed FINRA Rule 2214); communications with the public regarding security futures (proposed FINRA Rule 2215); and communications with the public about collateralized mortgage obligations (proposed FINRA Rule 2216).

FINRA has modified its Original Proposal in certain respects through Amendments Nos. 1 and 2, as described in the Notice and Proceedings Order[14] and Notice of Amendment No. 2,[15] respectively. FINRA has further modified its proposal through Amendment No. 3, as described immediately below.

III. Self-Regulatory Organization's Statement of the Terms of Substance of Proposed Amendment No. 3

FINRA is proposing to amend FINRA Rule 2210 to expand the scope of retail communications that a Supervisory Analyst may approve pursuant to NYSE Rule 344. In this regard, FINRA proposes to replace proposed FINRA Rule 2210(b)(1)(B) with the following:

(B) The requirements of paragraph (b)(1)(A) may be met by a Supervisory Analyst approved pursuant to NYSE Rule 344 with respect to: (i) research reports on debt and equity securities; (ii) retail communications as described in NASD Rule 2711(a)(9)(A); and (iii) other research that does not meet the definition of ''research report'' under NASD Rule 2711(a)(9), provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration.

IV. Discussion of Comment Letters

On August 3, 2011 the Commission published in the **Federal Register**, FINRA's proposed rule change governing communications with the public.[16] The comment period ended on August 24, 2011, and the Commission received the nine comment letters listed above.[17] Many of the commenters generally supported the proposal, but eight of the commenters raised specific concerns discussed in more detail below. FINRA filed Amendment No. 1 to address commenter concerns and responded to comments in a letter dated October 31, 2011.[18]

On November 7, 2011 the Commission published in the **Federal Register**, the Notice and Proceedings Order. The comment period ended on December 7, 2011, and the Commission received the seven comment letters listed above.[19] Again, many of the commenters generally supported the proposal, but each of the commenters raised specific concerns discussed in more detail below. FINRA filed Amendment No. 2 to address commenter concerns and responded to comments in a letter dated December 22, 2011.[20]

On December 29, 2011, the Commission published in the **Federal Register**, Amendment No. 2 to the Original Proposal, as modified by Amendment No. 1.[21] The comment period ended on January 17, 2012, and the Commission received the two comment letters listed above.[22] The commenters reiterated previously raised specific concerns discussed in more detail below. FINRA filed Amendment No. 3 to address commenter concerns,

[9] *See* Exchange Act Release No. 66049 (Dec. 23, 2011), 76 FR 82014 (Dec. 29, 2011) (''Notice of Amendment No. 2''). The comment period closed on January 18, 2012.

[10] *See* letter from Dorothy M. Donohue, Senior Associate Counsel, Investment Company Institute, dated January 18, 2012 (''ICI January Letter'') and letter from Yoon-Young Lee, Wilmer Hale LLP, on behalf of Citigroup Global Markets, Inc., Credit Suisse Securities (USA) LLC, Goldman, Sachs & Co., JP Morgan Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co., LLC, and UBS Securities LLC, dated January 19, 2012 (''Wilmer January Letter''). Comment letters are available at *www.sec.gov*.

[11] *See* letter from Joseph P. Savage, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated March 6, 2012 (''March Response Letter''). The text of proposed Amendment No. 3 and FINRA's Response Letter are 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. FINRA's Response Letter is also available on the Commission's Web site at *http://www.sec.gov*.

[12] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[13] NASD Interpretive Material 2210–2 is the subject of a separate proposed rule change. *See* Securities Exchange Act Release No. 61107 (December 3, 2009), 74 FR 65180 (December 9, 2009) (Notice of Filing File No. SR–FINRA–2009–070) (proposing to replace NASD Interpretive Material 2210–2 with proposed FINRA Rule 2211 (Communications with the Public About Variable Insurance Products)).

[14] *See supra* footnote 6.

[15] *See supra* footnote 9.

[16] *See supra* footnote 3.

[17] *See supra* footnote 4.

[18] *See supra* footnote 5.

[19] *See supra* footnote 7.

[20] *See supra* footnote 8.

[21] *See supra* footnote 9.

[22] *See supra* footnote 10.

and responded to comments in a letter dated March 6, 2012.[23]

The section below includes a detailed description of: the comments received in response to the Original Proposal, the Notice and Proceedings Order and the Notice of Amendment No. 2; FINRA's October Response Letter, December Response Letter and March Response Letter; Amendments Nos. 1, 2 and 3; and the Commission's findings.

V. Discussion and Commission Findings

A. Categories of Communications

The proposed rule change defines three categories of communications: retail communications, correspondence, and institutional communications. [24]

1. Retail Communication and Correspondence

FINRA proposed to define ''retail communication'' as ''any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period'' and ''correspondence'' as ''any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.''

Two commenters raised concerns regarding these definitions.[25] The comments focused on the scope of the definitions of retail communications and correspondence and the numerical limit on recipients of communications.

One commenter argued that the definition of correspondence is too limited, and that the definition of retail communication is too broad.[26] The commenter recommended that FINRA instead consider all communications to existing retail customers to be correspondence, as NASD Rule 2211(a)(1) currently does. Another commenter recommended that the definition of correspondence be qualified to state that the 25-person limit is determined by the number of persons to whom a member or associated person directly distributes a communication (and thus does not include persons to whom such recipients forward the communication).[27]

FINRA responded to the comments and disagreed that the term ''correspondence'' should include all communications to existing retail customers.[28] FINRA indicated that the definition is intended to allow greater supervisory flexibility for communications sent to a limited number of recipients. For example, FINRA proposed to make correspondence subject to the content standards of proposed FINRA Rule 2210, but would not require it to be filed with FINRA and would not subject it to the principal pre-use approval requirement. Instead, correspondence would be subject to the supervision, review and recordkeeping requirements under NASD Rules 3010 and 3110. FINRA also noted that it included in the proposal other exceptions that allow firms to supervise certain types of retail communications similarly to correspondence, such as retail communications posted on an online interactive electronic forum, and retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member, irrespective of the number of recipients.

FINRA indicated, however, that retail communications to large numbers of retail investors (regardless of whether they are existing customers) that include financial or investment recommendations or otherwise promote the products or services of the member should receive the additional scrutiny required through the pre-use principal approval and filing requirements. Accordingly, FINRA did not expand the definition of correspondence as the commenter recommended.

FINRA agreed with commenters that a member generally should not be responsible for a third party that independently forwards a retail communication to additional recipients. However, FINRA clarified that whether a member is responsible for a communication that is forwarded by a third-party will depend on the facts and circumstances surrounding a particular communication.

The Commission believes that FINRA has addressed adequately comments regarding the definitions of retail communication and correspondence by, among other things, explaining its rationale for including communications to large numbers of recipients (including a firm's existing customers) in the definition of retail communication.

2. Institutional Communication

Under the proposal, ''institutional communication'' would include written (including electronic) communications that are distributed or made available only to institutional investors. ''Institutional investor'' would include, among other persons and entities, any employee benefit plan (under Section 403(b) or Section 457 of the Internal Revenue Code) or qualified plan (under Section 3(a)(12)(C) of the Exchange Act), or multiple such plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but would not include any participant of such plans. The proposed definition also would include a category for any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million. The proposal states that no member may treat a communication as having been distributed to an institutional investor if the member ''has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor'' (the ''reason to believe'' standard).

In the Original Proposal, FINRA also included Supplementary Material 2010.01 to clarify that a member's internal written (including electronic) communications that are intended to educate or train registered persons about the products or services offered by a member are considered institutional communications. Accordingly, those internal communications would be subject to both the provisions of proposed FINRA Rule 2210 and NASD Rule 3010(d) (Review of Transactions and Correspondence).

Commenters raised a number of concerns regarding the definition of ''institutional communication'' (focusing on the scope of the category of institutional investor and the reason to believe standard) and the treatment of internal communications.[29]

a. Scope of the Definition of Institutional Investor: Retirement Plans

One commenter recommended that the definition of institutional investor be revised to cover any size retirement plan (including those with fewer than 100 participants) and that it cover any type of retirement plan, including those that do not meet the requirements of Sections 403(b) or 457 of the Internal Revenue Code and are not qualified plans as defined in the Exchange Act.[30] The commenter argued that the 100-participant minimum is arbitrary because there is no correlation between plan size and investor sophistication, and that the standard is difficult to

[23] *See supra* footnote 11.

[24] *See* proposed FINRA Rule 2210(a).

[25] *See* TLGI August Letter and SIFMA August Letter.

[26] *See* TLGI August Letter.

[27] *See* SIFMA August Letter.

[28] *See* October Response Letter.

[29] *See* Fidelity August Letter; SIFMA August Letter; FSI August Letter; Wolverine December Letter; Fidelity December Letter; SIFMA December Letter; and FSI December Letter.

[30] *See* Fidelity August Letter.

administer in practice because it requires firms to track the number of participants in clients' retirement plans. The commenter further argued that the retirement plans' coverage under the Employee Retirement Income Security Act of 1974 (''ERISA'') provides sufficient protection to small retirement plans without having to treat them as retail investors for purposes of FINRA communications rules. In a second letter, the commenter again recommended FINRA eliminate the requirement that such plans have at least 100 participants.[31] The commenter further argued that because all retirement plan sponsors have fiduciary responsibilities under ERISA, they are required to have an in-depth understanding of investment concepts and of the products chosen as retirement plan options or they are required to use the assistance of others who have such knowledge. Accordingly, the commenter argued that small retirement plans do not require the same investor protections as retail investors.

FINRA responded to the comments and declined to broaden the universe of retirement plans that are included or to eliminate the 100-participant threshold for employee benefit plans to be considered institutional investors. FINRA maintained that while some plans with 100 or more participants may have no more investment sophistication than smaller plans, that does not mean that all plans should be treated as institutional investors. FINRA believes that smaller plans require greater protection under the rules governing member communications than do larger plans because plans with at least 100 participants are more likely to have either the sophistication required to scrutinize member sales material without the benefit of the filing and more prescriptive content standards applicable to retail communications, or have the resources necessary to hire an outside party with this sophistication.[32]

FINRA also indicated that commenters did not identify any provision in ERISA or any Department of Labor rule under that Act that is intended to provide the same protections to investors with regard to communications with the public as those provided to retail investors under Rule 2210. FINRA further indicated that commenters also did not identify other plans that do not meet the requirements of Sections 403(b) or 457 of the Internal Revenue Code and are not qualified plans as defined in the Exchange Act that should be included as institutional investors.[33]

FINRA noted that when it first adopted the institutional investor definition in 2003, it had determined that retirement plans with fewer than 100 participants should receive the same investor protections as other retail investors. FINRA indicated that the Investment Company Institute had, at that time, recommended this 100-participant threshold as an appropriate cut-off point for retirement plans, citing the fact that ERISA distinguishes qualified plans with at least 100 participants from smaller plans.[34] At that time, FINRA agreed that this standard was a reasonable way to distinguish between large and small retirement plans.[35] FINRA does not believe commenters have provided any compelling reason to revise this standard.[36]

The Commission recognizes that the number of participants may not in all cases be a perfect proxy for investment sophistication, but believes that FINRA, in its statements summarized above, has responded adequately to comments regarding the definition of institutional investor with respect to retirement plans and that FINRA has provided adequate justifications for the adoption and continuing use of the 100-participant threshold.

b. Scope of the Definition of Institutional Investor: Minimum Asset Threshold and Inconsistency With Other Regulatory Thresholds

As noted above, the proposed definition of ''institutional investor'' would include a category for any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million. Several commenters argued that the $50 million asset threshold is too high.[37] Two commenters recommended that the $50 million asset threshold be decreased to $5 million in order to make the definition of institutional investor more consistent with the Commission's Regulation D[38] which includes a $5 million asset threshold within the definition of ''accredited investor.''[39] Alternatively, one of the commenters recommended that FINRA adopt the ''qualified investor'' definition under the Exchange Act,[40] or the ''qualified purchaser'' definition under the Investment Company Act of 1940,[41] as a test of investor sophistication in lieu of its proposed definition.[42] These commenters argued that adopting one of these alternative tests would create greater harmony among various securities laws and regulations.

Another commenter similarly recommended that the definition be expanded to include unregistered hedge funds, money managers and family offices, regardless of the assets under management.[43] Alternatively, the commenter recommended that the asset threshold be reduced to $10 million. In a second letter, this commenter noted that while it prefers the expanded definition of institutional investor under proposed FINRA Rule 2210(a)(4) to the definition of ''institutional account'' under FINRA Rule 4512(c), it ''strongly urges FINRA to adopt one standard or the other.''[44] The commenter indicated that firms should not be required to build systems to comply with inconsistent definitions of ''institutional investor'' and ''institutional account,'' and thus FINRA should have a uniform standard within the Consolidated Rulebook.

FINRA declined to lower the minimum asset threshold from $50 million to $5 million or $25 million for investors that are not included in another institutional investor category because it believes that the definition of institutional investor with its $50 million threshold has long served as a reasonable way to distinguish retail and institutional customers.[45] FINRA pointed to the practical effect of designating a communication as retail rather than institutional: certain additional principal approval, filing and content standards apply. FINRA believes that these additional requirements help ensure that investor

[31] *See* Fidelity December Letter.

[32] *See* October Response Letter.

[33] *See* October Response Letter.

[34] *See* December Response Letter (citing to letter from Craig S. Tyle, General Counsel, Investment Company Institute, to Joan Conley, NASD Regulation, Inc., dated October 29, 1999, citing ERISA 103(a)(3)(A) (auditing requirements) and 104(a)(2)(A) (annual reporting), 29 U.S.C. 1023(a)(3)(A), 1024(a)(2)(A)).

[35] *See* December Response Letter (citing to Securities Exchange Act Release No. 45181, 66 FR 67586 (December 31, 2001) (Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Concerning Amendments to Rules Governing Member Communications with the Public)).

[36] *See* December Response Letter.

[37] *See* Fidelity August Letter; SIFMA August Letter; Fidelity December Letter; Wolverine December Letter; and SIFMA December Letter.

[38] *See* Fidelity August Letter; Fidelity December Letter; Wolverine December Letter.

[39] *See* 17 CFR 230.501(a).

[40] *See* 15 U.S.C. 78c(a)(54).

[41] *See* 15 U.S.C. 80a–2(a)(51).

[42] *See* Wolverine December Letter.

[43] *See* SIFMA August Letter.

[44] *See* SIFMA December Letter.

[45] *See* December Response Letter.

communications are fair, balanced and accurate.[46]

FINRA noted that in its experience regulating member sales material, even where investors may meet an ''accredited investor'' or other standard under the federal securities laws, it is not assured that sales material used with such investors will not be misleading or fraudulent, nor are such investors immune from being deceived by such material.[47] FINRA indicates that, in FINRA's view, this is particularly true for individual investors that may have enough wealth to qualify for investing in privately placed securities, but lack the knowledge and understanding necessary to prevent investor harm from occurring.

FINRA stated that there would be no more reason to lower the threshold than to raise it to a higher one, such as the threshold for a ''qualified institutional buyer'' (certain institutions holding $100 million in securities) under Rule 144A of the Securities Act of 1933.[48]

Similarly, in response to the comments suggesting the Regulation D standard as an alternative, FINRA pointed to various observations about the accredited investor standard under Regulation D: some have asserted that the net worth, income or asset size may not be an indication of an investor's ability to bear the risk of loss[49] and that the definition may be both under-inclusive (by excluding financially sophisticated investors who do not meet the definition's wealth tests) and over-inclusive (by including wealthy financial novices).[50] FINRA concludes that the same criticisms can be made for any test of investor sophistication that is based upon measures of wealth, such as ''qualified investor'' or ''qualified purchaser.''

Moreover, FINRA indicates that it is seeking to harmonize, where appropriate, the definitions related to institutional investors under its rules; creating a different asset threshold for the definition of institutional investor under Rule 2210 would run counter to this goal.[51] Yet, FINRA acknowledged that the definition of institutional investor differs from the definition of ''institutional account'' under FINRA Rule 4512(c), as well as from the definitions of other terms such as ''accredited investor'' or ''qualified purchaser'' under the federal securities laws.

FINRA recognized that while it could narrow the definition of institutional investor under proposed FINRA Rule 2210(a)(4) to match the definition of ''institutional account'' under FINRA Rule 4512(c), regardless of which standard FINRA adopts for the proposed rule, the inconsistency with federal statutes and rules will remain. FINRA believes that the current broader definition establishes an appropriate standard for institutional communications and that narrowing the definition for purposes of consistency with FINRA Rule 4512(c) could adversely impact members that are relying on the current definition of institutional investor under NASD Rule 2211(a)(3). Accordingly, FINRA declined to revise the definition of institutional investor for the purpose of making it consistent with FINRA Rule 4512.

FINRA asked the Commission to consider that, unlike the accredited investor definition, the ''institutional investor'' definition does not prevent investors from investing in particular funds or products. Rather, FINRA explains that it simply requires members to exercise a greater degree of supervision with respect to sales material if it intends to distribute the material to individuals and certain entities that have less than $50 million in assets.

FINRA noted that Section 415 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') instructed the Government Accountability Office (''GAO'') to conduct a study on the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status to invest in private funds—and to report back to Congress within three years after the date of enactment of the Dodd-Frank Act. In light of the GAO study, FINRA stated that in its view it would make little sense to adopt a standard that Congress has questioned and that potentially could become obsolete in a few years.[52]

FINRA noted that regardless of which definition FINRA chooses to adopt for the communication with the public rules, inconsistencies will remain, because FINRA cannot alter definitions contained in either federal statutes or Commission rules.[53]

The Commission believes that FINRA responded adequately to commenter concerns by providing, among other things, a detailed explanation of its reasoning for maintaining a $50 million minimum asset threshold, as described above. The Commission recognizes that the institutional investor standard in the proposed rule is not intended to stand as a bar to investment activity; it determines what types of supervisory, filing and content requirements will apply to communications.

c. The Reason To Believe Standard

A commenter stated that FINRA needs to interpret ''the reason to believe'' standard because it is subject to a variety of interpretations.[54] Another commenter recommended that FINRA replace this standard with a requirement that a member establish policies and procedures (such as the use of legends that prohibit the forwarding of material to retail investors) that are reasonably designed to limit the distribution of

[46] *See* December Response Letter.

[47] *See* December Response Letter (citing examples of problematic practices. For example, FINRA notes that in one case, a member distributed sales literature regarding specific hedge funds to its customers that had inadequate risk disclosures about the specific risks of investing in these hedge funds and made unbalanced presentations that failed to provide investors with a sound basis for evaluating the facts associated with investments in these funds. FINRA states that these materials included projections of performance that were unwarranted. *Id.* at footnote 22 and accompanying text (citing to Altegris Investments Inc., AWC No. CAF030015 (April 15, 2003)).

FINRA cites another case, in which a member distributed sales literature regarding privately placed registered investment companies that contained inadequate risk disclosures, and that stated that the fund was seeking a targeted rate of return without providing a substantiated basis for the target. *Id.* at footnote 23 and accompanying text (citing to UBS Financial Services Inc., AWC No. CAF040051 (June 16, 2004)). In another case regarding the advertising of hedge funds, FINRA states that sales presentations and prospecting letters did not provide a sound basis for investors to evaluate the reasonableness of the targeted investment returns. For example, FINRA explains that some of the sales material included hypothetical results that were combined with the hedge fund's actual performance, giving the misimpression that the fund had actually achieved the combined performance record. *Id.* at footnote 24 and accompanying text (citing to Citigroup Global Markets, Inc., AWC No. CAF040077 (Oct. 4, 2004)).

FINRA also provides an example of a recently litigated case, in which a member distributed emails to investors that qualified as accredited investors that contained predictions or projections of performance, including claims of returns of up to 100 percent annually and ''comfortable'' returns of 25–50 percent. FINRA notes that aside from violating FINRA rules prohibiting such projections of performance, these claims also lacked any historical support, and the emails lacked risk disclosures. *Id.* at footnote 25 and accompanying text (citing to *Dep't of Enforcement* v. *Hedge Fund Capital Partners LLC,* Complaint No. 2006004122402 FINRA Discip. LEXIS 20 (Jan. 26, 2011), *appeal docketed,* Feb. 7, 2011).

[48] *See* 17 CFR 230.144A(a)(1).

[49] *See* December Response Letter at footnote 20 and accompanying text (citing to, *e.g.,* Manning Gilbert Warren III, *A Review of Regulation D: The Present Exemption Regimen for Limited Offerings Under the Securities Act of 1933,* 33 a.m. U.L. Rev. 355, 382 (1984)).

[50] *Id.* at footnote 21 and accompanying text (citing, *e.g.,* Stephen Choi, *Regulating Investors Not Issuers: A Market-Based Proposal,* 88 Cal. L. Rev. 279, 310 (2000)).

[51] *See* October Response Letter.

[52] *See* December Response Letter.

[53] *See* December Response Letter.

[54] *See* FSI August Letter.

communications to institutional investors.[55]

In response, FINRA indicated that a firm's policies and procedures are among the factors FINRA will consider in determining whether a firm has reason to believe an institutional communication will be forwarded to retail investors. However, FINRA disagreed that the mere existence of policies and procedures designed to prevent the forwarding of communications to retail investors (such as legends placed on communications) is sufficient to meet the reason to believe standard. For example, FINRA indicated that it would not consider a firm to have met the standard if it merely placed a legend on a communication warning the recipient not to forward it to retail investors, but a registered representative then orally told the recipient to distribute the communication as he pleased. In addition, FINRA indicated that a firm should not be able to treat a communication as an institutional communication in circumstances where, notwithstanding policies and procedures, the firm becomes aware that previous similar communications have been routinely redistributed to retail investors.[56]

Following publication of the Notice and Proceedings Order, one commenter reiterated its concern that the ''reason to believe'' standard creates substantial ambiguity, and urged FINRA to provide more guidance regarding member obligations under this standard.[57] In particular, the commenter inquired whether FINRA expects members to be proactive in obtaining information regarding the ultimate use of communications designed for institutional investors or whether members may satisfy their obligations by relying on assurances provided by financial advisors that such communications have not been forwarded to retail investors.

In response to the additional request for guidance, FINRA reiterated that it does not intend to impose an affirmative obligation on members to inquire whether an institutional communication will be forwarded to retail investors every time such a communication is distributed. Rather, FINRA stated that members should have policies and procedures in place reasonably designed to ensure that institutional communications are not forwarded to retail investors, and make appropriate efforts to implement such policies and procedures.[58]

FINRA further clarified that while the use of legends on institutional communications that are intended to limit a communication's distribution can be part of such policies and procedures, the use of legends by themselves is not sufficient. For example, as one commenter suggested,[59] FINRA noted that firms may wish to get periodic assurances from institutional investors that they will not forward institutional communications to retail investors. FINRA also clarified that to the extent a member or associated person becomes aware that an institutional investor is forwarding or making available institutional communications to retail investors, it must treat future communications sent to such institutional investors as retail communications, until it reasonably concludes that the improper practice has ceased.[60]

Following the publication of Amendment No. 2, an additional commenter expressed concern about the ''reason to believe standard.'' [61] The commenter argued that many funds are sold through intermediary broker-dealer firms, and an intermediary firm may use institutional communications prepared by a fund's underwriter with its associated persons. The commenter believed that, in these circumstances, it would be the recipient broker-dealer that would be responsible for assuring that its associated persons' limit use of the communication to institutional investors.

FINRA agreed with the commenter that the ''reason to believe'' standard does not make the fund underwriter responsible for supervising the associated persons of recipient broker-dealers (unless the person is also associated with the underwriter). Accordingly, FINRA noted that the recipient broker-dealer is responsible for assuring that its associated persons do not forward institutional communications to retail investors. FINRA reiterated that the fund underwriter should take appropriate steps to ensure that institutional communications are appropriately labeled so that there is no confusion as to their status. FINRA also noted that, if red flags indicate that a recipient broker-dealer has used or intends to use an institutional communication provided by the underwriter with retail investors, the underwriter must follow up on those red flags and, if it determines that this is the case, discontinue distribution of the communication to that recipient broker-dealer until the underwriter reasonably concludes that the broker-dealer has adopted appropriate measures to prevent future redistribution. FINRA stated that it intended to further clarify the issue in a *Regulatory Notice* announcing adoption of the rule.[62]

The Commission believes that FINRA has responded adequately to commenter concerns regarding the ''reason to believe'' standard by providing the guidance and clarifications described above.

d. Internal Communications

Numerous commenters opposed including internal written (including electronic) communications that are intended to educate or train registered persons about the products or services offered by a member as types of internal communications within the definition of ''institutional communication,'' arguing that it would impose new compliance and supervisory requirements on internal communications that do not exist under current FINRA rules.[63] Following publication of the Notice and Proceedings Order, the commenters reiterated opposition to proposed Supplementary Material 2010.01.[64]

One commenter stated that internal education and training materials are not sales material created for public distribution, and as such, not all of Rule 2210's policy concerns apply to such materials.[65] The commenter acknowledged that internal materials should be fair, balanced and accurate to support appropriate sales practices by registered representatives, but stated that this goal could be achieved by having such communications subject only to NASD Rule 3010. In particular, the commenter noted that Rule 3010 ''provides a sufficient regulatory basis for requiring member firms to develop policies, procedures and supervisory controls to support the development of training materials that are accurate and balanced in describing a firm's products and services.''

Three commenters argued that a reasonable reading of the definition of institutional investor under NASD Rule 2211 might lead to the conclusion that it is intended to include external

[55] *See* SIFMA August Letter.

[56] *See* October Response Letter.

[57] *See* FSI December Letter.

[58] *See* December Response Letter.

[59] *See* FSI December Letter.

[60] *See* December Response Letter.

[61] *See* ICI January Letter.

[62] *See* March Response Letter.

[63] *See* Fidelity; ICI August Letter; SIFMA August Letter; and Vanguard August Letter.

[64] *See* Fidelity December Letter; ICI December Letter; SIFMA December Letter; Vanguard December Letter; and Schwab December Letter.

[65] *See* Schwab December Letter.

parties, including third-party broker-dealers and their associated persons, but not the FINRA member firm or its associated persons creating an internal communication.[66] The commenters argued that the term ''institutional sales material'' under NASD Rule 2211 could be read to exclude internal communications. The commenters also argued that the additional costs that would be imposed on firms by including internal communications within the term ''institutional communication'' would far exceed any incremental benefits to investors, given the protection investors already receive under NASD Rule 3010.[67] One commenter indicated that, should this requirement be retained, it should also cover internal communications to associated persons who are not registered persons.[68]

FINRA disagreed with the commenters who suggested that internal communications are not included within the term ''institutional sales material,'' indicating that the current definition of ''institutional sales material'' under NASD Rule 2211 includes any communication that is distributed or made available only to any NASD member or registered associated person of such a member.[69] FINRA noted that the plain language of the definition of the term ''institutional investor'' includes any broker-dealer and its associated persons and contains no express exception for a firm's internal communications to its associated persons. FINRA stated that it believes that treatment of internal educational or training material that relate to a member's products or services as institutional communications is consistent with current FINRA rules and FINRA's current and past interpretations of those rules. FINRA indicated that it has previously issued public guidance making clear that the content standards of the rules governing member communications with the public apply to a member's internal communications.[70] FINRA also indicated that it settled a number of enforcement actions against members involving misleading internal educational and training materials that alleged violations of NASD Rules 2210 and 2211.[71]

FINRA further noted that a similar comment was raised in response to FINRA's proposed amendments to its communications with the public rules in 2000. FINRA stated, in response to a commenter that asserted that a member firm's internal communications are not communications with the public, that while Rule 2210 excepts internal-use only communications from the filing requirements, FINRA had long taken the position that broker-dealer-only materials must meet the rule's content and record-keeping requirements.[72] FINRA further pointed out that, at that time, the Commission acknowledged the comment and FINRA's response in approving the proposed rule change.[73]

To address commenters concerns, FINRA revised the proposed rule change in Amendment No. 2 so that going forward, internal communications would no longer be governed by proposed FINRA Rule 2210, and instead would be governed by NASD Rule 3010 (and any successor FINRA Rule), as well as other applicable rules. FINRA indicated that it believes these other existing rule requirements effectively lead to the same review and content standards as is set forth in proposed Supplementary Material 2210.01. Therefore, FINRA determined not to include internal educational and training materials within the term ''institutional communication'' for purposes of FINRA Rule 2210, and proposed, in Amendment No. 2, to delete Supplementary Material 2210.01.[74] FINRA also amended the definition of ''institutional communication'' (proposed FINRA Rule 2210(a)(3)) to specifically exclude a member's internal communications.

FINRA reiterated that, as the commenters noted, NASD Rule 3010 requires firms to supervise internal communications, including internal communications that train or educate registered representatives. Under NASD Rule 3010, firms must establish, maintain and enforce written procedures to supervise the types of business in which they engage and to supervise associated persons' activities that are reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable FINRA Rules, including the suitability rule[75] and just and equitable principles of trade.[76] FINRA said that it believes, with respect to internal communications for training and education that a firm's supervisory scheme would be deficient unless its policies and procedures are reasonably designed to ensure that such communications are fair, balanced and accurate.

FINRA further noted that firms also must determine the extent to which the review of internal communications is necessary in accordance with the supervision of their business[77] and maintain records of all internal communications relating to their business as a broker-dealer.[78]

The Commission believes that FINRA has responded adequately to comments regarding internal communications, including by amending the proposal to remove Supplementary Material 2210.01. and revising the definition of institutional communication to specifically exclude a member's internal communications. The Commission notes that FINRA cautioned firms that their supervisory policies and procedures should be structured to ensure that internal communications are fair, balanced and accurate.

B. Approval, Review and Recordkeeping

Proposed FINRA Rule 2210(b)(1)(A) generally requires an appropriately

[66] *See* Fidelity December Letter; ICI December Letter; and SIFMA December Letter.

[67] *Id. See also* Vanguard December Letter.

[68] *See* Fidelity August Letter.

[69] *See* December Response Letter (citing, NASD Rule 2211(a)(2) and (a)(3)(E)).

[70] *See* December Response Letter (citing, *e.g.,* NASD *Regulatory & Compliance Alert,* ''Ask the Analyst'' (September 1998), available at *www.finra.org*).

[71] *See* December Response Letter (citing, *e.g.,* NASD Letter of Acceptance, Waiver and Consent No. EAF0401000001 (MML Distributors, LLC) (Oct. 2005); NASD Letter of Acceptance, Waiver and Consent No. EAF0401240001 (AFSG Securities Corp.) (Oct. 2005); FINRA Letter of Acceptance, Waiver and Consent No. 20080130571 (US Bancorp Investments, Inc.) (Feb. 12, 2010); and FINRA Letter of Acceptance, Waiver and Consent No. 2008015443301 (UBS Financial Services, Inc.) (April 8, 2011)).

[72] *See* December Response Letter (citing letter from Barbara Z. Sweeney, NASD, to Katherine A. England, Assistant Director, SEC, dated November 4, 2002 (re: File No. SR–NASD–00–12)).

[73] *See* December Response Letter (citing Securities Exchange Act Release No. 47820 (May 9, 2003), 68 FR 27116 (May 19, 2003) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 3 and 4 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Concerning Amendments to Rules Governing Member Communications With the Public (File No. SR–NASD–00–12))).

[74] *See* December Response Letter.

[75] *See* NASD Rule 2310 (Recommendations to Customers (Suitability)). Effective July 9, 2012, this rule is superceded by new FINRA Rule 2111. *See* FINRA *Regulatory Notice* 11–25, ''New Implementation Date for and Additional Guidance on the Consolidated FINRA Rules Governing Know-Your-Customer and Suitability Obligations,'' May 2011 *available at www.finra.org.*

[76] *See* FINRA Rule 2010.

[77] *See* December Response Letter (citing *Regulatory Notice* 07–59 (FINRA Provides Guidance Regarding the Review and Supervision of Electronic Communications) (December 2007)). FINRA explained that *Regulatory Notice* 07–59 further makes clear that a member must have reasonably designed procedures for the supervisory review of those internal communications that are of a subject matter that require review under FINRA rules and the federal securities laws.

[78] *See* December Response Letter (citing Exchange Act Rule 17a-4(a)(4); FINRA Rule 4511(a)).

qualified registered principal to approve each retail communication before the earlier of its use or filing with the Department. The rule also includes a number of exceptions and modifications to this requirement for certain types of retail communications. For example, proposed FINRA Rule 2210(b)(1)(D)(iii) would allow a member to supervise in a manner similar to correspondence any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member. In addition, proposed paragraph (b)(1)(E) authorizes FINRA to grant an exemption from paragraph (b)(1)(A) for good cause shown, to the extent the exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

Commenters raised a number of concerns regarding the approval process and supervision of retail communications. The comments focused on who should be a principal qualified to approve certain communications (the ''qualified principal approval standard'') and whether communications that do not recommend specific securities should be excepted from the principal pre-use approval requirements.

1. Approval

a. Qualified Principal Approval Standard

Paragraph (b)(1)(B) in the Original Proposal would have permitted a Supervisory Analyst (as defined in NYSE Rule 344) approved pursuant to NYSE Rule 344 to approve research reports on debt and equity securities. One commenter recommended that the qualified principal approval standard be revised to permit Supervisory Analysts to review and approve any communication produced by a firm's research department, including communications that are not research reports on debt or equity securities.[79] The commenter gave as examples macroeconomic research or research on commodities.

The commenter alternatively argued that FINRA should exclude from the requirement to obtain pre-use principal approval all communications produced by a firm's research department. Another commenter recommended that FINRA exclude all research reports from proposed FINRA Rule 2210, on the ground that NASD Rule 2711[80] sufficiently regulates these communications.[81]

In a subsequent letter, one of the commenters argued that proposed paragraph (b)(1)(B) would have a negative effect on the review and distribution of materials prepared by research department personnel, since it would not permit Supervisory Analysts to review research notes and other materials if those materials do not meet the definition of ''research report.''[82] Instead, the proposed rule would require a registered principal to review and approve these materials. The commenter expressed the view that Supervisory Analysts are more qualified to review and approve research materials prepared by research department personnel than associated persons who have only taken a general securities principal examination.

The Commenter argued further that requiring registered principals rather than Supervisory Analysts to review these materials would disrupt well-established practices and processes that firms have developed for publishing content produced by research department personnel that does not fall within the definition of ''research report.'' Accordingly, the commenter urged that ''a Supervisory Analyst should be permitted to review materials that are not defined as ''research reports'' because they are excepted from the definition in NASD Rule 2711(a)(9), regardless of whether these materials contain a financial or investment recommendation.''[83]

In its October Response Letter, FINRA disagreed and declined to revise the qualified principal approval standard. FINRA noted that proposed paragraph (b)(1)(D)(i) already would allow members to supervise certain types of retail communications in the same manner as correspondence and that these communications include any retail communication that is excepted from the definition of ''research report'' pursuant to NASD Rule 2711(a)(9)(A), which includes ''commentaries on economic, political or market conditions.'' FINRA asserted that to the extent a research department produces communications concerning other types of investments, such as commodities, FINRA believed that a principal with appropriate expertise, rather than a Supervisory Analyst, should review such communications.

FINRA also declined to exclude all communications produced by a firm's research department and/or all research reports. FINRA noted that the fact that a particular department within a firm produces a communication generally should not alter the manner in which the communication is reviewed and supervised. FINRA indicated that while NASD Rule 2711 does include certain required disclosures for research reports, it lacks other important content standards, such as the requirement that a communication be based on principles of fair dealing and good faith, and be fair and balanced. FINRA further indicated that proposed FINRA Rule 2210 includes important supervisory and recordkeeping standards that are not found in NASD Rule 2711. FINRA also noted that it altered the application of proposed FINRA Rule 2210's content standards to research reports where appropriate.[84] For example, it would exclude research reports from the disclosure requirements set forth in proposed FINRA Rule 2210(d)(7) for retail communications that include a securities recommendation.[85] Thus, FINRA stated its belief that the current rules and proposal appropriately focus on the nature of the communication, not its department of origin.

In Amendment No. 1, FINRA proposed one modification to proposed FINRA Rule 2210(b)(1)(D)(i), in order to clarify that a member would be required to have a principal approve a retail communication that is excepted from the definition of ''research report'' pursuant to NASD Rule 2711(a)(9)(A) if the retail communication makes any financial or investment recommendation. To accommodate commenter concerns, in its March Response Letter, in addition to permitting Supervisory Analysts to review and approve research reports on debt or equity securities (as provided in the Original Proposal), FINRA determined that Supervisory Analysts

[79] *See* Wilmer August Letter.

[80] NASD Rule 2711 (Research Analysts and Research Reports) is designed to address conflicts of interest that are raised when research analysts recommend securities in public communications by implementing structural reforms designed to increase analysts' independence and further manage conflicts of interest, and require increased disclosure of conflicts in research reports and public appearances. Securities Exchange Act Release No. 45908 (May 10, 2002); 67 FR 34968 (May 16, 2002).

[81] *See* SIFMA August Letter.

[82] *See* Wilmer January Letter.

[83] *See* Wilmer January Letter.

[84] *See* October Response Letter.

[85] Proposed FINRA Rule 2210(d)(7) requires retail communications that include a recommendation of securities to have a reasonable basis for the recommendation and to include disclosures regarding the member's market-making activities in the security, financial interests in the recommended securities by the firm or any associated person that is directly and materially involved in the preparation of the communication, the member's role as manager or co-manager of a public offering of the recommended securities during the past 12 months. The proposed rule also requires members to make information available regarding the recommendation and generally prohibits reference to past specific recommendations, unless certain requirements are met.

could also review and approve retail communications that are described in NASD Rule 2711(a)(9)(A) [86] and other research that does not fall within the definition of ''research report'' under NASD Rule 2711(a)(9), provided that they have technical expertise in the particular product area. FINRA noted, however, that this revision is not intended to alter current requirements that certain types of retail communications, such as retail communications concerning options, municipal securities or security futures, be approved by a principal with a specific qualification. Accordingly, FINRA amended proposed FINRA Rule 2210(b)(1)(B) as set forth in this Order.

The Commission believes that FINRA has responded adequately to comments regarding the principal pre-use approval requirement through its statements summarized above, and its modification of proposed FINRA Rule 2210(b)(1)(B) as set forth in this Order.

b. Supervision of Retail Communication Without Financial or Investment Recommendation

One commenter argued that the exception from the qualified principal pre-use approval standard for retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member needs further clarification.[87] In contrast, another commenter recommended that the exception include only retail communications that are solely administrative in nature.[88] Another commenter requested confirmation that research-authored educational pieces, such as primers on certain asset classes that do not recommend specific securities, are excepted from the principal pre-use approval requirements under this provision.[89]

FINRA declined to revise the standard, suggesting that it viewed the proposed standard as a clearer alternative to the standard FINRA had originally proposed to its members in *Regulatory Notice* 09–55 (for retail communications that are solely administrative in nature). FINRA explained that numerous commenters had argued that the standard was unclear and insufficient, and that in response to those comments, FINRA had revised the standard to explicitly exclude retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member.[90]

FINRA does not agree that so-called ''educational'' pieces are or should be generally excepted from the principal pre-use approval requirements under this provision. FINRA indicated that while this determination will always depend on the facts and circumstances, the purpose of such pieces may be to draw investor interest to a member's products and services, and accordingly would be viewed as promotional in nature.[91]

The Commission believes that FINRA has responded adequately to comments regarding supervision of retail communications without financial or investment recommendations by, for example, highlighting the changes it had made in response to comments on a prior version of the standard as proposed in *Regulatory Notice* 09–55.

c. Other Comments Relating to Principal Pre-Use Approval

One commenter noted that many closed-end funds are listed on the New York Stock Exchange (''NYSE'').[92] Section 202.06 of the NYSE Listed Company Manual encourages listed issuers to disseminate ''quickly to the public any news or information which might reasonably be expected to materially affect the market for its securities.'' The commenter maintained that, in the case of listed closed-end funds, this information would include, among other things, dividend announcements, and typically would be disseminated through press releases. The commenter asked that FINRA clarify that closed-end funds' press releases issued pursuant to Section 202.06 of the NYSE Listed Company Manual are excluded from the pre-use principal approval requirement. The commenter also requested that FINRA exclude these press releases from the filing requirement, as discussed below.

FINRA responded by pointing to proposed FINRA Rule 2210(b)(1)(D)(iii), noting that to the extent a member distributes or makes available a press release about a closed-end fund that does not make any financial or investment recommendation or otherwise promote a product or service of the member, the member would not be required to have a principal approve it prior to use.[93] FINRA did not amend the proposal to specifically exclude these press releases from the pre-use principal approval requirement.

The Commission believes that FINRA has responded adequately to these comments by identifying the types of press releases issued pursuant to Section 202.06 of the NYSE Listed Company Manual that would be excluded from the proposed rule's pre-use principal approval requirements (*i.e.,* those that do not make any financial or investment recommendation or otherwise promote a product or service of the member), and (as discussed below), by amending the proposal to exclude these press releases from the filing requirement.

2. FINRA's Exemptive Authority

One commenter recommended that, should FINRA grant exemptive relief from the principal pre-use approval requirements to a member or a small number of members pursuant to proposed paragraph (b)(1)(E), FINRA should announce this relief in a *Regulatory Notice* and simultaneously grant this relief to all members.[94]

FINRA responded that it generally does not intend to use this provision to grant relief to firms that have not applied for such relief. If FINRA determines that similar relief is appropriate for all members, it generally expects to file a proposed rule change with the Commission to accomplish such result. However, FINRA indicated that it will consider the best means to publish any relief granted under this provision.[95]

The Commission believes that FINRA, in its statements summarized above, has responded adequately to this comment. The Commission notes that FINRA is required, under Exchange Act Section 19(b) and Rule 19b–4 thereunder to file a proposed rule change with the Commission if a stated policy, practice, or interpretation is not reasonably or fairly implied by an existing FINRA rule and is not concerned solely with FINRA's administration (subject to certain exceptions).[96] In a March 2003 letter to the NASD (as well as all other non-clearing agency self-regulatory organizations (''SROs'')), the Division of Trading and Markets (formerly known as the Division of Market Regulation) clarified the process to be used by SROs when granting exemptions from SRO rules.[97] As stated in the letter, the only

[86] NASD Rule 2711(a)(9)(A) defines the term ''Research Report.''

[87] *See* TLGI August Letter.

[88] *See* PIABA August Letter.

[89] *See* Wilmer August Letter.

[90] *See* December Response Letter.

[91] *See* October Response Letter.

[92] *See* ICI August Letter and ICI December Letter.

[93] *See* December Response Letter.

[94] *See* ICI August Letter.

[95] *See* October Response Letter.

[96] *See* Exchange Act Rule 19b–4.

[97] *See* letter from Annette L. Nazareth, Director, Division of Market Regulation to T. Grant Callery, Executive Vice President & General Counsel, National Association of Securities Dealers, re: SRO Exemption Authority, dated March 27, 2003. A

circumstance in which exemptive authority of SROs should be exercised in lieu of employing the notice-and-comment process applicable to proposed SRO rule changes under Section 19(b) of the Exchange Act is ''where the circumstances are truly unique.'' [98] The Commission expects FINRA to maintain records of any exemptions granted.

Commission Chairman Mary Schapiro recently articulated ''that the uniform dissemination of regulatory positions tends to enhance compliance, thereby furthering investor protection.'' [99] The Commission encourages FINRA to continue to identify means of improving transparency of regulatory interpretations and positions.

3. Recordkeeping

One Commenter requested confirmation that the requirement in proposed paragraph (b)(4)(A)(i) to maintain the date of last use does not apply to research communications.[100] FINRA indicated that this requirement (if applicable) applies to all communications and that there is no exception for research.[101]

The Commission believes that FINRA has clarified adequately that there is no exception to the requirement to maintain (if applicable) a record of the date of last use for any communications under proposed paragraph (b)(4)(A)(i). For a discussion of comments regarding recordkeeping requirements for online interactive electronic content, see Section E. (Other Issues Related to Public Appearances and Online Interactive Electronic Communications) below.

C. Filing Requirements and Review Procedures

Proposed FINRA Rule 2210(c)(1) through (c)(3) would require members to file certain retail communications either at least 10 business days prior to first use or publication, or within 10 business days of first use or publication, depending on the communication. Proposed paragraph (c)(7) includes a number of exclusions from these filing requirements.

Commenters raised concerns regarding the proposed filing requirements, focusing on the volume of material that would fall under the filing requirement and suggesting various possible exclusions to decrease the filing requirement burden.[102]

1. General

One commenter expressed concern that the filing requirements of paragraph (c)(3) would subject almost all member communications to filing with FINRA.[103] Another commenter argued that FINRA staff review of filings on a post-use basis does not enhance investor protection, since the material has already been distributed.[104]

FINRA disagreed with the first concern, indicating that the filing requirements under this paragraph covers retail communications concerning registered investment companies, public direct participation programs, investment analysis tools, collateralized mortgage obligations, and retail structured products. FINRA stated that the filing requirements would not cover correspondence or institutional communications and that they also would not apply to retail communications concerning many other types of securities that are not listed in paragraph (c)(3).[105]

FINRA also disagreed with the argument that post-use review by FINRA staff fails to protect investors. FINRA indicated that it allows members to file communications on a post-use basis to prevent filing requirements from serving as an impediment to distributing sales material in a timely manner. FINRA suggested that the commenter's argument, if extended, would require that all retail communications be filed prior to use.[106] While FINRA would require pre-use filing for certain types of retail communications that it believes present potentially higher risks of being misleading to investors, FINRA believes that post-use filing is sufficient for many other types of retail communications. FINRA indicates that the filing requirements provide a check on firms that may otherwise consider including misleading statements in sales material, and brings potentially misleading material to FINRA's attention.[107]

The Commission believes that FINRA responded adequately to these comments by, among other things, clarifying the scope of the filing requirement in proposed paragraph (c)(3) and by explaining that post-use filing permits a firm to distribute sales material in a timely manner, while bringing potentially misleading material to FINRA's attention.

2. Communications Concerning Government Securities

A commenter argued that the proposed filing requirements for retail communications concerning government securities, as set forth in the Original Proposal, would greatly expand the filing obligations with regard to many types of research communications, with little benefit to investors.[108] Another commenter argued

copy of this letter is available in the Commission's Public Reference Room.

[98] *Id.* The letter states that ''[t]he broad definition of ''proposed rule change'' in Rule 19b–4 means that exemptions of general applicability that impose substantive binding requirements should be done through the notice-and-comment rulemaking process. Similarly relief from the SRO standards or obligations made generally applicable to members is rulemaking and must be done through the notice-and-comment rulemaking process.

Determining when an exemption is of general applicability is in some cases difficult. It is clear that when an exemption on its face is a class exemption, or is otherwise generally applicable, the notice-and-comment process should apply. What is less readily apparent, however, is when the exemption is not on its face generally applicable but involves factual circumstances that will be frequently replicated. In this circumstance, adherence to the notice-and-comment process will also apply. The fact that the exemption order may be unpublished or may state that it is limited to the individual firm or person to whom it is granted, does not mitigate the need for notice-and-comment procedures if the circumstances involved are so common that the SRO will in fact be granting the same exemption to all other persons similarly situated.''

[99] *See* letter from Mary L. Schapiro, Chairman, Securities and Exchange Commission to Ms. Alicia Puente Cackley, Director, Financial Markets and Community Investment, GAO, dated July 15, 2011, Appendix III, United States Government Accountability Office, Report to Congressional Committees, ''Mutual Fund Advertising: Improving How Regulators Communicate New Rule Interpretations to Industry Would Further Protect Investors,'' July 2011, *available at http://www.gao.gov/assets/330/321961.pdf* (''GAO Mutual Fund Advertising Report''). The Chairman's letter responded to the GAO Mutual Fund Advertising Report, which recommended that the SEC should take steps to ensure FINRA develops sufficient mechanisms to notify all fund companies about changes in rule interpretations for fund advertising, to help ensure investors are better protected from misleading advertisements. In a letter from FINRA responding to the GAO, FINRA described certain steps that it had already taken to address the issues raised in the report: (1) FINRA's intent to publish, through a Notice to firms or by other means, any significant new interpretation of the advertising rules that affect a broad section of the industry; (2) FINRA's plan to develop one or more mechanisms to provide a regular summary of advertising issues and its interpretation, such as through a regular letter to advertising compliance contacts and regularly scheduled webinars; and (3) ongoing consideration by FINRA's Advertising Regulation managers of the means of disseminating important matters. *See* letter from Thomas M. Selman, Executive Vice President, Regulatory Policy, FINRA to Ms. Alicia Puente Cackley, Director, Financial Markets and Community Investments, GAO, dated July 11, 2011, *available at* Appendix II, GAO Mutual Fund Advertising Report.

[100] *See* Wilmer August Letter.

[101] *See* October Response Letter.

[102] *See* ICI August Letter; Wilmer August Letter; TLGI August Letter; SIFMA August Letter; and Fidelity August Letter.

[103] *See* TLGI August Letter.

[104] *See* SIFMA August Letter.

[105] *See* October Response Letter.

[106] *See* SIFMA August Letter.

[107] *See* October Response Letter.

[108] *See* Wilmer August Letter.

that FINRA should maintain the current filing requirements for government securities on the basis that principal pre-use approval is sufficient.[109]

In response to comments, FINRA eliminated the proposed filing requirement for retail communications concerning government securities.[110] FINRA indicates that NASD Rule 2210, which requires members to file advertisements concerning government securities, has generated relatively few filings over the past few years, and FINRA's staff has found relatively few problems with the advertisements that have been filed. Given the potential burden that an expanded filing requirement for retail communications concerning government securities may impose on members compared to the relatively lower risk that such retail communications pose, FINRA believes that it is not necessary to require members to file these communications. FINRA clarified that it retains the ability to review such communications through other means, such as spot checks or targeted examinations, and to take appropriate actions against members for violations of FINRA rules.[111]

The Commission believes that FINRA addressed adequately commenter concerns by eliminating the proposed filing requirement for communications concerning government securities contained in the Original Proposal, on the basis that (i) FINRA can review these communications through other means; (ii) such communications pose a lower risk for containing misleading material, and (iii) the filing requirement may be unduly burdensome.

3. Communications Concerning Structured Products

A commenter similarly argued that the proposed filing requirements for retail communications concerning registered structured products would greatly expand the filing obligations with regard to research communications, with little benefit to investors.[112]

FINRA disagreed with the argument that there is no need to file research concerning retail structured products.[113] FINRA cited a recent report summarizing broker-dealer examinations by the staff of the Commission's Office of Compliance Inspections and Examinations, in which the Commission staff identified a number of sales-related problems concerning structured products sold to retail investors.[114] FINRA concluded that retail communications concerning retail structured products should be filed for review by FINRA staff to help ensure that such communications are not misleading.

The Commission believes that FINRA addressed adequately the comment regarding registered structured products by, among other things, explaining that review by FINRA staff may result in discovery of sales-related disclosure problems, such as failure to disclose fees or material facts about redemption.

4. Templates

Proposed paragraph (c)(7)(B) would exclude from the filing requirements retail communications that are based on templates that were previously filed with the Department, the changes to which are limited to updates of more recent statistical or other non-narrative information. One commenter argued that this exclusion be expanded to cover updates of narrative information that is sourced from either an independent data provider or an investment company or its affiliate.[115] This commenter later reiterated the request, suggesting that the narrative information could also be sourced from publicly available documents filed with the SEC.[116] Two other commenters recommended that this filing exclusion be expanded to cover updates of narrative factual information from an entity that provides general information about investment companies to the public and is independent of the investment company and its affiliates.[117] One of these commenters later argued that this filing exclusion would reduce member costs, while still allowing FINRA to review updated templates through other means, such as spot-checks or examinations.[118]

FINRA declined the commenters' suggestions, indicating that adopting such a filing exclusion could potentially encompass almost all retail communications concerning investment companies, as long as a new retail communication could be related to a previously filed communication. FINRA cited concerns about the types of narrative information that would be updated, such as changes to the description of a fund's investment objectives, and concluded that in some cases additional review by Department staff may be warranted for updates of such narrative information.[119] FINRA also stated that third-party data providers often receive their information about a fund from an affiliate of the fund, and thus, in many cases, this information ultimately will be generated by either the member firm or one of its affiliates.[120] FINRA argued that such information would not be considered to have come from an independent source and that filing of updated material is the best way to ensure that members' retail communications are fair, balanced and accurate.

Following publication of Amendment No. 2, one commenter recommended that FINRA permit a risk-based principal review process for narrative updates of templates.[121] According to the commenter, ''FINRA could require firms to develop policies and procedures appropriate for their business structure,'' citing proposed FINRA Rule 2210(b)(1)(D), which permits members to supervise certain categories of retail communications in the same manner as required for supervising and reviewing correspondence.[122] The commenter argued that this approach would preserve FINRA's ability to monitor these materials, both through review via filing and through spot checks and targeted examinations.

FINRA reiterated that registered principal approval of narrative updates to templates prior to use helps to ensure that the narrative is fair, balanced and not misleading, in the same manner as prior review by registered principals of other types of mutual fund sales material.[123]

FINRA also suggested that the commenter's approach would not be workable as proposed.[124] FINRA had proposed that an appropriately qualified

[109] *See* SIFMA August Letter.

[110] *See* Amendment No. 1.

[111] *See* October Response Letter.

[112] *See* Wilmer August Letter.

[113] *See* October Response Letter.

[114] *See* October Response Letter (citing to Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission, ''Staff Summary Report on Issues Identified in Examinations of Certain Structured Securities Products Sold to Retail Investors,'' (July 27, 2011), *available at http://www.sec.gov/news/studies/2011/ssp-study.pdf.* FINRA noted that the staff found that some free-writing prospectuses concerning principal protected notes failed to disclose risks that investors could receive less than the principal investment if these notes were redeemed prior to maturity and that there were also problems regarding disclosures of fees for some products.).

[115] *See* Fidelity August Letter.

[116] *See* Fidelity December Letter.

[117] *See* SIFMA August Letter and ICI August Letter.

[118] *See* ICI December Letter.

[119] *See* October Response Letter.

[120] *See* December Response Letter.

[121] *See* ICI January Letter.

[122] *See* ICI January Letter.

[123] FINRA noted that to the extent that such a narrative constituted a retail communication that would be subject to more flexible supervision and review standards, then those standards would apply. *See, e.g.,* proposed FINRA Rule 2210(b)(1)(D) (allowing certain categories of retail communications to be supervised and reviewed in the same manner as is required for correspondence).

[124] *See* March Response Letter.

principal approve a communication prior to a member filing the communication with FINRA.[125] Accordingly, FINRA believes that review of narrative updates to templates in a manner similar to correspondence would not be consistent with this filing requirement.

The Commission believes that FINRA has responded adequately to comments regarding templates. For example, FINRA explained, that: (1) Its review of updated or new narrative information is designed to achieve fair and balanced communications that are not misleading, (2) that information provided by third parties may not be truly independent, and (3) that a risk-based principal review process for narrative updates of templates would not be consistent with the requirement to have an appropriately qualified principal approve a communication prior to a member filing the communication with FINRA.

5. SEC-Filed Documents

Proposed paragraph (c)(7)(F) would exclude from the filing requirements prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the Commission or any state, or that are exempt from such registration. Investment company prospectuses published pursuant to Securities Act Rule 482 and ''free writing prospectuses'' that have been filed with the Commission pursuant to Securities Act Rule 433(d)(1)(ii) (prospectuses used by or referred to and distributed by or on behalf of any offering participant, other than the issuer in a manner reasonably designed to lead to its broad unrestricted dissemination) (referred to herein as ''broker-prepared free writing prospectuses'') are not covered by this exclusion.

One commenter argued that the exclusion in proposed paragraph (c)(7)(F) should cover all free writing prospectuses that are widely distributed, since they are already filed with the Commission.[126] The commenter later argued that FINRA should exclude broker-prepared free writing prospectuses from the filing requirements on the grounds that the Commission staff already reviews such prospectuses under its filing program.[127]

FINRA disagreed that the filing exclusion under proposed paragraph (c)(7)(F) should cover all widely distributed free writing prospectuses or broker-prepared free writing prospectuses that have been filed with the Commission and declined to change the proposed provision. FINRA made clear that the filing requirement only applies to widely disseminated free writing prospectuses that are prepared by or on behalf of a broker-dealer, and that it would not apply to free writing prospectuses that are not widely disseminated, nor would it apply to widely disseminated free writing prospectuses that are prepared by or on behalf of an issuer.[128]

FINRA also cited, as an example of problematic practices, widely distributed free writing prospectuses for retail structured products that it has found to have misleading content that merits review by the Department. FINRA indicated that the additional review of widely distributed free writing prospectuses would help protect investors from potentially misleading sales material.[129] FINRA maintains that while certain broker-prepared free writing prospectuses must be filed with the Commission under Securities Act Rule 433, this filing requirement does not necessarily ensure prompt Commission staff review of all such prospectuses. Thus, FINRA believes that its review will add a layer of investor protection that is appropriate under the circumstances.[130]

The commenter also argued that the pre-use filing requirements of proposed FINRA Rule 2210(c)(2) could delay publication of broker-prepared free writing prospectuses, which would be contrary to the Commission's goal of timely release of information.[131] FINRA indicated that the concern that proposed FINRA Rule 2210(c)(2)'s pre-use filing requirements would delay the issuance of free writing prospectuses is based on a faulty premise. FINRA notes that these pre-use filing requirements apply to: (A) Retail communications concerning registered investment companies that include self-created rankings; (B) retail communications concerning security futures (subject to certain exceptions); and (C) retail communications concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings. FINRA stated its view that—with regard to (A) and (C) above—investment companies are not permitted to issue free writing prospectuses and—with regard to (B) above—security futures generally are exempted securities under the Securities Act.[132] FINRA maintains that there is no need for an issuer or broker-dealer to use a free writing prospectus to advertise security futures. Accordingly, FINRA stated that the pre-use filing requirements for retail communications concerning investment companies or security futures would not require a free writing prospectus to be filed with FINRA.

Although the commenter did not specifically cite to the proposed pre-filing requirement that applies to certain types of retail communications distributed by a new member during a one-year period beginning on the date that the member's FINRA membership became effective,[133] FINRA recognized that free writing prospectuses could potentially be subject to pre-filing under that new member requirement. To address the commenter's underlying concern regarding timely release of information, FINRA amended the provision governing new member communications to allow new members to file widely disseminated free writing prospectuses prepared by or on behalf of a broker-dealer within 10 business days of first use, rather than impose a pre-use filing requirement on such communications.[134]

The Commission believes that FINRA, in its statements summarized above, responded adequately to comments regarding SEC-filed documents. Among other things, FINRA stated its view that additional review by FINRA of widely distributed free writing prospectuses would help protect investors from potentially misleading sales material. FINRA also responded to the comments concerning timely issuance of information by modifying the provision governing new member communications as described above and explaining why other provisions requiring pre-filing would not apply to free writing prospectuses.

6. Communications With the Media

Two commenters recommended that the exclusion in proposed paragraph (c)(7)(H), which would exclude from the filing requirements press releases made available only to members of the media, be expanded to cover all materials that are provided to the media, such as white papers, research reports, charts, and

[125] *See* proposed FINRA Rule 2210(b)(1)(F).

[126] *See* SIFMA August Letter.

[127] *See* SIFMA December Letter.

[128] *See* October Response Letter.

[129] *See* October Response Letter.

[130] *See* December Response Letter.

[131] FINRA notes that SIFMA cited proposed FINRA Rule 2210(d)(2) in its comment letter; FINRA presumes this citation was a typographical error, since paragraph (d)(2) does not impose a filing requirement.

[132] *See* December Response Letter (citing to 15 U.S.C. 77c(a)(14)).

[133] *See* proposed FINRA Rule 2210(c)(1)(A).

[134] *See* Amendment No. 2; proposed FINRA Rule 2210(c)(1)(A).

educational materials.[135] Another commenter alternatively argued that the proposed rule should treat communications provided solely to the media as correspondence.[136]

FINRA declined to expand the filing exclusion for press releases made available only to members of the media to include other types of communications. FINRA indicated that to the extent a member is using a media outlet to distribute retail communications other than press releases, FINRA believes that such retail communications should be filed with the Department for review if they are subject to a separate filing requirement; otherwise, the media could become a conduit by which firms could avoid those filing requirements. In addition, FINRA noted that facts and circumstances surrounding a communication will determine whether that communication to a member of the media qualifies as correspondence, a retail communication or an institutional communication. FINRA does not believe it makes sense to characterize all such communications as correspondence.

The Commission believes that FINRA has responded adequately to comments regarding communications with the media, including by explaining why providing a communication (other than a press release) solely to a member of the media would not be a sufficient basis to exclude such communication from the filing requirements or to characterize such communication as correspondence.

7. Lists of Products

One commenter supported the filing exclusion in proposed paragraph (c)(7)(L), which would exclude from the filing requirements communications that refer to types of investments solely as part of a listing of products or services offered by the member, but noted that ''it seemingly would apply to, among other documents, a retirement plan enrollment guide, which includes a listing of a plan's investment options.'' [137]

FINRA indicated that the commenters' understanding was correct only to the extent an enrollment guide listed the types of investments available through the plan. FINRA clarified that to the extent an enrollment guide mentioned the individual funds or other investment options available through a plan, the filing exclusion would not be available. The Commission believes that FINRA has responded adequately to the issue raised by the commenter under proposed paragraph (c)(7)(L), including by providing examples of enrollment guides that would not be eligible for the filing exclusion.

8. Communications Concerning Closed-End Funds

One commenter argued that FINRA should exclude from the filing requirements all retail communications concerning closed-end funds.[138] The commenter argued that such communications pose lower risks than communications concerning other products (such as structured products), and that having a principal review such retail communications prior to use provides sufficient investor protection. Another commenter requested that FINRA clarify that closed-end funds' press releases issued pursuant to Section 202.06 of the NYSE Listed Company Manual be excluded from the filing requirements.[139]

FINRA noted that it does not believe it should exclude from the filing requirements other types of retail communications concerning closed-end funds, stating that it is not persuaded by the fact that a principal must approve such communications prior to use. FINRA indicated that the same principal approval requirement applies to other types of retail communications that are subject to a filing requirement. In addition, FINRA indicated that its staff found through filings and investigations of closed-end fund communications under the current rules that such communications frequently require changes in order to be consistent with applicable advertising rules. For example, FINRA indicated that its staff has found significant problems with retail communications used to promote auction-rate securities issued by closed-end funds.

FINRA indicated that proposed FINRA Rule 2210(c)(7)(C) would exclude from the Rule's filing requirements any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member. To the extent a member distributes or makes available a press release about a closed-end fund that does not make any financial or investment recommendation or otherwise promote a product or service of the member, FINRA noted that the member would not be required to have a principal approve it prior to use. To address one of the commenters' concerns, however, FINRA amended proposed FINRA Rule 2210(c)(7) to add a separate exclusion from the filing requirements for press releases concerning closed-end investment companies listed on the NYSE that are issued pursuant to Section 202.06 of the NYSE Listed Company Manual (or any successor provision).[140]

The Commission believes that FINRA has responded adequately to comments about communications concerning closed-end funds. For example, FINRA explained that it seeks to review such communications because it has found that some communications produced by closed-end funds have been inconsistent with current regulations governing communications. In addition, in response to comments concerning press releases issued pursuant to Section 202.06 of the NYSE Listed Company Manual, the Commission believes that FINRA appropriately responded to comments by amending the proposal by adding an exclusion for such press releases as described above.

9. Communications Posted on Online Interactive Electronic Forums

A commenter recommended that FINRA add a new filing exclusion for retail communications posted on an online interactive electronic forum, similar to the exception from the principal pre-use approval requirements under proposed FINRA Rule 2210(b)(1)(D)(ii).[141] FINRA initially disagreed that there should be a filing exclusion for such retail communications and declined to make the change.[142]

As discussed in more detail below, commenters raised a number of additional concerns regarding the treatment of communications on online interactive electronic forums. In its December Response Letter, FINRA recognized that a member may face supervisory and operational difficulties if it is required to file an online forum post given that the member will be supervising such communications in the same manner as correspondence. Accordingly, FINRA amended proposed FINRA Rule 2210(c)(7) to add a filing exclusion for retail communications that are posted on online interactive

[135] *See* Fidelity August Letter and SIFMA August Letter.

[136] *See* ICI August Letter.

[137] *See* ICI August Letter.

[138] *See* SIFMA August Letter and SIFMA December Letter.

[139] *See* ICI December Letter. As discussed under Section B.1.c. above, the ICI also requested that FINRA exclude such press releases from the pre-use approval requirements.

[140] *See* Amendment No. 2 Rule 2210(c)(7).

[141] *See* SIFMA August Letter. The commenter also stated that ''the better solution'' would be to revise proposed FINRA Rule 2210(f) to specify that online postings are a type of public appearance that do not constitute retail communications. This comment is discussed later in this Order.

[142] *See* October Response Letter.

electronic forums. FINRA cautioned that members should be aware that this exception does not apply to any filing requirement that may arise under either federal law or Commission rules.[143]

The Commission believes that FINRA has responded adequately to comments by, among other things, amending the proposal to add a filing exclusion for retail communications that are posted on online interactive electronic forums.

10. Mutual Fund Shareholder Reports

One commenter argued that FINRA should exempt a mutual fund's Management's Discussion of Fund Performance (''MDFP'') from filing with FINRA on the ground that it is already filed with the Commission and subject to certain control and certification requirements under federal law and Commission rules.[144] The commenter also noted that Section 408(c) of the Sarbanes-Oxley Act requires the Commission staff to review issuers' disclosures, including the MDFP, at least once every three years.

FINRA pointed out that it currently requires members to file the MDFP and sales material portion of a mutual fund annual or semi-annual report if a member intends to use the report to market the fund to prospective investors.[145] FINRA explained that the existing filing requirement under NASD Rule 2210 is limited to those shareholders reports that are being provided to prospective investors—and does not apply to shareholder reports provided only to existing shareholders for informational purposes. FINRA further highlighted that this limitation is designed to ensure that a filing requirement can achieve its purpose, which is to ensure that shareholder reports that the fund uses to market its shares to retail and other investors are reviewed in the same manner as other fund marketing material. FINRA stated that it does not require firms to file financial statements that appear in shareholder reports since the filing requirement is further tailored to require the filing only of the sales material and MDFP portions, which are narrative in form.

FINRA stated that a mutual fund's sales material and MDFP typically provide content beyond that which the Commission requires for a shareholder report, noting that the shareholder report may contain: an interview with the portfolio manager; a performance chart, such as a chart depicting how much the investor would have earned had he invested in the fund many years earlier; or the fund's historical performance with a comparison to an index. FINRA indicated that the reports routinely describe the prospects for the fund, opportunities in which the fund is investing, and the possible effects of market conditions on the fund's performance: all information designed to appeal to prospective investors of the mutual fund as well as existing shareholders.

FINRA explained that its current review program has found problems with a significant number of fund shareholder reports. Among those that were filed with FINRA in 2011, FINRA reports that approximately 7.5 percent required substantive comments to make the shareholder report fair, balanced and not misleading.[146] For example, FINRA stated that it recently commented on a shareholder report that illustrated a fund's past performance by providing performance concerning other accounts of the investment adviser, without disclosing the differences between those accounts and the advertised fund. FINRA cited another recently filed report that provided an ''overall credit rating'' of ''A-versus AA3'' for a fund, without disclosing material information necessary to balance this rating, such as the fact that it was not provided by a nationally recognized statistical rating organization. FINRA noted yet another recently filed shareholder report that provided non-standardized performance without providing the standardized one, five and ten year performance required by Securities Act Rule 482.

FINRA stated its position that although shareholder reports are filed with the Commission, they might be reviewed by Commission staff only on a three-year cycle.[147] In contrast, FINRA noted that it reviews all shareholder report sales material and MDFPs that are filed with the Department and that the Department's comprehensive review program discourages funds from including content that is misleading or potentially harmful to investors.

FINRA emphasized that it is sensitive to the costs that the communications rules impose upon the industry, and has agreed to changes to its existing rules and the proposed amendments to accommodate these concerns in a manner consistent with investor protection.[148] However, FINRA stated that it believed the costs associated with the shareholder report filing requirement appear to be substantially less than the amount estimated by the industry. One commenter estimated that ''a significant number of Institute member firms pay more than $20,000 in fees annually to file shareholder reports with FINRA.'' [149] FINRA noted the commenter's explanation that this estimate was based upon the assumption that a fund complex that files 100 shareholder reports twice a year at FINRA's minimum filing fee would pay $20,000 in filing fees, and that 31 firms that are members of the commenter have more than 100 funds in their complexes.

FINRA argued that this cost estimate appears overstated because many fund complexes combine multiple funds' shareholder reports into a single document, which they file one time with FINRA. FINRA noted that of the 10 fund complexes that filed the highest volume of shareholder reports in 2011, only two issue a separate shareholder report for each fund.[150] For example, FINRA indicated that it is not uncommon for fund groups to combine shareholder reports for multiple target date funds, money market funds or municipal bond funds in a single document.

In light of the use of mutual fund shareholder reports to market the fund, and the substantive concerns raised by some shareholder reports, FINRA stated that it continues to believe that fund shareholder report sales material and MDFPs that will be used with prospective investors should be subject to the same filing requirements as other mutual fund sales material. Consequently, FINRA declined to exempt a fund shareholder report sales material and MDFP from proposed FINRA Rule 2210's filing requirements.

The Commission believes that FINRA has responded adequately to comments regarding the MDFP filing requirement. For example, FINRA cited to substantive

[143] *See, e.g.,* 15 U.S.C. 80a–24(b); 17 CFR 230.497.

[144] *See* ICI December Letter and ICI January Letter.

[145] *See* March Response Letter.

[146] FINRA stated that its Department staff codes mutual fund shareholder reports as ''performance reports,'' which includes not only fund shareholder reports, but also other periodic performance reports, such as quarterly fund reports and other types of periodic fund performance updates. The 7.5 percent figure reflects comments made on all communications coded as performance reports, although most performance reports are sales material and MDFPs included within mutual fund shareholder reports. *Id.*

[147] *See* December Response Letter.

[148] See March Response Letter.

[149] *See* ICI January Letter.

[150] *See* March Response Letter. FINRA noted that these 10 largest fund complexes filed approximately 30 percent of all mutual fund performance reports received by FINRA in 2011 (which, as noted above, includes shareholder reports)—and of these fund complexes, one creates multiple-fund shareholder report documents for all of its funds, seven create multiple-fund shareholder report documents for at least some of their funds, and only two issue a separate shareholder report document for each fund.

concerns that it has identified in some fund shareholder reports, emphasizing that the Department's review program may serve to discourage funds from including content that is misleading or potentially harmful to investors.

D. Content Standards

Proposed paragraph 2210(d) generally requires all communications to be based on principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security, industry or service. The proposed rule prohibits the use of false, exaggerated, unwarranted, promissory or misleading statements or claims in communications. Additionally, the proposed rule sets forth specific requirements that apply to the use of comparisons; disclosure of the member's name; tax considerations; disclosure of fees, expenses, and standardized performance; testimonials; and recommendations.

Commenters raised various concerns about FINRA's proposed content standards.[151] The comments focused on predictions of future performance, the detail required of tax consideration disclosure, the prominence requirement for disclosure of fees and expenses and requirements applicable to communications concerning recommendations of securities.

1. Projections of Performance

One commenter requested confirmation that proposed paragraph (d)(1)(F), which generally would prohibit communications from predicting or projecting performance, implying that past performance will recur, or making any exaggerated or unwarranted claim, opinion or forecast would not apply to communications produced by a member's research department.[152]

FINRA indicated that proposed paragraph (d)(1)(F) would apply to all communications, including those produced by a member's research department. However, FINRA indicated that it does not believe that the provision's restrictions would inhibit the types of content typically found in research communications. FINRA noted that the provision includes an exception expressly permitting price targets that meet the standards of NASD Rule 2711. In addition, FINRA noted that it does not believe that the type of content described by the commenter, such as forward-looking statements or earnings estimates commonly provided in research reports, would be considered projections of performance for purposes of the provision. FINRA provided additional guidance indicating that, in general, the provision is intended to prohibit specific percentage or dollar-based projections of performance of an investment. Nevertheless, FINRA noted that proposed paragraph (d)(1)(F) would prohibit research communications from including any exaggerated or unwarranted claim, opinion or forecast.

The Commission believes that FINRA has responded adequately to this comment, including by providing guidance about the types of content that may or may not be prohibited under proposed paragraph (d)(1)(F).

2. Tax Considerations

One commenter argued that the disclosure requirements in proposed FINRA Rule 2210(d)(4) impose complicated content standards and disclosure requirements on certain retail communications and correspondence that discuss tax considerations of investments and investment accounts and should be limited instead to a requirement to disclose that an investor should seek professional tax advice due to the complexity and changing nature of the tax code.[153]

FINRA declined to make the change, indicating that it believes that the disclosures listed in proposed paragraph (d)(4) are important to help an investor understand the context and limitations of communications that discuss tax implications of investments and investment accounts. Additionally, FINRA cautioned against any member preparing a communication that it believes may be inaccurate in its representations of tax considerations due to the complexity of tax laws and rules.

In Amendment No. 1, FINRA modified proposed paragraph (d)(4) to clarify that it intended to require such retail communications to disclose that ordinary tax rates apply to withdrawals from tax-deferred investments in illustrations of tax-deferred products or accounts to the extent withdrawals are subject to ordinary income tax rates.[154]

The Commission believes that FINRA has responded adequately to the comment regarding tax disclosure requirements under proposed FINRA Rule 2210(d)(4) by, among other things, emphasizing the importance of the proposed disclosures for facilitating investor comprehension.

3. Standardized Performance Information

One commenter opposed a requirement in proposed FINRA Rule 2210(d)(5) that sets forth certain disclosure requirements concerning investment company fees and expenses with respect to retail communications and correspondence that advertise a fund's performance.[155] The commenter suggested that instead of requiring certain standardized performance and expense information to be included in a prominent text box with respect to print advertisements that include fund performance, FINRA should instead revise proposed FINRA Rule 2210 to require funds to prominently present standardized performance, maximum sales charges, and expense ratios.

FINRA declined this recommendation, indicating that prior to the adoption of NASD Rule 2210(d)(3),[156] FINRA stated that it had found that some mutual fund print advertisements placed standardized performance information in footnotes while placing non-standardized performance information in the body of a print advertisement, despite equal prominence requirements contained in Securities Act Rule 482. Additionally, FINRA noted that it found that NASD Rule 2210(d)(3) helped clarify that placing performance information in footnotes does not meet the equal prominence requirements of Rule 482, and made print performance advertisements more fair and balanced.

The Commission believes that FINRA has responded adequately to the comment opposing the disclosure requirements carried forward from NASD rule 2210(d)(3) by explaining, among other things, why it views the proposed requirement as an important tool for making print performance communications more fair and balanced.

4. Recommendations of Securities

Proposed FINRA Rules 2210(d)(7) and 2210(f)(1) would require retail communications and public appearances that include a recommendation of securities to have a reasonable basis for the recommendation, and to make certain disclosures. Among other things, the Original Proposal provided that a retail communications or a public appearance that includes a recommendation of securities would have to disclose, if applicable, that the member or any

[151] *See* Wilmer August Letter; TLGI August Letter; and ICI August Letter.

[152] *See* Wilmer August Letter.

[153] *See* TLGI August Letter.

[154] *See* Amendment No. 1; proposed FINRA Rule 2010(d)(4)(c)(vii)(d).

[155] *See* ICI August Letter.

[156] Proposed FINRA Rule 2210(d)(5) generally carries forward the requirements of NASD Rule 2210(d)(3).

associated person with the ability to influence the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal. FINRA received a number of comments concerning these proposed requirements.

Two commenters recommended that the disclosure requirements apply only to public appearances and retail communications that are published or used in any electronic or other media.[157] These commenters noted that it is not necessary to mandate extensive disclosure requirements for public appearances before small groups.

Two commenters argued that the requirement to disclose the financial interests of any associated person with the ability to influence the content of the communication is unclear, too broad, and difficult to administer.[158] The commenters argued that many persons within a firm may be able to influence a communication's content, and it would be difficult to track each person's financial interests with respect to particular retail communications or public appearances. One of the commenters also recommended that this disclosure requirement be limited to associated persons who are ''directly and materially involved in the preparation of the content.'' [159] The other commenter questioned the need for this disclosure at all, which it considered to be ''meaningless to the majority of retail investors.'' [160]

One commenter recommended that the requirement to disclose the financial interests of any associated person with the ability to influence the content of the communication be deleted and replaced with a requirement to disclose the financial interests of a member's officers or partners, which the commenter stated is similar to the current disclosure requirements for securities recommendations in NASD IM–2210–1(6).[161] The commenter argued that this alternative would ''provide meaningful disclosures to customers, without requiring members to implement costly monitoring systems and processes.''

By contrast, another commenter urged FINRA to broaden the disclosure requirements for retail communications and public appearances that contain securities recommendations. This commenter argued that the proposed standard (associated persons with the ability to influence the content of a communication) is too narrow.[162]

Two commenters focused particular attention on the proposed disclosure requirements as they would apply to public appearances. These commenters argued that the proposed standard is unworkable in this context, particularly where a speaker is answering a question about a particular security, and that such appearances would be impossible to monitor.[163] One of those commenters also argued that the standard is unfair, since it would impose disclosure requirements on registered representatives who recommend securities that are not imposed even on research analysts that recommend securities in public appearances.[164]

One commenter suggested as an alternative that the disclosure requirements of proposed FINRA Rule 2210(d)(7) apply to public appearances only if a member or associated person intends to recommend a security.[165] Another commenter offered as an alternative a more general requirement that an associated person making a public appearance disclose any actual, material conflict of interest related to a particular recommendation of which the person knows or has reason to know at the time of the public appearance.[166] The commenter noted that this standard is similar to the public appearance requirements that apply to research analysts under NASD Rule 2711(h).

One of the commenters recommended that FINRA clarify that the disclosure requirements in proposed FINRA Rule 2210(d)(7)(A)(ii) do not apply to indirect holdings, such as securities that are held by mutual funds or other pooled vehicles in which an associated person invests.[167]

One commenter recommended that the exception in proposed FINRA Rule 2210(d)(7)(D)(i), which would except from disclosure requirements any communication that meets the definition of ''research report'' or is a public appearance by a research analyst for purposes of NASD Rule 2711 and includes all of the applicable disclosures required by that Rule, be expanded to cover all communications created by a firm's research department, including debt research and research related communications that are not research reports.[168]

In response to comments, FINRA has amended the disclosure requirements for both retail communications and public appearances that include securities recommendations. As suggested by several commenters, in Amendment No. 1, FINRA narrowed the scope of the persons whose financial interests would have to be disclosed to those involved in the preparation of a communication. As revised, a retail communication that includes a securities recommendation would have to disclose if the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest, unless the extent of the financial interest is nominal.

FINRA also modified paragraph (d)(7)(D) to clarify that the disclosure requirements in paragraph (d)(7)(A) and the provisions regarding past specific recommendations in paragraph (d)(7)(C) do not apply to a retail communication that recommends only registered investment companies or variable insurance products; however, such communications still must have a reasonable basis for the recommendation. In addition FINRA noted that pursuant to proposed paragraph (d)(7)(B), a member must provide, or offer to furnish upon request, available investment information supporting the recommendation in those communications.[169]

FINRA clarified that the disclosure requirements in proposed FINRA Rule 2210(d)(7)(A)(ii), do not apply to the portfolio investments of an investment company or other fund owned by the member or such associated person.[170]

FINRA indicated that the revised standard provides sufficient information to investors reading a retail

[157] *See* Fidelity August Letter and SIFMA August Letter.

[158] *See* Fidelity August Letter and FSI August Letter.

[159] *See* Fidelity August Letter.

[160] *See* FSI August Letter.

[161] *See* SIFMA August Letter.

[162] *See* PIABA August Letter.

[163] *See* Fidelity August Letter and ICI August Letter.

[164] *See* ICI August Letter.

[165] *See* Fidelity August Letter.

[166] *See* ICI August Letter.

[167] *See* Fidelity August Letter.

[168] *See* Wilmer August Letter.

[169] *See* October Response Letter. FINRA noted that the proposed requirement in paragraph (d)(7)(B) to provide the price at the time a recommendation is made applies only to a recommendation of a corporate equity security, and thus does not apply to the recommendation of an investment company security or variable insurance product.

[170] FINRA stated that the disclosure requirements do not apply to any communication that recommends only registered investment companies or variable insurance products. *See* proposed FINRA Rule 2210(d)(7)(D)(ii).

communication to warn them of potential conflicts of interest. It also reduces the burdens on members with regard to tracking financial interests that must be disclosed. FINRA also revised the disclosure standards for public appearances that include securities recommendations. As revised, the requirements under proposed FINRA Rule 2210(f) would apply only to public appearances by associated persons (since members do not engage in public appearances except through their associated persons). As amended, an associated person making a public appearance would have to disclose, as applicable, his or her own financial interests in any of the securities of the issuer of the recommended security, and the nature of the financial interest, unless the extent of the financial interest is nominal. Additionally, the associated person would have to disclose any actual, material conflict of interest of the associated person or member of which the associated person knows or has reason to know at the time of the public appearance. FINRA noted that these disclosure requirements would not apply to any public appearance by a research analyst for purposes of NASD Rule 2711 that includes all of the applicable disclosures required by that Rule. FINRA further noted that the disclosure requirements also would not apply to a recommendation of investment company securities or variable insurance products; provided, however, that the associated person must have a reasonable basis for the recommendation. FINRA stated that it believes that this standard will still provide important information regarding potential conflicts to investors, while reducing the compliance burden to firms in administering this standard.

The Commission believes that FINRA addressed adequately comments regarding the disclosure requirements for both retail communications and public appearances that include securities recommendations. FINRA has amended these provisions in several respects to address commenter concerns. For example, FINRA has narrowed the scope of persons whose financial interests must be disclosed to capture the member or any associated person that is directly and materially involved in the preparation of the content of the communication. FINRA also revised the disclosure standards for public appearances that include securities recommendations for purposes of providing important information regarding potential conflicts to investors without unduly burdening firms. Additionally, FINRA explained why it would not be necessary to expressly exclude indirect holdings from the disclosure requirements in proposed FINRA Rule 2210(d)(7)(A)(ii).

E. Other Issues Related to Public Appearances and Online Interactive Electronic Communications

Currently, the term ''public appearance'' is included as a category within the broader term ''communications with the public,'' and includes participation in an online interactive electronic forum.[171] Under proposed FINRA Rule 2210, public appearances would no longer be a separate category of the term ''communications,'' and instead would be governed by FINRA Rule 2210(f). Proposed paragraph 2210(f) sets forth certain content, supervisory and other requirements that apply to public appearances. The term also would not include posts on online interactive electronic forums, which would be considered retail communications. Under proposed FINRA Rule 2210(b)(1)(D)(ii), members would be permitted to supervise and review retail communications that are posted on an online interactive electronic forum in the same manner as required for supervising and reviewing correspondence under NASD Rule 3010(d). Thus, members would not have to approve each such retail communication prior to use, and would have flexibility regarding how they establish their supervisory systems.

One commenter opposed proposed FINRA Rule 2210(f)(2), which would require each member to establish written procedures that are appropriate to its business, size, structure and customers to supervise its associated persons' public appearances, arguing that it is duplicative of supervisory requirements that already exist under NASD Rule 3010.[172] FINRA disagreed with this objection. FINRA maintains that while NASD Rule 3010 already generally requires a member to establish and maintain written procedures to supervise its associated persons' activities,[173] FINRA rules also include provisions regarding the supervision of particular activities where appropriate.[174] In this case, FINRA believes that proposed FINRA Rule 2210(f)(2) provides additional information regarding the type of supervision it expects members to maintain in connection with public appearances, and thus is appropriate.

Two commenters opposed the elimination of the term ''public appearance'' as a communication category, particularly with respect to online interactive electronic communications.[175] These commenters argued that posts on online interactive electronic forums are more analogous to ''physical public appearances.'' They also argued that recordkeeping requirements would be less burdensome if posts on social media Web sites were considered public appearances.

FINRA disagreed that it is necessary to continue to treat posts on online interactive electronic forums as public appearances. FINRA noted that it has created an exception from the pre-use principal approval requirements for such posts, permitting members to supervise and review such posts in the same manner permitted for correspondence.[176] Moreover, FINRA notes that this proposed standard would codify guidance already provided regarding supervision of posts on social media Web sites.[177]

Following publication of the Notice and Proceedings Order, the commenters reiterated that FINRA should maintain its current definition of ''public appearance'' under NASD Rule 2210 and include online interactive electronic communications within this framework, ''recognizing that these communications are more analogous to physical public appearances.'' [178] One commenter expressed concern that otherwise, online interactive electronic communications may fall into the definitions of correspondence, institutional communications or retail communications, which would complicate how the rules apply to such communications.[179] The other commenter recommended that FINRA exclude content that is interactive rather than static from the filing requirements under proposed FINRA Rule 2210(c), arguing that the burden of filing interactive online postings would far outweigh any potential benefits.[180]

In response to comments reiterating concerns about online interactive

[171] *See* NASD Rule 2210.

[172] *See* ICI August Letter.

[173] *See* NASD Rule 3010(b)(1).

[174] *See, e.g.,* FINRA Rule 2330(d) (supervisory procedures regarding the purchase or exchange of deferred variable annuities).

[175] *See* Fidelity August Letter and SIFMA August Letter.

[176] *See* proposed FINRA Rule 2210(b)(1)(D)(ii).

[177] *See* October Response Letter (citing *Regulatory Notice* 10–06 (Guidance on Blogs and Social Networking Web sites) (January 2010) and *Regulatory Notice* 11–39 (Guidance on Social Networking Web sites and Business Communications) (August 2011)).

[178] *See* Fidelity December Letter and SIFMA December Letter.

[179] *See* Fidelity December Letter.

[180] *See* SIFMA December Letter.

electronic communications, FINRA disagreed that participation on an online interactive electronic forum is more analogous to a physical public appearance than other electronic communications. FINRA noted that an online interactive electronic forum post generally remains available to the public for an extended period of time. FINRA noted that unless an interview or other public speaking activity is recorded and made available afterwards through some other medium, it no longer is available to the public after the interview or speech is completed. Thus, FINRA believes it is more appropriate to classify online interactive electronic forum posts generally as retail communications rather than public appearances.

FINRA recognized that participation on online electronic forums often occurs on a real-time basis and does not lend itself easily to pre-use principal approval. Accordingly, FINRA proposed to allow firms the flexibility to supervise participation on online electronic forums in the same manner as they supervise correspondence, which can include post-use review.[181] FINRA believes the concerns expressed by a commenter regarding whether an online forum post is correspondence, an institutional communication or a retail communication are overstated because FINRA believes that as a general matter, under the rule proposal, the supervisory requirements will be the same in each case.

As discussed above, FINRA recognized the potential difficulties associated with filing an online forum post, and accordingly amended proposed FINRA Rule 2210(c)(7) in Amendment No. 2, to add a filing exclusion for retail communications that are posted on online interactive electronic forums.

The Commission believes that FINRA has responded adequately to these comments. For example, FINRA responded to the comment suggesting that the proposed rule contains requirements duplicative of NASD Rule 3010 by clarifying that the proposed rule sets forth more specific information regarding the type of supervision it expects members to maintain in connection with public appearances. FINRA responded to comments regarding the treatment of online interactive electronic communications by noting that (1) the proposed rule permits members to supervise and review such communications in the same manner permitted for correspondence, (2) online interactive electronic forum posts generally remain available to the public for extended periods of time—which suggests they are more appropriately classified as retail communication than public appearance, and (3) as noted above, FINRA amended the proposal to add a filing exclusion for such communications in light of potential difficulties associated with filing.

F. Social Media

Three commenters expressed concern with the amount of content and data related to social media that must be stored under Commission recordkeeping rules.[182] These commenters recommended that the Commission, FINRA and the securities industry work together to create a new paradigm for electronic recordkeeping. Two commenters also urged FINRA to take a longer-term, comprehensive approach to the regulation of social media taking into consideration evolving media and technology, as well as the costs and benefits of regulation.[183] One of those commenters recommended that FINRA use its Social Media Task Force or another committee to consider how the communications rules should apply to mobile devices and provide guidance or new rules that are tailored to these technologies.[184] Another commenter recommended that FINRA codify in its communications rules the guidance that it provided in *Regulatory Notices* 10–06 and 11–39.[185]

FINRA noted that the commenters' concerns regarding the Commission's recordkeeping rules are outside the scope of the proposed rule change. FINRA indicated that it will continue to work with the industry going forward to address issues raised under FINRA rules, and may issue more guidance or propose new rules regarding these issues in the future as appropriate.

The Commission believes that FINRA responded adequately to these comments by indicating that it will continue to monitor and address issues that arise under FINRA rules in the social media landscape, whether through its Social Media Task Force or other means it deems suitable. The Commission also believes that Commission recordkeeping rules are outside the scope of the proposed rule change. Under Exchange Act Rule 17a–4, a broker-dealer is required to maintain originals of all communications received and copies of all communications sent relating to its ''business as such'' including all communications which are subject to the rules of a self regulatory organization regarding communications with the public.

G. Other General Comments

One commenter indicated that the proposed rule change will not improve the flow of communications, which in turn will compromise investor protection.[186] FINRA disagreed, indicating that the proposed rule change seeks to balance the need for members to communicate with their customers and the need for such communications to be fair and balanced. FINRA believes that members still will be able to communicate with their customers through a number of channels, and that the proposed rules will enhance rather than compromise investor protection.

One commenter noted that it is difficult to follow the proposed rules in the form presented in the Proposing Release and urged FINRA to simplify that presentation.[187] FINRA noted that it presents the proposed rule text in the format required by SEC Form 19b–4 under the Exchange Act.

The Commission believes that FINRA has responded adequately to comments regarding the flow of communications and the complexity of the proposed rule by, among other things, emphasizing that the proposed rule is designed to enhance investor protection, while still providing members a number of channels for communicating with customers.

As FINRA noted in response to comments the presentation of the proposed rule is consistent with the requirements of SEC Form 19b–4. The Commission also notes that in an effort to assist commenters in reviewing proposed Amendment No. 1, FINRA submitted as a comment letter an alternative version of Exhibit 4 showing the full proposal marked with the changes in Amendment No. 1.[188] Additionally, FINRA has revised its rule text to seek to provide clarity where commenters have pointed out ambiguities.

H. Implementation Timeframe

One commenter recommended that FINRA allow at least six months after

[181] *See* December Response Letter (citing to *Regulatory Notice* 10–06 (Guidance on Blogs and Social Networking Web Sites) (January 2010); *Regulatory Notice* 07–59 (FINRA Provides Guidance Regarding the Review and Supervision of Electronic Communications) (December 2007)).

[182] *See* Fidelity August Letter; ICI August Letter; and Vanguard August Letter.

[183] *See* ICI August Letter and Vanguard August Letter.

[184] *See* Fidelity August Letter.

[185] *See* FSI August Letter.

[186] *See* TLGI August Letter.

[187] *See* SIFMA August Letter.

[188] *See* Letter from Philip A. Shaikun, FINRA, to Elizabeth M. Murhpy, Secretary, SEC, dated November 2, 2011 *available at www.sec.gov*.

Commission approval of the proposed rule change before these changes become effective.[189] Another commenter recommended that the compliance date be 10 business days after the second calendar quarter end following Commission approval.[190] These commenters also recommended that if FINRA subjects internal training and education materials to proposed FINRA Rule 2210, FINRA should permit a compliance time period of nine months after Commission approval. Another commenter requested that FINRA provide, at a minimum, 12 months for members to adapt to the changes.[191]

FINRA stated that it recognizes that members will need time to alter their internal policies and procedures in response to new requirements imposed by the proposed rule change. FINRA indicated on multiple occasions that it plans to publish a *Regulatory Notice* no later than 90 days following Commission approval of the rule changes.[192] FINRA has stated that the implementation date will be no later than 365 days following Commission approval. In establishing this schedule, FINRA agreed to consider members' need to adopt and implement policies and procedures necessary to comply with the new rules.

FINRA has clarified that it will take into account members' comments in establishing the implementation timeframe for members to adapt to changes. Therefore, the Commission believes that FINRA has responded adequately to the comments regarding the implementation timeframe of the proposed rule.

I. FINRA's General Comments Regarding the Proposal

FINRA believes that the proposed rule change, as amended, satisfies the statutory standard for Commission approval. FINRA indicated that the proposed rule change is primarily intended to simplify FINRA's advertising rules by reducing the number of communications categories, codifying long-standing interpretations of the rules, and clarifying certain provisions. FINRA also stated that the industry supports most of these amendments, which it believes should simplify application of the rules by compliance professionals and other broker-dealer personnel. FINRA also believes that the proposed rule change would continue to ensure that FINRA's rules protect investors from false and misleading communications.

FINRA noted that it has been responsive to industry and Commission staff comments. The industry and other members of the public have had four formal opportunities (one provided by FINRA and three by the Commission) to comment on iterations of the proposal. Throughout the comment process FINRA believes that it has responded to commenters' concerns. FINRA noted that many of the comments concerned provisions of existing NASD Rules 2210 and 2211 that FINRA had not originally proposed to amend.

Among the changes that FINRA has proposed in response to comments are the following:

- Eliminating the existing requirement that internal training material is subject to NASD Rule 2211;
- Explicitly excluding retail communications that are posted on online interactive electronic forums from the filing requirement;
- Expanding a Supervisory Analyst's authority to approve retail communications;
- Eliminating the current filing requirement for advertisements concerning government securities;
- Providing a new exception from the filing and principal pre-use approval requirements for those retail communications that do not make a financial or investment recommendation or otherwise promote a product or service of the member;
- Permitting firms to combine multiple retirement plans offered by the same employer for purposes of determining whether there are 100 participants, thereby making it easier for such an employer to qualify as an institution for purposes of the rule;
- Permitting retail communications concerning collateralized mortgage obligations (CMOs) to be filed within 10 days of first use, rather than 10 days prior to use as required by the existing rule; and
- Authorizing FINRA to grant exemptions from both the filing and principal pre-use approval requirements for good cause shown.

FINRA believes that these changes to the existing rules would address concerns raised by the industry in the comment process while maintaining rigorous investor protections.

J. General Commission Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[193] which, among other things, requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.[194]

As discussed above, the Commission believes that FINRA addressed adequately concerns regarding pre-filing and supervision requirements that could impact efficiency; and notes that the proposed rule's overarching goal of simplifying the regulatory framework enhances efficiency. As FINRA noted in the March Response Letter, the intent of the proposed rule is to simplify communications rules by decreasing the number of communications categories, codifying long-standing interpretations of the rules, and clarifying certain provisions. The Commission believes that the proposed rule simplifies the framework under which broker-dealers are required to supervise communications, disclose information to investors and file information with regulators.

The Commission also believes that FINRA has addressed adequately competition concerns that could arise from differing treatment of certain products or categories of communications. The Commission believes that the proposed requirements for enhanced supervision and review of communications to retail investors by new members, containing certain rankings or ratings and/or concerning more complex products is designed to prevent misleading communications and to protect investors.

The Commission has reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule would have a significant effect on capital formation. The Commission believes that the intent of the proposed rule is beneficial and that the changes will enhance consumer confidence by promoting fair and balanced communications from broker-dealers to the investing public.

As noted in each category above, the Commission believes that FINRA has

[189] *See* Fidelity August Letter and Fidelity December Letter.

[190] *See* ICI August Letter.

[191] *See* FSI December Letter.

[192] *See* October Response Letter and December Response Letter.

[193] 15 U.S.C. 78o–3(b)(6).

[194] *See* 15 U.S.C. 78c(f).

considered carefully and responded adequately to comments and concerns raised about previous versions of the proposed rule. As evidence of FINRA's commitment to drafting a narrowly tailored rule while maintaining comprehensive investor protection standards, the Commission points to the discussion above which highlights the many revisions FINRA made to the proposal to address comments and concerns raised through four separate opportunities for comment.

VI. Accelerated Approval

The Commission finds goods cause, pursuant to Section 19(b)(2) of the Exchange Act,[195] for approving the proposed rule change, as modified by Amendments Nos. 1, 2, and 3 thereto, prior to the 30th day after publication of notice of the filing of Amendment No. 3 in the **Federal Register**. The proposed rule change was informed by FINRA's consideration of, and the incorporation of many suggestions made in comments on a 2009 proposal to members to harmonize and modernize the communications with the public rules,[196] the Original Proposal, the Notice and Proceedings Order, and Amendment No. 2. Amendment No. 3 reflects FINRA's efforts to further address commenter concerns and minimize burdens resulting from the proposed rule's requirements.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment Nos. 1, 2 and 3 on an accelerated basis.

VII. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 3 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–035 and should be submitted on or before April 25, 2012.

VIII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[197] that the proposed rule change (SR–FINRA–2011–035), as modified by Amendments Nos. 1, 2 and 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[198]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8043 Filed 4–3–12; 8:45 am]

BILLING CODE 8011–01–P

[195] 15 U.S.C. 78s(b)(2).

[196] *See* Regulatory Notice 09–55.

[197] 15 U.S.C. 78s(b)(2).

[198] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66677; File No. SR–C2–2012–006]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to Its Automated Improvement Mechanism

March 29, 2012.

On January 31, 2012, the C2 Options Exchange, Incorporated (''Exchange'') 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 amend C2 Rule 6.51, which relates to the Exchange's Automated Improvement Mechanism (''AIM''). The proposal would permit a participant (''Participant''), when submitting an agency order to AIM to initiate an auction against a single price submission, to elect to have last priority in the AIM auction's order allocation.[3]

The proposed rule change was published for comment in the **Federal Register** on February 17, 2012.[4] The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of Section 6(b)(5) of the Act,[6] in that it is designed to provide additional flexibility for Participants to obtain executions on behalf of their customers through AIM because the initiating Participants may elect to have

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In an AIM auction, described here generally, a Participant submits into the mechanism an order that it represents as agent (''Agency Order'') along with a contra-side order at a specified price (which must comply with parameters set forth in Rule 6.51) and for the same size that either represents principal interest of the Participant or is a solicited order. Certain Participants, as set forth in Rule 6.51, then can compete with the contra-side order by submitting bids (offers) to execute against the Agency Order. After better-priced orders are filled and public customers competing at the best price receive their allocations, the Participant is granted priority ahead of other participants to execute against 40% (in some circumstances 50%) of the original size of the Agency Order. Under the proposed rule change, the initiating Participant will be able to elect to have last priority.

[4] *See* Securities Exchange Act Release No. 66384 (February 13, 2012), 77 FR 9717.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

last priority. The Commission believes that, as a result of this flexibility, there may be increased usage of AIM auctions and the mechanism may attract new participants, thereby helping to further competition and to enhance the possibility of price improvement on behalf of customers.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–C2–2012–006) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8036 Filed 4–3–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66676; File No. SR–OCC–2012–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to More Closely Align OCC's By-Laws and Rules with Regulatory Requirements Related to ''Statutory Disqualifications''

March 29, 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 March 15, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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 proposed rule change would more closely align OCC's By-Laws and Rules with applicable regulatory requirements related to ''statutory disqualifications'' under the Act in order to reduce the overall administrative burden on OCC associated with addressing the statutory disqualification of OCC clearing members (''Clearing Members'') and applicants for clearing membership (''Applicants'') while giving guidance to Clearing Members and Applicants as to OCC's policies with respect to statutory disqualifications.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to more closely align OCC's By-Laws and Rules with applicable regulatory requirements related to ''statutory disqualifications'' under the Act in order to reduce the overall administrative burden on OCC associated with addressing the statutory disqualification of Clearing Members and Applicants while giving guidance to Clearing Members and Applicants as to OCC's policies with respect to statutory disqualifications. OCC is also proposing to amend its ''Fitness Standards for Directors, Clearing Members and Others'' (''Fitness Standards'') to bring such standards into conformity with the proposed amendments to OCC's By-Laws. The Fitness Standards were submitted to the Commission in SR–OCC–2011–12 and approved by the Commission on October 27, 2011.[4]

Background

Persons who have engaged in certain types of misconduct are subject to ''statutory disqualification,'' as defined by Section 3(a)(39) of the Act, and must undergo a review by the Commission under Rule 19h–1 of the Act in order to enter or continue in membership in a self-regulatory organization (''SRO''). Section 17A(b)(4)(A) of the Act provides that a registered clearing agency may, and in cases in which the Commission so orders must, deny participation to any person subject to a statutory disqualification. This provision further requires a registered clearing agency to provide the Commission with 30 days' notice before admitting a statutorily disqualified person to clearing membership. Rule 19h–1 of the Act implements these statutory provisions by requiring notice to the Commission if a registered clearing agency proposes either to admit to membership or to continue as a member a person subject to a statutory disqualification. Notably, unlike in the case of a national securities exchange or registered securities association, the rule does not require a registered clearing agency to file such a notice with respect to statutory disqualifications of associated persons of a Member or Applicant. A registered clearing agency is required to file such a notice only when the Member or Applicant itself is subject to the disqualification.

Article V of OCC's By-Laws establishes the qualifications required of Clearing Members and sets forth the procedures for admitting persons to clearing membership, including those that are or become subject to a statutory disqualification. Currently, Interpretation and Policy .03 of Article V, Section 1 of OCC's By-Laws provides that the Membership/Risk Committee (''Committee'') will not recommend the approval of an application for membership if the Applicant or an associated person is subject to a statutory disqualification unless the Committee makes a finding that ''special circumstances'' exist warranting a waiver of the statutory disqualification. The requirements of this By-Law are more stringent than those applied to registered clearing agencies by the Act or Commission rules because they require the Committee to (i) make specific findings of ''special circumstances'' before recommending membership approval and (ii) address statutory disqualifications of associated persons. The By-Laws therefore impose additional administrative burdens on OCC that are not required under any

[7] The Commission notes that Chapter V, Section 18(f)(v) of the Rules of the Boston Exchange Group, LLC, ''The Price Improvement Period'' (''PIP''), includes a similar provision that permits an options participant initiating a PIP auction to designate a lower amount than the 40% to which it is otherwise entitled upon the conclusion of the PIP auction. The Commission also recently approved a similar provision under Rule 6.74A of the Chicago Board of Options Exchange, Incorporated, with respect to its AIM auction. *See* Securities Exchange Act Release No. 66375 (February 10, 2012), 77 FR 9274 (February 16, 2012) (SR–CBOE–2011–117).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Securities Exchange Act Release No. 34–65648 (October 27, 2011), 76 FR 68236 (November 3, 2011).

statute or rule administered by the Commission.

Neither Article V of the By-Laws nor OCC's Rules currently contain procedures for notice to OCC that an Applicant or Clearing Member is subject to a statutory disqualification, which provides insufficient guidance to Applicants and Clearing Members and exposes OCC to the risk that such notice may be given on a delayed basis. OCC's By-Laws and Rules are also silent as to the procedures to be followed by a Clearing Member when it becomes subject to a statutory disqualification even though Rule 19h–1 requires a registered clearing agency to file a notice if it intends to permit such a firm to remain a Clearing Member.

As a registered derivatives clearing organization (''DCO''), OCC is also subject to the jurisdiction of the Commodity Futures Trading Commission (''CFTC''). OCC's By-Laws also address statutory disqualification under Section 8a(2)–(4) of the Commodity Exchange Act (''CEA''), which allows the CFTC to refuse to register or to suspend the registration of futures commission merchants and other entities required to register under the CEA. Neither the CEA nor the CFTC's regulations require DCOs to file a notice similar to that required by Rule 19h–1, and OCC therefore is not proposing to amend Article V or the Rules to specifically address statutory disqualifications under the CEA other than to clarify that if a principal of a futures commission merchant is subject to a statutory disqualification, the Membership/Risk Committee has discretion to not recommend the approval of such futures commission merchant's application for membership pursuant to Section 8a(2) of the CEA or to determine not to permit such a futures commission merchant to continue in Clearing Membership.

In addition to being consistent with the Commission's regulations, OCC's Fitness Standards, as described above, were constructed in part to comply with core principles (''Core Principles'') applicable to DCOs as these core principles were amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act and as are set forth in the CEA. The Fitness Standards establish certain minimum fitness criteria for directors, Clearing Members, and their affiliates sufficient to comply with Core Principle O as set forth in the CEA.[5] However, the Fitness Standards were also drafted to conform to OCC's existing qualification standards for Clearing Members, which standards OCC is now proposing to revise. Accordingly, OCC proposes to amend the Fitness Standards to conform them to the proposed amendments to the qualification standards for Applicants and Clearing Members in OCC's By-Laws.

Proposed By-Law Changes

Article V (Clearing Members) sets forth the qualifications for Clearing Members. OCC proposes to amend the current Article V provisions addressing statutory disqualifications to eliminate provisions that require unnecessary Committee action and to add provisions designed to ensure that OCC receives appropriate notice of a statutory disqualification in order to discharge its obligations as an SRO. The proposed amendments are generally based on similar rules of the National Securities Clearing Corporation and the Chicago Board Options Exchange. OCC proposes to amend Article V, Section 1, Interpretation and Policy .03 (Experience and Competence) to:

1. Eliminate the requirement that the Committee must find ''special circumstances'' warranting the waiver of a statutory disqualification in order to recommend an Applicant's approval for clearing membership providing instead that the Committee may in its discretion consider a statutory disqualification in determining whether or not to recommend approval.

2. Eliminate the requirement that the Committee address the status of associated persons who are subject to statutory disqualifications.

3. Establish procedures requiring Clearing Members and Applicants to provide notice of a statutory disqualification.

4. Eliminate the second paragraph of subsection c. The definition of statutory disqualification in subsection a. includes the conduct covered by Section 15(b)(4)(B) of the Act, making the second paragraph of subsection c. redundant.

OCC proposes to amend Chapter II and Chapter XII of its Rules to:

1. Establish procedures applicable to Clearing Members who are or become subject to a statutory disqualification to provide that: (i) OCC has the discretion not to permit any such Clearing Member to continue in Clearing Membership, (ii) such Clearing Member must notify OCC of any statutory disqualification and may seek to continue in Clearing Membership, (iii) a failure to notify OCC of a statutory disqualification may be deemed a violation of OCC's rules, (iv) OCC may convene a Disciplinary Committee to conduct a hearing concerning a Clearing Member's statutory disqualification, (v) OCC has discretion to waive such provisions if another self-regulatory organization is conducting a proceeding addressing a Clearing Member's statutory disqualification with respect to the same matter, and (vi) OCC has discretion to waive the hearing provisions if OCC intends to grant the Clearing Member's application to continue in Clearing Membership in certain circumstances.

2. Add Interpretation and Policy .01 to Rule 1201 in order to clarify that a decision to suspend or expel a Clearing Member after a disciplinary proceeding under Chapter XII of the Rules would be grounds for summary suspension under Chapter XI of the Rules.

OCC also proposes to amend its Fitness Standards to conform them to the proposed amendments to OCC's By-Laws.

OCC believes that the proposed changes to its By-Laws are consistent with the purposes and requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to OCC because they are designed to more closely align OCC's By-Laws and Rules with applicable regulatory requirements, establish standard notification and other procedures, provide Clearing Members with guidance as to OCC's policies regarding statutory disqualifications, facilitate the timely filing of notices pursuant to Rule 19h–1 should OCC determine to admit to membership or continue in membership any person subject to a statutory disqualification and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of OCC. The proposed rule change is not inconsistent with any rules of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

[5] Commodity Exchange Act Section 5b(c)(2)(O); 7 U.S.C. 7a–1(c)(2)(O).

[6] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve or disapprove 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–OCC–2012–03 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–OCC–2012–03. 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 Section, 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 filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_03.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–03 and should be submitted on or before April 25, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–8035 Filed 4–3–12; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 33

This document replaces and supersedes ''Line of Succession Designation No. 1–A, Revision 32.''

Line of Succession Designation No. 1–A, Revision 33:

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d), to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief of Staff;

(2) General Counsel;

(3) Chief Operating Officer;

(4) Associate Administrator, Office of Disaster Assistance; and

(5) Regional Administrator for Region 8.

(b) Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2, ''absence from the office,'' as used in reference to myself in paragraph (a) above, means the following:

(1) I am not present in the office and cannot be reasonably contacted by phone or other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or other electronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(c) An individual serving in an acting capacity in any of the positions listed in subparagraphs (a)(1) through (5), unless designated as such by the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(d) This designation shall remain in full force and effect until revoked or superseded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(e) Serving as Acting Administrator has no effect on the officials listed in subparagraphs (a)(1) through (5), above, with respect to their full-time position's authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: March 15, 2012

Karen G. Mills,

Administrator.

[FR Doc. 2012–8015 Filed 4–3–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Delegation of Authority; Delegation of Authority No. 24 to the Chief Operating Officer

AGENCY: U.S. Small Business Administration.

ACTION: Notice of delegation of authority.

DATES: Effective March 15, 2012.

SUMMARY: This is notice that the Administrator of Small Business Administration (SBA) has delegated to the Chief Operating Officer (COO) of SBA management and supervisory authority, with certain limited exceptions noted below, over the Office of the Chief Information Officer and the Office of Management and Administration, and responsibility for coordinating and collaborating with other relevant officers within the Agency so as to achieve the mission and goals of the Agency.

[7] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Monique Fortenberry, Deputy General Counsel, Office of General Counsel, Small Business Administration, 409 3rd Street SW., Suite 7200, Washington, DC 20416, telephone number 202–619–1848. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling 1–704–344–6640.

SUPPLEMENTARY INFORMATION: Certain management, program and planning functions previously performed by the Deputy Administrator, the Associate Administrator for Management and Administration, and by the Chief Information Officer will now be performed, managed, or coordinated by the COO. These functions include providing overall organizational management to improve Agency performance and achieve the mission and goals of the Agency through the use of strategic and performance planning, measurement, analysis, assessment of progress, and use of performance information to improve results achieved; security and emergency planning; grants management and oversight; long-range budgeting and accounting; hiring and training employees; modernizing information technology systems; information security; protecting privacy; internal procurement and contracting; strategic planning; and disaster preparedness policy.

Section A. Delegation of Authority No. 24 to the Chief Operating Officer

The Administrator of the Small Business Administration has delegated to the COO authority to:

1. Provide overall organizational guidance and oversight to improve Agency performance, and to achieve the mission and goals of the Agency through the use of strategic and performance planning, measurement, analysis, regular assessment of progress and the use of performance information to improve results;

2. Manage and supervise, either directly or through subordinate managers, the Office of Management and Administration (OM&A). OM&A is responsible for managing administrative services; facilities management; executive secretariat and correspondence management; grants management; equal employment opportunity and civil rights compliance; and human capital management, including performance management, executive resources, human capital policy, planning and training, recruitment and staffing, employee and labor relations, pay, benefits and retirement. With regard to the Office of Equal Employment Opportunity and Civil Rights Compliance, however, the COO's responsibilities are limited to guidance and oversight of the office's budget, staffing, external reporting requirements, setting and meeting performance goals, and other organizational matters;

3. Manage and supervise, either directly or through subordinate managers, the Office of the Chief Information Officer (OCIO). OCIO is responsible for modernizing information technology systems; providing network support, application development, IT security, IT project management, enterprise architecture services; and participating in cross-Government initiatives. However, for the purpose of performing the duties and responsibilities mandated by Section 5125(b) & (c) of the Clinger-Cohen Act of 1996, 44 U.S.C. 3506, the CIO will continue to report directly to the Administrator; and

4. Coordinate and collaborate with other relevant officers within the Agency who have a significant role in contributing to and achieving the mission and goals of the Agency, in particular the Chief Financial Officer and Associate Administrator for Performance Management, and the Director of the Office of Disaster Planning.

Section B. Authority to Re-Delegate

The COO may not re-delegate any of the authority outlined under Section A, above. However, in the event that the COO is absent from the office, as defined in SBA Standard Operating Procedure 00 01 2, or is unable to perform the functions and duties of the position, an individual serving in an acting capacity, by designation from the Administrator or pursuant to a written and established line of succession, shall have the authority delegated to the COO as outlined under Section A, above.

Section C. Authority Superseded

All previous delegations of authority from the Administrator of SBA to the COO or any other officer of the Agency are superseded to the extent that such previous delegations are inconsistent with the delegation of authority outlined in Section A, above.

Section D. Authority Excepted

The authority delegated to the COO under Section A, above, does not include the authority to sue or be sued, or to issue or waive regulations.

Authority: 15 U.S.C. 634 and 31 U.S.C. 1123.

Dated: March 15, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–8016 Filed 4–3–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13058 and #13059]

West Virginia Disaster #WV–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–4061–DR), dated 03/22/2012.

Incident: Severe Storms, Flooding, Mudslides, and Landslides.

Incident Period: 03/15/2012 and continuing.

Effective Date: 03/22/2012.

Physical Loan Application Deadline Date: 05/21/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/24/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/22/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Lincoln, Logan, Mingo.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.125
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13058B and for economic injury is 13059B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–8014 Filed 4–3–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.250 (2 ¼) percent for the April–June quarter of FY 2012.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. 2012–8012 Filed 4–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 7837]

Culturally Significant Objects Imported for Exhibition Determinations: ''Nicolai Fechin''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Nicolai Fechin,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Russian Art, Minneapolis, Minnesota, from on or about August 18, 2012, until on or about January 13, 2013, the Frye Art Museum, Seattle, Washington, from on or about February 2, 2013, until on or about April 7, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 28, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–8096 Filed 4–3–12; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS431]

WTO Dispute Settlement Proceeding Regarding China—Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on March 13, 2012, in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement''), the United States requested consultations regarding restraints on the export from China of various forms of rare earths, tungsten and molybdenum (the ''materials''). That request may be found at *www.wto.org* contained in a document designated as WT/DS431/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 30, 2012 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR 2012–0005. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Jared Wessel, Assistant General Counsel, or Ben Kostrzewa, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On March 13, 2012, the United States requested consultations regarding China's restraints on the export from China of various forms of rare earths (''rare earths'' include, but are not limited to, items falling under the following eight-digit HS numbers identified in the Announcement No. 27 Issuing the 2012 Tariff Implementation Program (State Council Customs Tariff Commission, shuiweihui, No. 27, issued December 9, 2011, effective January 1, 2012) (hereinafter, the ''*2012 Tariff Implementation Program*''): 25309020, 26122000, 28053011, 28053012, 28053013, 28053014, 28053015, 28053016, 28053017, 28053019, 28053021, 28053029, 28461010, 28461020, 28461030, 28461090, 28469011, 28469012, 28469013, 28469014, 28469015, 28469016, 28469017, 28469019, 28469021, 28469022, 28469023, 28469024, 28469025, 28469026, 28469028, 28469029, 28469031, 28469032, 28469033, 28469034, 28469035, 28469036, 28469039, 28469041, 28469042, 28469043, 28469044, 28469045, 28469046, 28469048, 28469049, 28469091, 28469092,

28469093, 28469094, 28469095, 28469096, 28469099, 72029911, 72029919, 72029991, 72029999, and 72051000. Forms of rare earths also include, but are not limited to, items falling under the following 10-digit Chinese Customs Commodity Codes (''CCC Codes''), as identified in the Notice on Issuing the ''2012 Export Licensing Management Commodities List,'' Ministry of Commerce and General Administration of Customs Notice No. 98 (December 30, 2011), (hereinafter the ''*2012 Export Licensing Management Commodities List''*): 2530902010, 2530902090, 2612200000, 2805301100, 2805301200, 2805301300, 2805301400, 2805301510, 2805301590, 2805301600, 2805301700, 2805301913, 2805301914, 2805301915, 2805301990, 2805302110, 2805302190, 2805302910, 2805302990, 2846101000, 2846102000, 2846103000, 2846109010, 2846109090, 2846901100, 2846901200, 2846901300, 2846901400, 2846901500, 2846901600, 2846901700, 2846901920, 2846901930, 2846901940, 2846901970, 2846901980, 2846901991, 2846901992, 2846901999, 2846902100, 2846902200, 2846902300, 2846902400, 2846902500, 2846902600, 2846902810, 2846902890, 2846902900, 2846903100, 2846903200, 2846903300, 2846903400, 2846903500, 2846903600, 2846903900, 2846904100, 2846904200, 2846904300, 2846904400, 2846904500, 2846904600, 2846904810, 2846904890, 2846904900, 2846909100, 2846909200, 2846909300, 2846909400, 2846909500, 2846909600, 2846909910, 2846909990, 7202991100, 7202991200, 7202991900, 7202999110, 7202999191, 7202999199, and 7202999900. Forms of rare earths may also include the following CCC Codes listed in the Announcement Regarding Export Declarations for Rare Earth Products, (General Administration of Customs, No. 37, issued May 27, 2011, effective June 1, 2011): 25309020, 26122000, 280530, 2846, 32065000, 36069011, 36069019, 38249099, 72029911, 72029912, 72029919, 72029991, 72029999, 72044900, 72051000, 72052100, and 85051110); tungsten (''tungsten'' includes, but is not limited to, items falling under the following eight-digit HS numbers, as identified in the *2012 Tariff Implementation Program:* 26209910, 28259011, 28259012, 28259019, 28418010, 28418020, 28418030, 28418040, 28418090, 28499020, 72028010, 72028020, 81011000, 81019400, and 81019700. Forms of tungsten also include, but are not limited to, items falling under the following 10-digit CCC Codes, as identified in the *2012 Export Licensing Management Commodities List:* 2611000000, 2620991000, 2825901100, 2825901200, 2825901910, 2841801000, 2841802000, 2841803000, 2841804000, 2849902000, 3824300010, 7202801000, 7202802000, 8101100010, 8101100090, 8101940000, and 8101970000); and molybdenum (''molybdenum'' includes, but is not limited to, items falling under the following eight-digit HS numbers, as identified in the *2012 Tariff Implementation Program:* 26131000, 26139000, 28257000, 28417010, 28417090, 72027000, 81021000, 81029400, 81029700. Forms of molybdenum also include, but are not limited to, items falling under the following 10-digit CCC Codes, as identified in the *2012 Export Licensing Management Commodities List:* 2613100000, 2613900000, 2825700000, 2841701000, 2841709000, 7202700000, 8102100000, 8102940000, 8102970000, and 8102990000).

These export restraints include: Export duties on the materials; quantitative restrictions such as quotas on the export of the materials; additional requirements and procedures in connection with the administration of the quantitative restrictions on the export of the materials, including, but not limited to, fees and formalities, restrictions on the right to export such as prior export experience requirements and minimum capital requirements, and other conditions that appear to treat foreign-invested entities differently from domestic entities; licensing requirements on the export of the materials, including in connection with the administration of the quantitative restrictions imposed on the materials; and a minimum export price system for the export of the materials. In addition, China appears to administer these export restraints and the requirements and procedures in connection with the export restraints in a manner that is not uniform, impartial, reasonable, or transparent. It further appears that China imposes and administers these export restraints through measures that are not published.

USTR believes that these export restraints and China's administration of and manner of imposing these export restraints are inconsistent with China's obligations under Articles VII, VIII, X, and XI of the *General Agreement on Tariffs and Trade 1994;* paragraphs 2(A)2, 2(C)1, 5.1, 5.2, 7.2, 8.2 and 11.3 of Part I of the *Protocol on the Accession of the People's Republic of China* (''Accession Protocol''); and the provisions of paragraph 1.2 of Part I of the Accession Protocol (which incorporates commitments in paragraphs 83, 84, 162, and 165 of the *Report of the Working Party on the Accession of China*).

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR 2012–0005. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR 2012–0005 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment''. (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comments'' field, or by attaching a document using an ''upload file'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be

determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov,* docket number USTR 2012–0005. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Bradford Ward,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012–8018 Filed 4–3–12; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2012–0006–N–4]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 4, 2012.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–___.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Toone at *kimberly.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of eight currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

OMB Control Number: 2130–0006.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Abstract: The regulations pertaining to railroad signal systems are contained in 49 CFR parts 233 (Signal System Reporting Requirements), 235 (Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System), and 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Systems, Devices, and Appliances). Section 233.5 provides that each railroad must report to FRA within 24 hours after learning of an accident or incident arising from the failure of a signal appliance, device, method, or

system to function or indicate as required by Part 236 of this Title that results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Section 233.7 sets forth the specific requirements for reporting signal failures within 15 days in accordance with the instructions printed on Form FRA F 6180.14. Finally, Section 233.9 sets forth the specific requirements for the ''Signal System Five Year Report.'' It requires that every five years each railroad must file a signal system status report. The report is to be prepared on a form issued by FRA in accordance with the instructions and definitions provided. Title 49, Part 235 of the Code of Federal Regulations, sets forth the specific conditions under which FRA approval of modification or discontinuance of railroad signal systems is required and prescribes the methods available to seek such approval. The application process prescribed under Part 235 provides a vehicle enabling FRA to obtain the necessary information to make logical and informed decisions concerning carrier requests to modify or discontinue signaling systems. Section 235.5 requires railroads to apply for FRA approval to discontinue or materially modify railroad signaling systems. Section 235.7 defines material modifications and identifies those changes that do not require agency approval. Section 235.8 provides that any railroad may petition FRA to seek relief from the requirements under 49 CFR part 236. Sections 235.10, 235.12, and 235.13 describe where the petition must be submitted, what information must be included, the organizational format, and the official authorized to sign the application. Section 235.20 sets forth the process for protesting the granting of a carrier application for signal changes or relief from the rules, standards, and instructions. This section provides the information that must be included in the protest, the address for filing the protest, the item limit for filing the protest, and the requirement that a person requesting a public hearing explain the need for such a forum. Section 236. 110 requires that the test results of certain signaling apparatus be recorded and specifically identify the tests required under sections 236.102–109; sections 236.377–236.387; sections 236.576; 236.577; and section 236.586–589. Section 236.110 further provides that the test results must be recorded on pre-printed or computerized forms provided by the carrier and that the forms show the name of the railroad, place and date of the test conducted, equipment tested, test results, repairs, and the condition of the apparatus. This section also requires that the employee conducting the test must sign the form and that the record be retained at the office of the supervisory official having the proper authority. Results of tests made in compliance with sections 236.587 must be retained for 92 days, and results of all other tests must be retained until the next record is filed, but in no case less than one year. Additionally, section 236.587 requires each railroad to make a departure test test of cab signal, train stop, or train control devices on locomotives before that locomotive enters the equipped territory. This section further requires that whoever performs the test must certify in writing that the test was properly performed. The certification and test results must be posted in the locomotive cab with a copy of the certification and test results retained at the office of the supervisory official having the proper authority. However, if it is impractical to leave a copy of the certification and test results at the location of the test, the test results must be transmitted to either the dispatcher or one other designated official who must keep a written record of the test results and the name of the person performing the test. All records prepared under this section are required to be retained for 92 days. Finally, section 236.590 requires the carrier to clean and inspect the pneumatic apparatus of automatic train stop, train control, or cab signal devices on locomotives every 736 days, and to stencil, tag, or otherwise mark the pneumatic apparatus indicating the last cleaning date.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
233.5—Reporting of accidents	754 railroads	10 phone calls	30 minutes	5
233.7—False proceed signal failures report	754 railroads	100 reports	15 minutes	25
233.9—Signal System Five Year Report	754 railroads	754 reports	60 minutes	754
235.5—Block signal applications	80 railroads	111 applications	10 hours	1,110
235.8—Applications for relief	80 railroads	24 relief requests	2.5 hours	60
235.20—Protest letters	80 railroads	50 protest letters	30 minutes	25
236.110—Record keeping	80 railroads	936,660 forms	27 minutes/ 15 minutes	393,397
236587—Departure tests	18 railroads	730,000 tests	4 minutes	48,667
236.590—Pneumatic valves	18 railroads	6,697 stencilings/tags	22.5 minutes	2,511

Total Estimated Responses: 1,674,406.

Total Estimated Annual Burden: 446,554 hours.

Status: Regular Review.

Title: U.S. DOT Crossing Inventory Form.

OMB Control Number: 2130–0017.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): FRA F 6180.71.

Abstract: Form FRA F 6180.71 is a voluntary form, and is used by States and railroads to periodically update certain site specific highway-rail crossing information which is then transmitted to FRA for input into the National Inventory File. This information has been collected on the U.S. DOT–AAR Crossing Inventory Form (previous designation of this form) since 1974 and maintained in the National Inventory File database since 1975. The primary purpose of the National Inventory File is to provide for the existence of a uniform database which can be merged with accidents data and used to analyze information for planning and implementation of crossing safety programs by public, private, and governmental agencies responsible for highway-rail crossing safety. Following the official establishment of the National Inventory in 1975, the Federal Railroad Administration (FRA) assumed the principal responsibility as custodian for the maintenance and continued development of the U.S. DOT/AAR National Highway-Rail Crossing Inventory Program. The major goal of the Program is to provide Federal, State, and local governments, as well as the railroad industry, information for the improvement of safety at highway-rail crossings. Good management practices

necessitate maintaining the database with current information. The data will continue to be useful only if maintained and updated as inventory changes occur. FRA previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) Clearance Number 2130–0017. OMB approved the burden for this form through July 31, 2006. FRA is requesting a new three year approval from OMB for this information collection.

Respondent Universe: 754 Railroads.

Frequency of Submission: On occasion; monthly.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Crossing Inventory—Forms	754 railroads	3,820 forms	30 minutes	1,910
Crossing Inventory—Mass Update Printouts	754 railroads	269 printouts (4,625 updated records).	30 minutes	135
Crossing Inventory—Disc/Tape (non-GX)	754 railroads	650 discs/tapes (95,666 records updated).	30 minutes	325
Crossing Inventory—GX 32 Electronic Updates	754 railroads	12,848 records updated	6 minutes	1,285
Special Mass Changes	754 railroads	36,679 records updated	Automatic	0

Total Responses: 153,638.

Estimated Total Annual Burden: 3,655 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Dated: Issued in Washington, DC, on March 29, 2012.

Rebecca Pennington,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2012–8007 Filed 4–3–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0160; Notice 2]

Volvo Trucks North America and Mack Trucks, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of Petition Grant.

SUMMARY: North American Trucks (NAT) on behalf of Volvo Trucks North America (VTN) and Mack Trucks, Inc. (MTI) [1] has determined that certain 2008 through 2010 Volvo VHD model, 2008 and 2009 Volvo VHL model, 2008 and 2009 Volvo VNL model, 2008 Volvo VT model, and 2008 through 2010 Mack CHU, CXU and GU model trucks that were built with certain Meritor WABCO Vehicle Control Systems (Meritor WABCO) ABS Modulator valves fail to meet the requirements of paragraph S5.3.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems.* VTN and MTI filed appropriate reports pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports;* the original submissions were dated April 30, 2010, and corrected versions were dated May 28, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), VTN and MTI have petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of VTN and MTI's petitions was published, with a 30-day public comment period, on December 8, 2010, in the **Federal Register** (75 FR 76518). One comment was received from Meritor WABCO, the equipment manufacturer who manufactured the component that is the source of the subject noncompliance. Subsequent to receiving the comment, the NHTSA Office of Vehicle Safety Compliance (OVSC) requested, and NAT provided, information that supplements the data, views and arguments included in the VTN and MTI petitions. To view the petitions, comment and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2010–0160.''

Contact Information: For further information on this decision, contact Mr. James Jones, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5294, facsimile (202) 366–7002.

Summary OF VTN's and MTI's Petitions: VTN stated that the affected Volvo VNL, VNM, and VHD model trucks were manufactured from March 1, 2007 through December 11, 2009. A total of 1,916 affected Volvo trucks were manufactured of which 1,763 were sold in the U.S.

MTI stated that the affected Mack CHU, CXU and GU model trucks were manufactured from March 1, 2007, through December 11, 2009. A total 1,287 affected Mack trucks were manufactured of which 1,202 were sold in the U.S.

Only the trucks sold in the United States are the subject of their petition.

VTN and MTI state that the noncompliance is that the quick release service brake function for brakes mounted on the vehicle front steer axle may not activate properly during FMVSS No. 121 brake pressure release certification testing due to an internal component variation in certain Meritor WABCO ABS modulator valves installed on the subject vehicles. As a result, certain vehicles may not comply with the FMVSS No. 121 brake pressure release timing requirement as specified in S5.3.4.1(a). However, VTN and MTI indicate that they do not believe that this issue has any effect on the ABS performance of the brake system.

VTN and MTI also state that they have taken steps to correct the noncompliance in future production.

VTN and MTI rely on the test report submitted with the petition to support their contention that the described FMVSS No. 121 noncompliance is inconsequential to motor vehicle safety.

VTN and MTI believe that their petitions, to exempt them from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

[1] Volvo Trucks North America and Mack Trucks, Inc., are both United States corporations that import and manufacture motor vehicles.

NHTSA Decision

Background

FMVSS No. 121 establishes performance and equipment requirements for motor vehicles equipped with air brake systems. Paragraph S5.3.4.1(a) of FMVSS No. 121, requires in pertinent part that;

> With an initial service brake chamber air pressure of 95 psi, the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 psi in not more than 0.55 second in the case of trucks and buses; * * *

To minimize excessive brake drag, the requirement limits the time for pressurized air to exhaust from the service brake chamber after the service brakes have been released. For vehicles equipped with conventional S-cam foundation brakes, the brake linings release from the drums as pressurized air exhausts from the service brake chambers. Typically, heavy-duty vehicle manufacturers have met the requirement by installing a quick release valve in the front (steer) axle control line, between the left and right ABS modulator valves. The subject Volvo and Mack trucks have ABS modulator valves which have an integrated quick release function to allow rapid exhaustion of air pressure from the front axle brake chambers. In faulty valves, the quick release function does not operate as intended causing slow exhaustion of pressurized air from the brake chambers and consequently slow pneumatic release times. Pneumatic release timing test results provided by NAT show that a tractor equipped with a faulty valve took 0.98s for pressurized air inside the brake chamber to fall from 95 psi to 5 psi versus 0.55s as required.

Poor pneumatic timing could affect brake performance. For example, if a vehicle's wheels lock as the driver is attempting to stop, the vehicle will skid. If the driver is to regain control of the vehicle, immediate release of the brakes is necessary.[2] Additionally, poor pneumatic timing could cause the brakes to drag and cause premature wear of the brake linings. Under certain conditions, excessive brake drag could contribute to heat build-up within the foundation brake assembly resulting in degradation of braking power, particularly in cases in which the driver repeatedly applies the vehicle's brakes to reduce speed while traveling down an extended slope.

Subsequent to submitting the VTN and MTI petitions, NAT provided test data and analyses [3] to evaluate the effect of the faulty valves on various aspects of the vehicle's braking performance. The tests and analyses were performed by an independent test lab, Link Commercial Vehicle Testing (Link) and Mr. Richard Radlinski. Based on the test results, NAT has drawn the conclusion that there is no degradation of the brake performance of subject noncompliant vehicles and no negative impact on vehicle safety.

The Problem—Faulty Meritor Wabco ABS Modulator Valve

The noncompliance is caused by a faulty quick release service brake function that may not activate properly to release air pressure from the brake chamber in the time specified by FMVSS No. 121. The quick release function is integral to Meritor WABCO's ABS modulator valve. In brake system designs other than the subject vehicle's, a separate quick release valve placed between the front steer axle's left and right ABS modulator valves, performs the quick release function.

According to NAT, when the modulator valve was retooled due to a supplier sourcing change, the case surface was not adequately controlled within tolerance. As a result, the required internal pressure differential within the valve does not develop as quickly as it should and air does not exhaust, or exhausts slowly, through the valve's exhaust port. This leads to increased brake release times. Brake actuation, however, is not adversely affected.

Link/Radlinski Test Data

A. Release Timing Tests

Link conducted timing tests to illustrate the difference between release times of noncompliant and compliant systems with and without ABS operational. The static timing tests were conducted on a 4x2 Volvo tractor's front steer axle equipped with a properly functioning ABS modulator valve (i.e., fast valve). To achieve the noncompliant system, Link replaced the good valve with a faulty one (i.e., slow valve).

To simulate braking conditions without ABS operational, Link followed OVSC compliance test procedure (OVSC TP) protocol. To simulate braking conditions with ABS operational, Link first filled the air brake chamber to 95 psi. Then, Link manually activated the ABS modulator solenoid valve (ABS control system was disconnected) to the ''open'' position and measured how long it took for the air to exhaust down to 5 psi through exhaust ports controlled by the modulator valve.

Without ABS operational, the compliant system had average release times of 0.36s and 0.37s, for left and right brake chambers respectively, comfortably below the FMVSS No. 121 requirement of 0.55s. However for the noncompliant system, the release times were much higher and well above the FMVSS No. 121 requirement at 0.91s and 0.98s, for left and right brake chambers, respectively.

With ABS operational, release times were all below 0.20s for both compliant and non-compliant systems. As noted by Link, these results may not fully represent actual release times that would occur during a real ABS braking event because the electronic control unit's (ECU) activation of the ABS modulator valve was bypassed.

B. Road Tests

Link conducted four different road tests on two Volvo tractors to illustrate differences in the dynamic braking performance of noncompliant vehicles when compared to compliant vehicles. One tractor was equipped with a single rear axle (i.e., 2009 Volvo VNM 4x2) and the other with a dual rear axle and lift axle (i.e., 2007 Volvo VT 8x4). To simulate the noncompliant system configuration, Link lengthened the brake control line from the brake pedal to the front axle's modulator valves.

1. Fully Loaded Vehicle—60 mph stopping distance tests (ABS operational).

These tests generally followed OVSC TP protocol. Both tractors, loaded to gross vehicle weight rating (GVWR) using an un-braked control trailer, were stopped on dry pavement from an initial speed of 60 mph. There was no significant difference in the average stopping distances of noncompliant vehicles when compared to compliant vehicles.

2. Unloaded Vehicle (Bobtail)—500 ft., wet Jennite (low friction surface), 30 mph, Braking-in-a-curve tests (ABS operational).

These tests also generally followed OVSC TP protocol. Additionally, Link measured the stopping distances during each run. The results show that the differences in performance between noncompliant and compliant configurations were insignificant.

3. Repeated brake Snubs—Simulated heat build-up tests (ABS operational).

The results show no significant rise in brake lining temperatures for the noncompliant configuration when compared to the compliant configuration.

[2] 56 FR13785.

[3] Requested by NHTSA's Office of Vehicle Safety Compliance (OVSC) by letter dated June 6, 2011.

4. Unloaded and Fully Loaded—500 ft., wet Jennite, 30 mph, Braking-in-a-curve tests (ABS Failure Modes).

The results were inconclusive. Noncompliant configurations performed better than compliant configurations during some stops and not as good as compliant configurations during other stops. Link attributed the confounding results to variability in the friction level of the wet Jennite surface during the tests.

Summary and Conclusion

The vehicle manufacturer installed faulty ABS modulator valves on the front steer axle of subject vehicles. The faulty valves were not manufactured within engineering specifications and do not rapidly release pressurized air from brake chambers as required. Laboratory test data results and analyses submitted by the vehicle manufacturer demonstrate the following:

1. When simulating severe braking events which require ABS activation, noncompliant vehicles would meet the pneumatic time requirement because pressurized air in the brake chamber quickly exhausts through the valve via ports controlled by ABS modulators.

2. There is no significant difference in stopping distances of noncompliant vehicles when compared to compliant vehicles during 60 mph panic stops.

3. There is no significant difference in stopping distances or vehicle stability of noncompliant vehicles when compared to compliant vehicles during 30 mph braking-in-a-curve tests.

4. There is no significant rise in brake lining temperatures of noncompliant vehicles when compared to compliant vehicles during repeated brake stops at 30–70 psi application pressures.

NHTSA has concluded that the test data results and analyses are sufficient to grant the petition for the specific conditions that cause the subject vehicles to be out of compliance with the standard's pneumatic release time requirement.

NHTSA emphasizes that in the case of the subject vehicles, only the failure of the release timing to meet the exact timing requirement for the brakes mounted on the steer axles of the subject truck tractors is at issue. The release timing requirements for the drive axles and for the trailer brake control line output coupling of the subject vehicles were not affected by this noncompliance and were not considered under this grant. NHTSA considers brake release timing to be an important element of FMVSS No. 121 requirements, because in the event a non-ABS trailer is being towed, the driver is able to quickly release the brakes of any locked wheels to restore vehicle control and maintain yaw stability. Also, the release timing requirements ensure that brakes on certain axles of a vehicle combination (steer, drive, or trailer) do not excessively drag such that during repeated brake applications they become overly heated. The subject petition is granted solely on the demonstration by petitioner, comparing compliant and noncompliant vehicles, that the noncompliance in the subject vehicles does not create a significant safety risk. It is important that all other vehicles subject to these requirements continue to meet them.

In consideration of the foregoing, NHTSA concludes that VTN and MTI have provided sufficient information to indicate that the subject FMVSS No. 121 noncompliance is inconsequential to motor vehicle safety. Accordingly, VTN and MTI's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that VTN and MTI no longer controlled at the time that they determined that a noncompliance existed in the subject vehicles.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: March 28, 2012.

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

[FR Doc. 2012–8000 Filed 4–3–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0025; Notice 1]

Bridgestone Americas Tire Operations, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of Petition.

SUMMARY: Bridgestone Americas Tire Operations, LLC, (Bridgestone),[1] has determined that certain Firestone Transforce AT, size LT265/70R17, light truck replacement tires manufactured between November 20, 2011 and December 10, 2011, do not fully comply with paragraph S5.5(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Bridgestone has filed an appropriate report dated January 9, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Bridgestone has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Bridgestone's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Tires Involved: Affected are approximately 467 Firestone brand Transforce AT, size LT265/70R17, light truck replacement tires manufactured between November 20, 2011 and December 10, 2011, at the Bridgestone Canada, Inc., plant located in Uoliette, Quebec, Canada and imported into the United States by Bridgestone.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 467 [2] tires that Bridgestone no longer controlled at the time that it determined that a noncompliance existed in the subject tires.

Noncompliance: Bridgestone explains that the noncompliance is that the

[1] Bridgestone Americas Tire Operations, LLC (Bridgestone), is a Delaware corporation that manufactures and imports replacement equipment.

[2] Bridgestone's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Bridgestone as a replacement equipment manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for 467 of the affected tires. However, a decision on this petition will not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Bridgestone notified them that the subject noncompliance existed.

sidewall marking on the intended outboard sidewall of the subject tires describes the maximum load in kilograms incorrectly. Specifically, the tires in question were inadvertently marked with a maximum load of 1350 kg. The labeling should have read 1320 kg.

Rule text: Paragraph S5.5(d) of FMVSS No. 139 require in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches * * *

(d) The maximum load rating and for LT tires, the letter designating the tire load range; * * *

Summary of Bridgestone's Analysis and Arguments

Bridgestone explains that while the noncompliant tires are mislabeled; the tires do in fact have the correct marking for the maximum load in pounds on the intended outboard sidewall, and the maximum load marking in both pounds and kg is correct on the intended inboard sidewall. The tires also meet or exceed all other applicable FMVSS.

Bridgestone argues that the subject mismarking is inconsequential as it relates to motor vehicle safety and is unlikely to have an adverse impact on motor vehicle safety since the actual performance of the subject tires will not be affected by the mismarking. Bridgestone supports this belief by stating that the tires met the performance requirements of FMVSS No. 139 for endurance and high speed when tested at the 1350 kg load.

Bridgestone also points out its belief that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

In summation, Bridgestone believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 4, 2012.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: March 29, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–8050 Filed 4–3–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0083; Notice 1]

Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of Petition.

SUMMARY: Michelin North America, Inc.[1] (MNA) has determined that certain Michelin brand passenger car replacement tires, do not fully comply with paragraph S5.5 [2] of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New pneumatic radial tires for light vehicles.* MNA has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* (dated June 2, 2011).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), MNA has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Tires involved: Affected are approximately 17,500 Michelin Primacy MXV4 TL passenger car replacement tires labeled as sizes P205 65 R15 94H, P205 65 R15 94V, and P225 55 R17 97H that were manufactured by SC Michelin Romania SA in Victoria, Romania between January 9, 2011 and May 28, 2011.

[1] Michelin North America, Inc. is a New York corporation that manufactures and imports motor vehicle replacement equipment.

[2] In its petition MNA states its belief that the subject tires do not meet the load marking requirements of 49 CFR 571.139 S5.5(d). However, the actual noncompliance is due to an error in the tire size designation marking required by 49 CFR 571.139 S5.5(b) which causes the load marking to appear to be incorrect.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 17,500 [3] Michelin Primacy MXV4 TL passenger car replacement tires that MNA no longer controlled at the time it determined that the noncompliance existed.

Paragraph S5.5 of FMVSS No. 139 requires in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5 each tire must be marked on each sidewall with the information specified in S5.5 (a) through (d) and on one sidewall with the information specified in S5.5 (e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches* * *

(b) The tire size designation as listed in the documents and publications specified in S4.1.1 of this standard;* * *

Noncompliance: MNA explained that the noncompliance is a tire sidewall labeling error. A prefix letter ''P'' was inadvertently added to the tire size designation required by paragraph S5.5 (b) by FMVSS No. 139.

The tire was designed to comply with the ETRTO standard for maximum load and inflation pressure. The Max Load and Max Pressure markings on the tire are correct and the tire passes all certification requirements at the marked loads/pressures under 49 CFR 571.139. The mix of ETRTO loads with the ''P''-metric size designation causes the tire to be noncompliant with both the ETRTO standard and the T&RA standard, thus becoming noncompliant with the labeling requirements of 49 CPR Part 571.139 S5.5. All other markings are compliant with the FMVSS requirements.

MNA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) Both the 205/65 R15 and the 225/55 R17 radial tires, each tire was originally conceived as a Euro-metric radial tire. Both tires when certifying to DOT requirements were tested in accordance with safety standard FMVSS No. 139 as well as the ETRTO standard for dimensions, pressure, load, and performance. To which the subject tires meet or exceed all of the minimum performance requirements for FMVSS No. 139 at the load and pressure marked on the respective sidewall.

(2) The P-metric version of the tire dimensions specify a maximum load and pressure that is less than the maximum load and associated pressure of the Euro-metric dimension. Performace capabilities as P-metric dimensions exceed all P-metric requirements.

(3) Should the subject tires be selected and fitted based on their markings, no possibility of tire overloading exists.

(4) The P-metric dimensional marks on the subject tires would be treated as such in the replacement market. Which at the dealer or consumer level, the inconsistency between the dimensional marking and the maximum load marking may lead to some confusion at the time of installation but fitment would still be acceptable.

(5) Whether the tires are fitted as P-metric dimensions per the current industry fitment guide, or fitted according to the subject tire's sidewall's maximum load. These tires do not risk the possibility of being overloaded when making a replacement tire selection for vehicle fitment.

In addition, MNA states that it has corrected the problem that caused the noncompliance so that it will not reoccur in future production.

In summation, MNA believes that the subject noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

DATES: Comment closing date: May 4, 2012.

[3] MNA's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt MNA as a motor vehicle replacement equipment manufacturer from the notification and recall responsibilities of 49 CFR part 573 for 17,500 of the affected vehicles. However, a decision on this petition cannot relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–8051 Filed 4–3–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0035, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1999 to 2006 Toyota Land Cruiser IFS 100 Series Multipurpose Passenger Vehicles Manufactured Prior to September 1, 2006 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 1999 to 2006 Toyota Land Cruiser IFS 100 Series multipurpose passenger vehicles (MPVs) manufactured prior to September 1, 2006 that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1999 to 2006 Toyota Land Cruiser IFS 100 Series MPV manufactured prior to September 1, 2006) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 4, 2012.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS, of Havre de Grace, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether nonconforming 1999 to 2006 Toyota Land Cruiser IFS 100 Series MPVs manufactured prior to September 1, 2006 are eligible for importation into the United States. The vehicles which US SPECS believes are substantially similar are 1999 to 2006 Toyota Land Cruiser IFS 100 Series MPVs manufactured prior to September 1, 2006 that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified nonconforming 1999 to 2006 Toyota Land Cruiser IFS 100 Series MPVs manufactured prior to September 1, 2006 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 1999 to 2006 Toyota Land Cruiser IFS 100 Series MPVs manufactured prior to September 1, 2006 as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999 to 2006 Toyota Land Cruiser IFS 100 Series MPVs manufactured prior to September 1, 2006 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic and Electric Brake Systems,* 106 *Brake*

Hoses, 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the brake telltale in place of the international ECE warning symbol; and (b) replacement of the speedometer with a unit reading in miles per hour, or modification of the existing speedometer so that it reads in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of the following components on vehicles that are not already so equipped: (a) U.S.-model front side marker lamps; (b) U.S.-model headlamps; (c) U.S.-model tail lamps that incorporate rear side marker lights; (d) U.S.-model high-mounted stop lamp; and (e) front and rear side reflex reflectors.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard on vehicles that are not already so equipped.

Standard No. 111 *Rearview Mirrors:* installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of the existing mirror.

Standard No. 114 *Theft Protection:* installation of a supplemental key warning buzzer, or reprogramming of the starting system to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* reprogramming or rewiring of the power operated window system to meet the requirements of this standard.

Standard No. 201 *Occupant Protection in Interior Impact:* inspection of each vehicle and replacement of non U.S.-model upper interior components with U.S.-model components to meet the requirements of this standard on vehicles not already so equipped.

Standard No. 206 *Door Locks and Door Retention Components:* inspection of each vehicle and replacement of non U.S.-model door lock components with U.S.-model components on vehicles that are not already so equipped.

Standard No. 208 *Occupant Crash Protection:* inspection of each vehicle and (a) installation of a seat belt warning lamp and buzzer on vehicles that are not already so equipped; and (b) replacement of any non U.S.- model air bags, air bag control units, sensors, seat belts, and knee bolsters on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped with an automatic restraint system that consists of dual front air bags and knee bolsters. In addition, the vehicles have combination lap and shoulder belts at the outboard front and rear seating positions that are self-tensioning and capable of being released by means of a single red push button.

Standard No. 209 *Seat Belt Assemblies:* inspection of each vehicle and replacement of any non U.S.-certified model seat belts with U.S.-model components.

Standard No. 214 *Side Impact Protection:* inspection of each vehicle and installation of door reinforcements to meet the requirements of the standard on vehicles that are not already so equipped.

Standard No. 225 *Child Restraint Anchorage Systems:* inspection of each vehicle and installation of U.S.-model child restraint anchorage system components on vehicles not already no so equipped.

Standard No. 301 *Fuel System Integrity:* inspection of each vehicle and replacement of any non U.S.-model fuel system components with U.S.-model components on vehicles not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 28, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–8003 Filed 4–3–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Mitsubishi Motors

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Mitsubishi Motors R&D of America, Inc.'s (Mitsubishi) petition for exemption of the Mitsubishi i-MiEV vehicle line in accordance with 49 CFR part 543, *Exemption From the Theft Prevention Standard.* This petition is granted, because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the 49 CFR part 541, *Federal Motor Vehicle Theft Prevention Standard.* Mitsubishi requested confidential treatment for specific information in its petition. The agency addressed Mitsubishi's request for confidential treatment by letter dated February 14, 2012.

DATES: The exemption granted by this notice is effective beginning with the 2013 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–443, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated January 3, 2012, Mitsubishi requested exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Mitsubishi i-MiEV vehicle line, beginning with MY 2013. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption From Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Mitsubishi provided a detailed description and diagram of the identity, design and location of the components of the antitheft device for the i-MiEV vehicle line. Mitsubishi will install a passive, transponder-based,

electronic engine immobilizer system as standard equipment on its i-MiEV vehicle line beginning with MY 2013. Features of the antitheft device will include a transponder key, Electronic Time and Alarm Control System Electronic Control Unit (ETACS ECU) and an Electric Vehicle Electronic Control Unit (EV ECU), key ring antenna and a passive immobilizer. Mitsubishi will also incorporate an audible and visual alarm system as standard equipment on the entire vehicle line. Mitsubishi's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

Mitsubishi stated that the transponder-based, electronic engine immobilizer device prevents unauthorized starting of the engine. The transponder is located in a traditional key that must be inserted into the key cylinder and turned to the ''ON'' position in order to activate the ignition. Mitsubishi also stated that activation of the immobilizer does not require the doors to be locked. Activation of the device automatically occurs when the ignition switch is turned to the ''OFF'' position with a valid key and deactivated when it is turned to the ''ON'' position with an invalid key. Mitsubishi further stated that the immobilizer system checks the key code once the ignition switch is turned to the ''ON'' position. The key ring antenna reads the specific ignition key code for the vehicle and transmits an encrypted message containing the key code to the ETACS ECU. The ETACS ECU determines if the key is valid and authorizes the engine to start by sending a separate encrypted message to the EV ECU. The engine will start only if the key code matches the unique identification key code previously programmed into the EV ECU. If the codes do not match, the engine will be disabled.

In addressing the specific content requirements of 543.6, Mitsubishi provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Mitsubishi conducted tests based on its own specified standards. Mitsubishi provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its specific requirements for each test. Mitsubishi additionally stated that its immobilizer system is further enhanced by several factors making it very difficult to defeat. Specifically, Mitsubishi stated that communication between the transponder and the ECU are encrypted and that there are over 4.3 billion possible key codes that make successful key code duplication virtually impossible. Mitsubishi also stated that its immobilizer system and the ECU share security data during vehicle assembly that make them a matched set. These matched modules will not function if taken out and reinstalled separately on other vehicles. Mitsubishi further stated that it is impossible to mechanically override the system and start the vehicle, because the vehicle will not be able to start without the transmission of the specific code to the electronic control module. Lastly, Mitsubishi stated that the antitheft device is extremely reliable and durable because there are no moving parts, nor does the key require a separate battery.

Mitsubishi informed the agency that the i-MiEV vehicle line was first equipped with the proposed device beginning with its MY 2012 vehicles. Additionally, Mitsubishi informed the agency that the Eclipse, Galant, Endeavor, Outlander, Lancer and Outlander Sport vehicle lines have been equipped with a similar type of immobilizer device since January 2000, January 2004, April 2004, September 2006, March 2007 and September 2010 respectively, and they have all been granted parts-marking exemptions by the agency. Mitsubishi also stated that beginning with its MY 2000 vehicles, the Eclipse vehicle line has been equipped with a similar device. Mitsubishi further stated that the theft rate for the MY 2000 Eclipse decreased by almost 42 percent when compared with that of its MY 1999 Mitsubishi Eclipse (unequipped with an immobilizer device). Mitsubishi has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements. The average theft rates using three MY's data for the Mitsubishi Eclipse, Galant, Endeavor, Outlander and Lancer vehicle lines and are 2.5788, 5.1114, 1.3723, 0.6374 and 2.5519 respectively, and theft rates are not available for the Outlander Sport vehicle line.

Based on the supporting evidence submitted by Mitsubishi on the device, the agency believes that the antitheft device for the i-MiEV vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation, attract attention to the efforts of an unauthorized person to enter or move a vehicle by means other than a key, preventing defeat or circumvention of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for an exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Mitsubishi has provided adequate reasons for its belief that the antitheft device for the Mitsubishi i-MiEV vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Mitsubishi provided about its device.

For the foregoing reasons, the agency hereby grants in full Mitsubishi's petition for exemption for the Outlander Sport vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2013 MY vehicles. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Mitsubishi decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mitsubishi wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on

which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 28, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–8049 Filed 4–3–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 18, 2012.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be held Wednesday, April 18, 2012, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 26, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–7996 Filed 4–3–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 25, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, April 25, 2012, 2 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS topics.

Dated: March 26, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8008 Filed 4–3–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday April 26 and Friday, April 27, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be held Thursday, April 26 from 8 a.m. to 5 p.m. and Friday, April 27 from 8 a.m. to Noon Central Time at 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Ms. Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 27, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–7997 Filed 4–3–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 17, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be held Tuesday, April 17, 2012, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 27, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8002 Filed 4–3–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Season for Membership to the Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Request for Nominations and Applications.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC) was established to provide continued input into the development and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. Members of the ETAAC may not be federally registered lobbyists. This document seeks applicants for selection as committee members.

The Director, Return Preparer Office (RPO) will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small business, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting applicants from professional and public interest groups. Members will serve a three-year term on the ETAAC to allow for a rotation in membership which ensures that different perspectives are represented. All travel expenses within government guidelines will be reimbursed. Potential candidates must pass an IRS tax compliance check and Federal Bureau of Investigation (FBI) background investigation.

DATES: The complete application package must be received no later than Thursday, May 24, 2012.

ADDRESSES: Completed applications should be submitted using one of the following methods:

- *Email:* Send to *etaac@irs.gov.*
- *Mail:* Send to Internal Revenue Service, Return Preparer Office, SE:RPO 5000 Ellin Road (M/Stop C4–470, Attn: ETAAC Analyst (C4–213), Lanham, Maryland 20706.
- *Fax:* Send via facsimile to (202) 283–2845 (not a toll-free number).

An application can be obtained by sending an email to *etaac@irs.gov* or calling (202) 283–2178 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Cassandra Daniels, (202) 283–2178 or send an email to *etaac@irs.gov.*

SUPPLEMENTARY INFORMATION: The ETAAC will also provide an annual report to Congress on IRS progress in meeting the Restructuring and Reform Act of 1998 goals for electronic filing of tax returns. This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7801 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue under section 7803 of the Internal Revenue Code. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration.

Applicants should describe and document their qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities. The Secretary of Treasury will review the recommended candidates and make final selections.

Dated: March 28, 2012.

Diane Fox,

Director, Relationship Management Branch.

[FR Doc. 2012–8004 Filed 4–3–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the panels of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet

from 8 a.m. to 5 p.m. on the dates indicated below:

Panel	Date(s)	Location
Hematology	May 23, 2012	Sheraton Suites—Old Town Alexandria.
Mental Health and Behavioral Science-B	May 24, 2012	Sheraton Suites—Old Town Alexandria.
Neurobiology-D	May 24–25, 2012	Sheraton Suites—Old Town Alexandria.
Immunology-A	May 30, 2012	Sheraton Suites—Old Town Alexandria.
Mental Health and Behavioral Science-A	May 31, 2012	Sheraton Suites—Old Town Alexandria.
Surgery	May 31, 2012	*VA Central Office.
Endocrinology-B	June 1, 2012	*VA Central Office.
Neurobiology-A	June 1, 2012	Sheraton Suites—Old Town Alexandria.
Clinical Application of Genetics	June 1, 2012	*VA Central Office.
Cardiovascular Studies	June 4, 2012	Sheraton Suites—Old Town Alexandria.
Cellular and Molecular Medicine	June 4, 2012	*VA Central Office.
Infectious Diseases-A	June 4, 2012	Sheraton Suites—Old Town Alexandria.
Epidemiology	June 6, 2012	*VA Central Office.
Clinical Research Program	June 7–8, 2012	Sheraton Suites—Old Town Alexandria.
Infectious Diseases-B	June 8, 2012	Sheraton Suites—Old Town Alexandria.
Neurobiology-E	June 8, 2012	*VA Central Office.
Pulmonary Medicine	June 8, 2012	Sheraton Suites—Old Town Alexandria.
Gastroenterology	June 11–12, 2012	Sheraton Suites—Old Town Alexandria.
Endocrinology-A	June 14–15, 2012	Sheraton Suites—Old Town Alexandria.
Neurobiology-C	June 14–15, 2012	L'Enfant Plaza Hotel.
Oncology-A	June 14–15, 2012	Sheraton Suites—Old Town Alexandria.
Nephrology	June 15, 2012	Sheraton Suites—Old Town Alexandria.
Eligibility	July 23, 2012	Sheraton Suites—Old Town Alexandria.

The addresses of the hotel and VA Central Office are:
L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC.
Sheraton Suites—Old Town Virginia, 801 North Saint Asaph Street, Alexandria, Virginia.
*VA Central Office, 131 M Street NE., Washington, DC.
*Teleconference.

The purpose of the Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The panel meetings will be open to the public for approximately one-half hour at the start of each meeting to discuss the general status of the program. The remaining portion of each panel meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research proposals. During this portion of each meeting, discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these panel meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B).

Those who plan to attend the general session or would like to obtain a copy of minutes of the panel meetings and rosters of the members of the panels should contact LeRoy G. Frey, Ph.D., Chief, Program Review (10P9B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or call (202) 443–5674 or by email at *Leroy.frey@va.gov.*

By Direction of the Secretary.

Dated: March 29, 2012.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–8037 Filed 4–3–12; 8:45 am]

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Federal Register

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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