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WHEN: Tuesday, May 15, 2012
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Rules and Regulations

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0036]

RIN 0579–AD27

Importation of Clementines From Spain; Amendment to Inspection Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of clementines from Spain by removing from the regulations the number of clementines per consignment intended for export to the United States that are required to be sampled by inspectors of the Animal and Plant Health Inspection Service (APHIS). In place of this number, we will state in the regulations that inspectors will cut and inspect a sample of clementines determined by APHIS. By removing from the regulations the number of clementines per consignment from Spain to be sampled, we will have the flexibility to respond to changing risk levels while continuing to provide protection against the introduction of quarantine pests.

DATES: *Effective Date:* May 16, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Paul McGowan, Operational Director, Preclearance and Offshore Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2312.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

The regulations in § 319.56–34 list specific requirements for the importation into the United States of clementines from Spain, one of which is that 200 clementines from each consignment be cut and inspected (i.e., sampled) before undergoing cold treatment. The purpose of this inspection is to detect live Mediterranean fruit flies (*Ceratitis capitata,* or Medfly) in any stage of development that may be present. If a single live Medfly is found in any stage of development, the entire consignment is rejected.

On December 29, 2010, we published in the **Federal Register** (75 FR 81942–81943, Docket No. APHIS–2010–0036) a proposal [1] to amend the regulations by removing the requirement in § 319.56–34(f) that 200 fruit from each consignment be sampled by cutting before treatment and replacing it with the statement that the number of fruit to be sampled before treatment will be determined by the Animal and Plant Health Inspection Service (APHIS). We explained in the proposal that this change would give us the flexibility to raise or lower the fruit sampling rate when conditions indicate a higher or lower risk of Medfly. With this change, we stated that we would be able to adjust the sampling rate and thereby detect pests that might otherwise go undetected prior to treatment. We also stated that the actual sampling rate would continue to be included in the workplan agreed to by APHIS and the Government of Spain, which describes in detail how the regulations are implemented operationally.

We solicited comments concerning our proposal for 60 days ending February 28, 2011. We received three comments by that date. They were from the national plant protection organization (NPPO) of Spain, a domestic citrus trade association, and a group of students. All opposed our proposal to remove the set number of 200 fruit and replace it with a statement that the number of fruit to be sampled will be determined by APHIS.

Two commenters stated that our proposal contained no objective criteria on which to base increases in the sampling rate or to evaluate the risk level of Medfly. One of these commenters, the NPPO of Spain, noted that they and APHIS had signed a bilateral workplan in October 2010, in which both parties agreed that sampling 200 fruit per consignment would provide a 95 percent confidence level of detecting a 1.5 percent infestation level. The Spanish NPPO expressed concern that the lack of specific criteria in our proposed change to the regulations could be difficult to interpret and lead to disruptions in Spanish exports.

We have subsequently held discussions with the Government of Spain regarding specific confidence and infestation levels. Changes in the sampling rate to achieve agreed-upon target levels will be based on internationally recognized sampling methodologies [2] and included in an annex to the bilateral workplan.

The same commenter recommended that target detection levels and sampling rates should be negotiated within the sphere of annual bilateral meetings with APHIS rather than set through rulemaking.

It was necessary for us to propose changing the regulations themselves because they require the use of a single, invariable sampling rate. With the change we are making to the regulations in this final rule, we will have the flexibility to make future adjustments to sampling rates in the context of bilateral discussions with the Government of Spain.

Another commenter noted that the current sampling rate of 200 fruit was established based on a scientific risk assessment, and that if a smaller sample is taken without conducting a similar assessment APHIS may not be able to determine the efficacy of the inspection process until Medfly are found in the channels of distribution. The commenter recommended that, for those reasons, 200 fruit per consignment be the minimum required sampling rate.

We are making no changes in response to this comment. In most of

[1] To view the proposed rule, the economic analysis, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-;2010-0036.*

[2] International Standards for Phytosanitary Measures, ISPM No. 31: *Methodologies for Sampling of Consignments* (2008): *https://www.ippc.int/file_uploaded/1229532867492_ISPM31_2008_E.pdf.*

our systems approaches for importing fruits and vegetables that involve sampling of fruit prior to export, we do not specify the sampling rate in the regulations; instead, fruit is sampled at a rate agreed upon by the NPPO of the exporting country and APHIS and contained in the bilateral workplan. This final rule will make our approach with respect to sampling clementines from Spain consistent with other systems approaches for fruits and vegetables set out in the regulations.

The scientific risk assessment that established the 200 fruit sample indicated that such a sample would give us a 95 percent confidence rate of detecting a 1.5 percent level of infestation. The risk assessment determined that such a detection rate would be sufficient to ensure that Medfly populations in the clementines were low enough to be mitigated by the subsequent required cold treatment. The sampling rate change we proposed was prompted by the desire to increase the number of fruit sampled and thus increase the confidence that we were detecting any shipments with an infestation rate of 1.5 percent or more. We anticipate using the greater flexibility provided by this final rule to allow for such increases, when conditions warrant.

In the other systems approaches in the regulations that include sampling of fruits and vegetables, we only lower the initial sampling rate after years of few or no pest detections have established a definitive record of low pest prevalence in the commodity. At some point, conditions may warrant sampling a lower number of clementines from Spain, thus providing a lower level of confidence that the sampling method is detecting all consignments of fruit with a 1.5 percent or more infestation level. For that reason, it is appropriate that the regulations provide the flexibility to reduce the sampling rate.

If we were to determine that lowering the sampling rate for Spanish clementines was warranted, we would share the data that led to our determination with our domestic stakeholders and State partners prior to finalizing any adjustments with the NPPO of Spain. After the sampling rate was lowered, we would continue to monitor inspection results closely; if detections were to increase, we would promptly return the number of fruit sampled to 200 per consignment or more, depending on conditions.

The NPPO of Spain expressed concern that an increase in the sampling rate would require more time for APHIS inspectors to sample the additional fruit, potentially resulting in costly treatment and shipping delays.

If the sampling rate is increased in order to detect infestations of Medfly that might otherwise go undetected, we estimate that the number of additional fruit to be sampled would not be so high as to cause significant delays in treating or shipping consignments of fruit. A consignment of clementines consists of one or more lots containing no more than a combined total of 200,000 boxes of clementines that are presented to an inspector for pre-treatment inspection. Under the current regulations, the percentage of sampled clementines ranges from 0.02 percent to 0.1 percent per consignment inspected. Even if inspection amounts were to be increased two or three times, the sampling rate would still be well under 1 percent of the consignment.

Another commenter asked whether we intended to establish timeframes for increasing the sampling rate and, if so, how those timeframes would be determined.

We have no plans to establish timeframes in conjunction with any changes to the clementine sampling rate. They will be changed on the basis of changing risk, as discussed earlier.

Another commenter stated that any reduction in the sampling rate may result in higher pest control costs and cause inspectors to bow to budgetary pressures by reducing inspections in an arbitrary or capricious way.

We have no indications that inspectors would approach inspections in this way due to any budgetary pressures. Inspectors authorized by APHIS are required to follow a well-defined, scientifically based inspection protocol.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

A consignment of clementines consists of one or more lots containing no more than a combined total of 200,000 boxes of clementines that are presented to an inspector for pretreatment inspection. Under the regulations that require sampling of 200 clementines, the percentage of sampled clementines ranges from 0.02 percent to 0.1 percent per consignment inspected. Even if inspection amounts are increased 2 or 3 times when there is a higher pest risk, the sampling rate will still be under 1 percent of the consignment.

While this rule will help reduce the risk of pest introduction, we are unable to quantify the economic impact of decreasing the probability of introducing Medfly into the United States. Medfly introductions can be very costly to producers and to the Federal and State Governments. The mean cost of eradicating six Medfly outbreaks in 2007 was $13.54 million.

This rule will not have a significant economic effect on producers of clementines or other U.S. entities, regardless of their size or resources. As described, an adjustment in the number of fruit sampled will have a negligible effect on the number of clementines imported from Spain.

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

Executive Order 12988

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

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

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

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

PART 319—FOREIGN QUARANTINE NOTICES

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

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

§ 319.56–34 [Amended]

■ 2. In § 319.56–34, paragraph (f) is amended as follows:

■ a. In the paragraph heading, by removing the words ''; rates of inspection''.

■ b. By removing the words ''200 fruit'' and adding in their place the words ''a sample of clementines determined by APHIS''.

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–9067 Filed 4–13–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0113]

RIN 0579–AD40

Importation of Fresh Pitaya Fruit From Central America Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of fresh pitaya fruit from Central America into the continental United States. As a condition of entry, the pitaya fruit must be produced in accordance with a systems approach that includes requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya fruit. This action will allow for the importation of pitaya fruit from Central America into the continental United States while continuing to provide protection against the introduction of plant pests.

DATES: *Effective Date:* May 16, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2103.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

On May 24, 2011, we published in the **Federal Register** (76 FR 30036–30040, Docket No. APHIS–2010–0113) a proposal [1] to amend the regulations by allowing fresh pitaya from Central America to be imported into the continental United States. We proposed that, as a condition of entry, the pitaya fruit must be produced in accordance with a systems approach that includes requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya fruit.

We solicited comments concerning our proposal for 60 days ending July 25, 2011. We did not receive any comments.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see footnote 1 for a link to Regulations.gov).

This rule will allow the importation of fresh pitaya fruit into the continental United States from the Central American countries of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama in accordance with a systems approach that includes requirements for monitoring and oversight, establishment of pest-free places of production, and procedures for packing the pitaya fruit. Entities potentially affected by the rule are U.S. pitaya fruit growers, of which most, if not all, are small entities.

Pitaya fruit is produced in Hawaii, California, and Florida, but the quantities produced, numbers of U.S. producers, quantities imported, and other factors needed to assess likely economic effects of this rule are not known. The quantity of pitaya fruit expected to be imported from Belize, Costa Rica, El Salvador, Guatemala, Honduras, and Panama is also unknown. Nicaragua estimates exporting 1,200 metric tons (60 forty-foot containers) of pitaya fruit to the continental U.S. annually, and it is thought that the other countries may ship similar or lesser amounts.

Executive Order 12988

This final rule allows fresh pitaya to be imported into the United States from Central America. State and local laws and regulations regarding pitaya imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0378.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and

[1] To view the proposed rule and supporting documents, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0113.*

recordkeeping requirements, Rice, Vegetables.

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

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. A new § 319.56–55 is added to read as follows:

§ 319.56–55 Fresh pitaya from certain Central American countries.

Fresh pitaya fruit (*Hylocereus* spp.) may be imported into the United States from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama in accordance with the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Anastrepha ludens, Ceratitis capitata, Dysmicoccus neobrevipes,* and *Planococcus minor.*

(a) *Monitoring and oversight.* (1) The national plant protection organization (NPPO) of the exporting country must provide a workplan to APHIS that details the activities that the NPPO will, subject to APHIS approval, carry out to meet the requirements of this section. APHIS will be directly involved with the NPPO in the monitoring and auditing implementation of the systems approach.

(2) The NPPO of the exporting country must conduct inspections at the packinghouses and monitor packinghouse operations. Starting 2 months before harvest and continuing until the end of the shipping season, the NPPO of the exporting country must visit and inspect the places of production monthly to verify compliance with the requirements of this section. If the NPPO finds that a packinghouse or place of production is not complying with the requirements of this section, no fruit from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO have conducted an investigation and appropriate remedial actions have been implemented.

(3) The NPPO must review and maintain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(b) *Place of production requirements.* (1) The personnel conducting the trapping required in paragraph (c) of this section must be hired, trained, and supervised by the NPPO of the exporting country. The exporting country's NPPO must certify that each place of production has effective fruit fly trapping programs, and follows control guidelines, when necessary, to reduce quarantine pest populations. APHIS may monitor the places of production.

(2) The places of production producing pitaya for export to the United States must be registered with the NPPO of the exporting country.

(3) Trees and other structures, other than the crop itself, must not shade the crop during the day. No *C. capitata* or *A. ludens* host plants may be grown within 100 meters of the edge of the production site.

(4) Pitaya fruit that has fallen on the ground must be removed from the place of production at least once every 7 days and may not be included in field containers of fruit to be packed for export.

(5) Harvested pitaya fruit must be placed in field cartons or containers that are marked to show the place of production.

(c) *Mitigation measures for C. capitata and A. ludens*—(1) *Pest-free places of production.* (i) Beginning at least 1 year before harvest begins and continuing through the end of the shipping season, trapping for *A. ludens* and *C. capitata* must be conducted in the places of pitaya fruit production with at least 1 trap per hectare of APHIS-approved traps, serviced every 7 days.

(ii) From 2 months prior to harvest through the end of the shipping season, when traps are serviced, if either *A. ludens* or *C. capitata* are trapped at a particular place of production at cumulative levels above 0.07 flies per trap per day, pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export pitaya fruit to the continental United States. If the average *A. ludens* or *C. capitata* catch is greater than 0.07 flies per trap per day for more than 2 consecutive weeks, the place of production is ineligible for export until the rate of capture drops to an average of less than 0.07 flies per trap per day.

(iii) The NPPO must maintain records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS upon request. The records must be maintained for at least 1 year for APHIS review.

(2) *Pest-free area for C. capitata.* If the pitaya fruit are produced in a place of production located in an area that is designated as free of *C. capitata* in accordance with § 319.56–5, the trapping in paragraph (c)(1) of this section is not required for *C. capitata.*

(d) *Packinghouse requirements.* (1) The packinghouses must be registered with the NPPO of the exporting country.

(2) All openings to the outside must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering the packinghouses.

(3) The packinghouses must have double doors at the entrance to the facilities and at the interior entrance to the area where the pitaya fruit are packed.

(4) While in use for packing pitaya fruit for export to the United States, the packinghouses may only accept pitaya fruit that are from registered places of production and that are produced in accordance with the requirements of this section.

(e) *Post-harvest procedures.* The pitaya fruit must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. Pitaya fruit must be packed in insect-proof cartons or containers that can be sealed at the packinghouse, or covered with insect-proof mesh or a plastic tarpaulin for transport to the United States. These safeguards must be intact upon arrival in the United States.

(f) *Phytosanitary inspection.* (1) The NPPO of the exporting country must visually inspect a biometric sample of pitaya fruit, jointly approved by APHIS and the NPPO of the exporting country, for *D. neobrevipes* and *P. minor,* and cut open a portion of the fruit to detect *A. ludens* and *C. capitata.* If the fruit is from a pest-free area for *C. capitata,* then the fruit will only be inspected for *A. ludens.*

(2) The fruit are subject to inspection at the port of entry for all quarantine pests of concern. Shipping documents identifying the place(s) of production in which the fruit was produced and the packing shed(s) in which the fruit was processed must accompany each lot of fruit presented for inspection at the port of entry to the United States. This identification must be maintained until the fruit is released for entry into the United States.

(3) If *D. neobrevipes* or *P. minor* is found, the entire consignment of fruit will be prohibited from import into the United States unless the shipment is treated with an approved treatment monitored by APHIS. If inspectors (either from the exporting country's NPPO or at the U.S. port of entry) find a single fruit fly larva in a shipment, they will reject the entire consignment for shipment to the United States, and the place of production for that

shipment will be suspended from the export program until appropriate measures, agreed upon by the NPPO of the exporting country and APHIS, have been taken.

(g) *Commercial consignments.* The pitaya fruit may be imported in commercial consignments only.

(h) *Phytosanitary certificate.* Each consignment of pitaya fruit must be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country, containing an additional declaration stating that the fruit in the consignment was produced in accordance with requirements in 7 CFR 319.56–55.

(Approved by the Office of Management and Budget under control number 0579–0378)

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–9066 Filed 4–13–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–11–0006]

RIN 0563–AC32

Common Crop Insurance Regulations; Fresh Market Tomato (Dollar Plan) Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Fresh Market Tomato (Dollar Plan) Crop Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2013 and succeeding crop years.

DATES: This rule is effective April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11, or 7 CFR part 400, subpart J for the informal administrative review process of good farming practices as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Fresh Market Tomato (Dollar Plan) Crop Provisions that were published by FCIC on November 17, 2011, as a notice of proposed rulemaking in the **Federal Register** at 76 FR 71271–71276. The public was afforded 30 days to submit comments after the regulation was published in the **Federal Register.**

A total of 136 comments were received from 14 commenters. The commenters were farmers, trade associations, an insurance agent, an insurance company, and other interested parties.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

Section 1—Definitions

Comment: In regard to the definition of ''acre'' commenters asked for additional information regarding how unplanted acreage (e.g., field irrigation canals and furrows, or field roads for spraying and handling harvested tomatoes) should be deducted when reporting planted acres.

Response: It would not be possible to include this information in this rule because of the complexities involved. However, FCIC provides several sources of information and examples to be used by the insurance providers, agents and their producers for determining planted acreage for fresh market tomatoes. The Risk Management Agency (RMA) published Manager's Bulletin MGR–09–010 on November 18, 2009, which provided appropriate methods for determining ''planted acreage.'' The clarifying information and additional examples in this bulletin were incorporated into the 2010 Loss Adjustment and Standards Handbook (LASH) and is available for the insurance providers, their agents and producers to use in calculating and reporting their planted acreage.

Comment: In regard to the new ''fresh market tomatoes'' definition, a few commenters recommended that other types or varieties of tomatoes should be insured under this policy (greenhouse, hydroponic, heirlooms, etc.).

Response: FCIC disagrees with these recommendations to insure these other types of tomatoes. FCIC added the new definition of ''fresh market tomatoes'' to clarify the Fresh Market Tomato (Dollar Plan) Crop Provisions is primarily designed to insure ''field grown mature green or ripe fresh market tomatoes.'' These are the traditional large ''round'' or ''globe'' field grown tomatoes that account for approximately 90 percent of the fresh market tomato production. In addition, there must be standards for determining the fresh market tomatoes and the U.S. Standards for Grades of Fresh Tomatoes, and the AMS Federal Marketing Order (FMO #966) are the primary federal regulations that govern these traditional ''round or globe'' field grown fresh market tomatoes. These other tomatoes are not field grown and there are no such established standards for these other types or varieties of tomatoes. No change has been made.

Comment: In regard to the definitions of ''harvest'' and ''penhookers'', some commenters recommended tomatoes that are field packed as ''ripe'' tomatoes, and tomatoes salvaged by penhookers should be considered a harvest.

Response: Field packed ''ripe'' tomatoes meet the definition of ''fresh market tomatoes'' so they qualify as harvested. FCIC considers all ''penhooked'' tomatoes as salvage value, since the penhookers pay the producer directly and should be treated separately from harvested fresh market tomatoes because they usually have less value. However, the revenue received from the penhookers must still be reported in their total dollar value of production to count. No change has been made.

Section 8—Insured Crop

Comment: Commenters recommended that field grown cherry, grape, plum or roma types of fresh market tomatoes be insured under this policy by including these types in the Special Provisions.

Response: FCIC agrees and proposed to include the cherry, grape, plum or roma types of tomatoes via the Special Provisions. This provision was left unchanged in this final rule.

Section 10—Insurance Period

Comment: Commenters recommended the calendar date for the end of the insurance period be increased to 140 days after transplanting. Under the current policy the end of the insurance period is 125 days after transplanting.

Response: No changes were proposed to section 10(f) regarding the end of the insurance period for transplanted or replanted tomatoes. FCIC only proposed to remove the provisions regarding direct seeded tomatoes. Since the public was not provided an opportunity to comment on the extension of the end of the insurance period to 145 days and the recommendation does not address a conflict or vulnerability in the crop provisions, FCIC cannot consider the recommended change. No change has been made to the final rule.

Section 12—Replanting Payments

Comment: Commenters recommended raising the current replanting payments from $600 to $900 per acre.

Response: No changes were proposed to sections 12(a), 12(b), and 12(c). Since the public was not provided an opportunity to comment on an increase of replanting payments and the recommendation does not address a conflict or vulnerability in the provisions, FCIC cannot consider the recommended change. No change has been made.

Section 14—Settlement of Claim

Comment: Commenters recommended under ''Section 14(c)(2)(i) that appraised potential production, as currently in the policy, allows up to 30 cartons that do not count against the grower if tomatoes have been picked 3 times.''

Response: FCIC disagrees with this recommendation. There is no language in the current policy that indicates there should be a 30 carton reduction in the grower's production to count if tomatoes are harvested more than three times. FCIC is revising the language in section 14(c)(2)(i) to clarify and state potential production on any fresh market tomato acreage that has not been harvested the required number of times as specified in the Special Provisions will be included in the total appraised production. This will allow flexibility for future harvest requirements for specialty tomatoes such as cherry, grape, plum or roma tomatoes.

Comment: Commenters asked for clarification on new policy wording in section 14(c)(3).

Response: FCIC is not sure what needs clarifying. Section 14(c)(3) provides the method for valuing sold harvested production and is the same type of calculation used for the Summary of Harvested Production Worksheet in the current LASH to determine the total dollar value per load. Therefore, this calculation should already be familiar to producers, agents and insurance providers.

Comment: Under Section 14(c)(4) commenters recommended unsold harvested production should not be counted as production to count if these tomatoes are ''inspected and dumped'' due to quality defects.

Response: The Proposed Rule makes it clear that harvested production that is damaged due to insurable causes such that it is unmarketable or unsold is not counted as production to count. This would include tomatoes that are dumped due to quality defects resulting from insured causes that render the tomato unmarketable. It is only unsold harvested production that is not damaged by an insured cause of loss is considered as production to count. No change has been made.

Comment: Under Section 14(c)(5) commenters recommended field packed/penhooked tomatoes or salvage value count as value received, for there is no picking cost involved.

Response: FCIC considers field packed tomatoes as production to count under sections 14(c)(3) and 14(c)(4) because producers do incur harvesting costs. Section 14(c)(5) clarifies penhooked tomatoes are a salvage operation and any salvage value paid to the producer by penhookers will be added to the total dollar value of production to count. Since no harvest costs are incurred for penhooked tomatoes, they do not reduce their value for the purposes of establishing the total dollar value of the production to count. No change has been made.

Section 16—Minimum Value Option

Comment: Commenters recommended that both Minimum Value Options (MVO I) and (MVO II) remain in the policy.

Response: As stated in the Proposed Rule, FCIC is removing the Minimum Value Option II (MVO II) provision because allowing the MVO II price to go down to zero has resulted in unfavorable loss experience and program abuse. Under the current policy there are two Minimum Value Option choices (MVO I) and (MVO II). The producer can purchase either Minimum Value Option and pay additional premium. The current 2012 MVO I reduces the Minimum Value price to $4.75 per carton while the current 2012 MVO II reduces the Minimum Value price to $1.00 per carton, from the current Minimum Value price of $6.95. Historically, producers chose MVO II and it has resulted in excessive losses because tomatoes slightly damaged due to rain are valued at the MVO II price of $1.00 per carton for claims settlement; however, producers are often able to salvage or market such production in excess of $1.00 per carton. These excess loss payments unnecessarily increase premium rates for all producers leading to overall increased program costs. Additionally, having two options adds unnecessary complexity to the program.

Therefore, this final rule eliminates the current MVO II and will offer one MVO price as specified in the Special Provisions. The Risk Management Agency will be diligent in establishing and maintaining a fair and equitable MVO price in future crop years. No change has been made.

In addition to the changes described above, FCIC has made minor editorial changes.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register**. Good cause to make a rule effective less than 30 days after publication in the **Federal Register** exists when the 30 day delay in the effective date is impractical, unnecessary, or contrary to the public interest.

With respect to the provisions of this final rule, it would be contrary to public interest to delay implementation because public interest is served by improving the insurance product as follows: (1) Increasing insurance flexibility by providing coverage for specific types of tomatoes via the Special Provisions instead of by written agreement; (2) providing simplification and clarity to the Fresh Market Tomato (Dollar Plan) crop insurance program so it is easier for producers and agents to understand; and (3) only offering one Minimum Value Option that more accurately reflects the salvage value of slightly damaged tomatoes for claim purposes which addressed concerns raised about the Fresh Market Tomato claims process.

If FCIC is required to delay implementation of this rule after the date it is published, the provisions of this rule could not be implemented until the 2014 crop year. This would mean the affected producers would be without the benefits described above for an additional year.

For reasons stated above, good cause exists to make these policy changes effective less than 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 457

Crop insurance, Fresh market tomato (dollar plan), Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2013 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.139 as follows:
■ a. Revise the introductory text;
■ b. Remove the paragraph immediately preceding section 1;
■ c. Amend section 1 by:
■ i. Adding definitions for ''allowable cost'', ''amount of insurance per acre'', ''fresh market tomatoes'', ''minimum value'', ''penhookers'', ''price received'', and ''registered handler'';
■ ii. Removing the definitions of ''planted acreage'' and ''practical to replant'';
■ iii. Revising the definitions of ''acre'', ''direct marketing'', ''harvest'', ''plant stand'', and ''potential production''; and
■ iv. Amending the definition of ''crop year'' by removing the phrase ''of 'crop year' contained in section 1 (Definitions) of the Basic Provisions (§ 457.8)'' and adding the phrase ''contained in the Basic Provisions (§ 457.8)'' in its place.
■ d. Amend section 3 by:
■ i. Removing the phrases ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'' and ''(§ 457.8)'' in paragraphs (a) and (c);
■ ii. Remove the comma following ''Basic Provisions'' in paragraphs (a) and (c);
■ iii. Revising the table in paragraph (d); and
■ iv. Revising paragraph (e).
■ e. Amend section 4 by removing the phrases ''(Contract Changes)'' and ''(§ 457.8)''.
■ f. Amend section 5 by removing the phrases ''(Life of Policy, Cancellation, and Termination)'' and ''(§ 457.8)''.
■ g. Amend section 6 introductory text by removing the phrases ''(Report of Acreage)'' and ''(§ 457.8)''.
■ h. Amend section 7 by:
■ i. Removing the phrases ''(Annual Premium)'' and ''(§ 457.8)''; and
■ ii. Removing the phrase ''(e.g., fall direct-seeded irrigated)'' and adding the phrase ''(e.g., fall transplanted irrigated)'' in its place.
■ i. Amend section 8 by:
■ i. Revising the introductory text; and
■ ii. Revising paragraph (c)(4).
■ j. Amend section 9 by:
■ i. Removing the phrases ''(Insurable Acreage)'' and ''(§ 457.8)'' in paragraphs (a) and (b);
■ ii. Removing the phrase ''or 60 days of direct seeding'' in paragraph (b)(1)(iii);
■ iii. Removing the word ''satisfied'' and adding the word ''met'' in its place in paragraph (b)(2) introductory text; and

■ iv. Revising paragraph (b)(3).
■ k. Amend section 10 by:
■ i. Revising the introductory text;
■ ii. Revising paragraph (e); and
■ iii. Revising paragraph (f).
■ l. Amend section 11 by:
■ i. Removing the phrases ''(Causes of Loss)'' and ''(§ 457.8)'' in paragraphs (a) introductory text and (b); and
■ ii. Revising paragraph (b)(2).
■ m. Amend section 12(a) and 12(c) by removing the phrases ''(Replanting Payment)'' and ''(§ 457.8)''.
■ n. Amend section 13 introductory text by removing the phrases ''(Duties in the Event of Damage or Loss)'' and ''(§ 457.8)''.
■ o. Amend section 14 by:
■ i. Revising paragraph (b)(4)(ii);
■ ii. Adding an example following paragraph (b)(5);
■ iii. Revising paragraph (c)(2)(i);
■ iv. Revising paragraph (c)(3);
■ v. Adding a new paragraph (c)(4); and
■ vi. Adding a new paragraph (c)(5).
■ p. Revise section 16.
■ q. Add an example following paragraph 16(c).

The revised and added text reads as follows:

§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.

The fresh market tomato (dollar plan) crop insurance provisions for the 2013 and succeeding crop years are as follows:

* * * * *

1. Definitions.

Acre. 43,560 square feet of planted acreage when row widths do not exceed six feet. If row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Allowable cost. The dollar amount per carton for harvesting, packing, and handling as stated in the Special Provisions.

Amount of insurance per acre. The dollar amount of insurance per acre obtained by multiplying the reference maximum dollar amount shown in the actuarial documents by the coverage level percentage you elect.

* * * * *

Direct marketing. The sale of the insured crop directly to consumers without the intervention of an intermediary such as a registered handler, wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

* * * * *

Fresh market tomatoes. Field grown mature green or ripe fresh market tomatoes that meet the Agricultural Marketing Service United States Standards for Grades of Fresh Tomatoes; and the applicable Federal Marketing Order and Florida Tomato Committee Regulations, or their successors.

Harvest. The picking of fresh market tomatoes from the plants, excluding tomatoes salvaged by penhookers.

* * * * *

Minimum value. The dollar amount per carton shown in the Special Provisions we will use to value appraised and unsold harvested production to count.

Penhookers. Individuals who purchase the right to salvage tomatoes remaining in the field after commercial harvests are completed.

Plant stand. The number of live plants per acre prior to the occurrence of an insured cause of loss.

* * * * *

Potential production. The number of cartons of field grown mature green or ripe fresh market tomatoes that the tomato plants will or would have produced per acre assuming normal growing conditions and practices by the end of the insurance period.

Price received. The gross dollar amount per carton received by the producer before deductions of allowable costs.

Registered handler. A person or entity officially certified by the Florida Tomato Committee, or successor entity, to inspect and enforce all the handling regulations for fresh market tomatoes, and report the required packout data to the Florida Tomato Committee.

* * * * *

3. Amounts of Insurance and Production Stages.

* * * * *

(d) * * *

Stage	Percent of the amount of insurance per acre that you selected	Length of time if transplanted
1	50	From planting through the 29th day after planting.
2	75	From the 30th day after planting until the beginning of stage 3.
3	90	From the 60th day after planting until the beginning of the final stage.
Final	100	Begins the earlier of 75 days after planting, or the beginning of harvest.

(e) Any acreage of fresh market tomatoes damaged in the first, second, or third stage to the extent that the majority of producers in the area would not normally further care for the crop, the indemnity payable for such acreage will be based on the stage the plants had achieved when the insured damage occurred, even if the producer continues to care for the damaged tomatoes.

* * * * *

8. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all the field grown mature green or ripe fresh market tomato types in the county as specified in the Special Provisions for which a premium rate is provided in the actuarial documents:

* * * * *

(c) * * *

(4) Direct seeded fresh market tomatoes, unless insured by written agreement.

* * * * *

9. Insurable Acreage.

* * * * *

(3) We will not insure any acreage on which tomatoes (except for replanted tomatoes in accordance with sections 9(b)(1) and (2)), peppers, eggplants, strawberries or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting the insured tomatoes.

10. Insurance Period.

In lieu of section 11 of the Basic Provisions, coverage begins on each unit or part of a unit the later of the date we accept your application, or when the tomatoes are planted in each planting period. Coverage ends on each unit at the earliest of:

* * * * *

(e) Final harvest on the unit; or

(f) The calendar date for the end of the insurance period that is 125 days after the date of transplanting or replanting with transplants.

11. Causes of Loss.

* * * * *

(b) * * *

(2) Failure to harvest in a timely manner or failure to sell the tomatoes, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period. For example, we will not pay an indemnity if you are unable to sell the insured crop due to quarantine, boycott, or refusal of any person to accept production.

* * * * *

14. Settlement of Claim.

* * * * *

(b) * * *

(4) * * *

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to count determined in accordance with section 14(c) by the percentage contained in the Special Provisions.

(5) * * *

For Example: You have a 100 percent share in 10.0 acres of fresh market tomatoes. You select a 70% coverage level of the reference maximum dollar amount of $7,500 per acre. The average price received is $10.00 per carton of tomatoes. Allowable costs are $4.25 per carton. Minimum value is $5.00 per carton. Your total sold production is 5,000 cartons (5,000 ÷ 10.0 = 500 cartons per acre) and you have an additional 1,000 cartons of unsold harvested production (1,000 ÷ 10.0 = 100 cartons per acre). Your loss occurred in the final stage of production. Your total indemnity is calculated as follows:

	$7,500 × 70% = dollar amount of insurance per acre	$5,250
14(c)(3)	500 cartons × $5.75 = value of sold production ($10 selling price minus $4.25 allowable cost)	2,875
14(c)(4)	100 cartons of unsold harvested production × $5 minimum value per carton	+500
	Total value of production to count	3,375
14(b)(5)	Indemnity per acre = ($5,250 − $3,375) × 100% share	1,875
	$1,875 × 10.0 acres = $18,750 total indemnity payment	18,750

(c) * * *

(2) * * *

(i) Potential production on any fresh market tomato acreage that has not been harvested the required number of times as specified in the Special Provisions.

* * * * *

(3) The total value of all sold harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of fresh market tomatoes in the load (this result may not be less than the minimum value shown in the Special Provisions for any carton of tomatoes), and multiplying this result by the number of cartons of fresh market tomatoes harvested.

(4) The total value of all unsold harvested production will be the dollar amount obtained by multiplying the number of cartons of such tomatoes on the unit by the minimum value shown in the Special Provisions for the planting period. Harvested production that is damaged or defective due to an insured cause of loss and is not sold will not be counted as production to count.

(5) Any penhooker salvage value paid to you will be added to the total dollar value of production to count.

* * * * *

16. Minimum Value Option.

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market tomatoes (dollar plan) under this option, and pay the additional premium indicated in the actuarial documents for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3) and 14(c)(4) of these Crop Provisions, the total value of harvested production will be determined as follows:

(1) For sold harvested production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of fresh market tomatoes in the load (this result may not be less than the minimum value option price contained in the Special Provisions for any carton of tomatoes sold), and multiplying this result by the number of cartons of fresh market tomatoes sold; and

(2) For unsold harvested production, the dollar amount obtained by multiplying the number of cartons of such fresh market tomatoes on the unit by the minimum value shown in the Special Provisions for the planting period. Harvested production that is damaged or defective due to an insured cause of loss and is not sold will not be counted as production to count.

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

Example with Minimum Value Option: You have a 100 percent share in 10.0 acres of fresh market tomatoes. You select a 70% coverage level of the reference maximum dollar amount of $7,500 per acre. The average price received is $6.00 per carton of tomatoes. Allowable costs are $4.25 per carton. Minimum value is $5.00 per carton. The Minimum Value Option price is $2.00 per carton. Your total sold production is 5,000 cartons (5,000 ÷ 10.0 = 500 cartons per acre) and you have an additional 1,000 cartons of unsold harvested production (1,000 ÷ 10.0 = 100 cartons per acre). Your loss occurred in the final stage of production. Your total indemnity is calculated as follows:

	$7,500 × 70% = dollar amount of insurance per acre	$5,250
16(b)(1)	500 cartons × $2 = value of sold production ($6 price received minus $4.25 allowable costs = $1.75. $2.00 minimum value option price is greater than $1.75).	1,000
16(b)(2)	100 cartons of unsold harvested production × $5 minimum value per carton	500
	Total value of production to count	1,500
16(b)	Indemnity per acre = $5,250 − $1,500 = $3,750 × 100% share	3,750
	$3,750 × 10.0 acres = $37,500 total indemnity payment	37,500

Signed in Washington, DC, on April 5, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–8902 Filed 4–13–12; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–STD–0005]

RIN 1904–AB57

Energy Conservation Program: Energy Conservation Standards for Certain External Power Supplies; Correction

AGENCY: Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) is publishing this correction to its regulations pertaining to the energy conservation standards for certain external power supplies to re-insert a table that had been inadvertently deleted by a technical amendment published on September 19, 2011. That table contained the statutorily-prescribed energy conservation standards for all Class A external power supplies to meet.

DATES: This correction is effective April 16, 2012.

FOR FURTHER INFORMATION CONTACT:

Mr. Victor Petrolati, 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) 586–4549. Email: *Victor.Petrolati@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *michael.kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Energy Independence and Security Act of 2007 (Pub. L. 110–140) amended section 325(u)(3) of the Energy Policy and Conservation Act (EPCA) to establish energy conservation standards for all Class A external power supplies. (42 U.S.C. 6295(u)(3)) Those standards consisted of minimum efficiency levels that these products must meet during active mode (i.e. when an external power supply is in actual use) and no-load mode (i.e. when an external power supply is plugged into AC mains but its output is not connected to an electrical load). DOE added these standards to its regulations as part of a final rule that incorporated a series of statutorily-prescribed changes made by the Energy Independence and Security Act of 2007 (Pub. L. 110–140) (Dec. 19, 2007). That final rule was published on March 23, 2009. See 74 FR 12058.

Subsequently, Congress revisited elements of the no-load standards that it had prescribed for Class A external power supplies. On January 4, 2011, Congress enacted Public Law 111–360, which amended section 325(u)(3) of EPCA (42 U.S.C. 6295(u)(3)) by defining a new term—''security or life safety alarm or surveillance system''—and excluding those external power supplies used in certain security or life safety alarms or surveillance system components from the no-load mode requirements Congress had previously set. To address this change, DOE issued a technical amendment to codify verbatim in regulation these statutory changes. See 76 FR 57897 (Sept. 19, 2011).

Recently, DOE discovered that the amendatory language used in modifying the regulatory text to account for the January 2011 statutory changes to EPCA resulted in the Office of the Federal Register removing the statutory Class A external power supply standards from the regulations. Today's document addresses that error by re-inserting these pre-existing statutory standards into the regulations at 10 CFR 430.32(w)(1)(i) where they were located previously. DOE notes that, in spite of this inadvertent removal, the standards have remained in effect by virtue of their continued existence as a statutory requirement. See 42 U.S.C. 6295(u)(3)(A).

Pursuant to authority at 5 U.S.C. 553(b)(B), the DOE finds good cause to waive the requirement for prior notice and an opportunity for public comment on this rulemaking because such procedures would be unnecessary. As DOE is merely re-inserting into the Code of Federal Regulations statutory standards already applicable to these products prior notice and an opportunity for public comment would serve no useful purpose. For the same reason, DOE finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make this rule effective immediately.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, and Small businesses.

Issued in Washington, DC, on April 9, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE corrects 10 CFR part 430 as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by revising paragraph (w)(1)(i) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(w) *Class A external power supplies.* (1)(i) Except as provided in paragraphs (w)(1)(ii) and (w)(1)(iii) of this section, all Class A external power supplies manufactured on or after July 1, 2008, shall meet the following standards:

Nameplate output	Required efficiency (decimal equivalent of a percentage)
Active Mode	
Less than 1 watt	0.5 times the Nameplate output.
From 1 watt to not more than 51 watts	The sum of 0.09 times the Natural Logarithm of the Nameplate Output and 0.5.
Greater than 51 watts	0.85.

Nameplate output	Required efficiency (decimal equivalent of a percentage)
No-Load Mode	
Nameplate output	Maximum consumption
Not more than 250 watts	0.5 watts.

* * * * *

[FR Doc. 2012–9036 Filed 4–13–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1358; Airspace Docket No. 11–ANM–19]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes; Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes nine new RNAV routes originating within Seattle Air Route Traffic Control Center's (ARTCC) airspace. The routes extend generally east-west providing connection between the Seattle, WA terminal area and destinations east and southeast of Seattle. This action enhances the navigation routes within the National Airspace System (NAS).

DATES: Effective date 0901 UTC, May 31, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On December 21, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish nine new RNAV routes (76 FR 79137).

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish nine new high altitude RNAV routes (Q–140, Q–142, Q–144, Q–146, Q–148, Q–150, Q–152, Q–154 and Q–156) originating in Seattle ARTCC's airspace. The proposed routes would connect the Seattle terminal area with destinations east and southeast of Seattle. This action enhances en route navigation for users, increases the efficiency of the NAS and expands the use of RNAV in the NAS.

High altitude RNAV routes are published in paragraph 2006 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in the Order.

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

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

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 2006 United States area navigation routes.

* * * * *

Q–140 WOBED, WA to EEGEE, WI [New]

WOBED, WA	WP	Lat. 48°36′01″ N., long. 122°49′47″ W.
GETNG, WA	WP	Lat. 48°25′31″ N., long. 119°31′39″ W.
CORDU, ID	WP	Lat. 48°10′46″ N., long. 116°40′22″ W.
PETIY, MT	WP	Lat. 47°58′47″ N., long. 114°36′20″ W.
CHOTE, MT	INT	Lat. 47°39′57″ N., long. 112°09′38″ W.
LEWIT, MT	WP	Lat. 47°23′00″ N., long. 110°08′45″ W.
SAYOR, MT	INT	Lat. 47°13′58″ N., long. 104°58′39″ W.
WILTN, ND	INT	Lat. 47°04′58″ N., long. 100°47′44″ W.
TTAIL, MN	WP	Lat. 46°41′28″ N., long. 96°41′09″ W.
CESNA, WI	WP	Lat. 45°52′14″ N., long. 92°10′59″ W.
EEGEE, WI	WP	Lat. 45°08′53″ N., long. 88°45′58″ W.

Q–142 METOW, WA to KIXCO, MT [New]

METOW, WA	WP	Lat. 48°08′00″ N., long. 120°09′00″ W.
Mullan Pass, ID (MLP)	VOR/DME	Lat. 47°27′25″ N., long. 115°38′46″ W.
KEETA, MT	WP	Lat. 47°20′39″ N., long. 112°52′51″ W.
OKVUJ, MT	WP	Lat. 47°03′11″ N., long. 109°35′31″ W.
KIXCO, MT	WP	Lat. 46°35′56″ N., long. 104°35′27″ W.

Q–144 ZIRAN, WA to LEWIT, MT [New]

ZIRAN, WA	WP	Lat. 47°32′20″ N., long. 120°25′05″ W.
ZOOMR, WA	INT	Lat. 47°25′32″ N., long. 118°18′34″ W.
BLOWS, MT	WP	Lat. 47°16′10″ N., long. 115°00′00″ W.
KEETA, MT	WP	Lat. 47°20′39″ N., long. 112°52′51″ W.
LEWIT, MT	WP	Lat. 47°23′00″ N., long. 110°08′45″ W.

Q–146 CASHS, WA to HUFFR, MN [New]

CASHS, WA	INT	Lat. 47°24′21″ N., long. 120°27′30″ W.
BLUNT, WA	INT	Lat. 47°03′57″ N., long. 117°39′41″ W.
DIPHU, MT	INT	Lat. 46°56′34″ N., long. 114°41′22″ W.
CUSDA, MT	INT	Lat. 46°56′14″ N., long. 112°01′02″ W.
ZERZO, MT	INT	Lat. 46°52′26″ N., long. 110°05′08″ W.
KIXCO, MT	WP	Lat. 46°35′56″ N., long. 104°35′27″ W.
TIMMR, ND	INT	Lat. 46°22′50″ N., long. 100°54′33″ W.
SMERF, SD	WP	Lat. 45°55′16″ N., long. 97°34′08″ W.
HUFFR, MN	WP	Lat. 45°08′49″ N., long. 93°29′30″ W.

Q–148 STEVS, WA to Bartlesville, OK (BVO) [New]

STEVS, WA	WP	Lat. 47°14′54″ N., long. 120°32′10″ W.
ZAXUL, WA	INT	Lat. 47°10′03″ N., long. 120°02′42″ W.
FINUT, WA	WP	Lat. 46°44′56″ N., long. 117°05′20″ W.
WEDAK, MT	INT	Lat. 45°53′18″ N., long. 114°05′02″ W.
WAIDE, MT	INT	Lat. 44°50′49″ N., long. 111°44′47″ W.
JUGIV, WY	INT	Lat. 42°57′44″ N., long. 108°08′43″ W.
Medicine Bow, WY (MBW)	VOR/DME	Lat. 41°50′44″ N., long. 106°00′15″ W.
MOCTU, WY	INT	Lat. 41°11′54″ N., long. 104°33′10″ W.
LEWOY, CO	WP	Lat. 40°31′51″ N., long. 103°13′48″ W.
CUGGA, KS	INT	Lat. 39°19′04″ N., long. 100°52′07″ W.
PENUT, KS	WP	Lat. 38°37′00″ N., long. 99°38′25″ W.
KIRKE, KS	INT	Lat. 38°05′23″ N., long. 98°24′05″ W.
MORRR, KS	WP	Lat. 37°31′11″ N., long. 97°15′21″ W.
Bartlesville, OK (BVO)	VOR/DME	Lat. 36°50′03″ N., long. 96°01′06″ W.

Q–150 STEVS, WA to OPPEE, ND [New]

STEVS, WA	WP	Lat. 47°14′54″ N., long. 120°32′10″ W.
ZAXUL, WA	INT	Lat. 47°10′03″ N., long. 120°02′42″ W.
LEZLE, WA	INT	Lat. 46°08′36″ N., long. 117°09′24″ W.
BAXGO, ID	INT	Lat. 45°02′57″ N., long. 114°01′33″ W.
LAMON, ID	INT	Lat. 43°57′34″ N., long. 111°14′58″ W.
GANNE, WY	WP	Lat. 43°18′37″ N., long. 109°30′24″ W.
OPPEE, WY	WP	Lat. 41°27′33″ N., long. 106°14′42″ W.

W.Q–152 SUNED, WA to O′Neill, NE [New]

SUNED, WA	INT	Lat. 46°17′42″ N., long. 119°57′36″ W.
LEZLE, WA	INT	Lat. 46°08′36″ N., long. 117°09′24″ W.
WEDAK, MT	INT	Lat. 45°53′18″ N., long. 114°05′02″ W.
IKFOM, WY	WP	Lat. 44°54′59″ N., long. 108°32′21″ W.
WUVUT, WY	INT	Lat. 44°14′40″ N., long. 105°15′53″ W.
O′Neill, NE (ONL)	VORTAC	Lat. 42°28′14″ N., long. 98°41′13″ W.

Q–154 WANTA, WA to Bowie, TX [New]

WANTA, WA	INT	Lat. 46°28′24″ N., long. 121°37′26″ W.
JELTI, OR	INT	Lat. 44°59′37″ N., long. 118°21′12″ W.
HOVEL, ID	INT	Lat. 44°21′33″ N., long. 117°11′31″ W.

VELUY, ID	WP	Lat. 43°38′24″ N., long. 115°44′53″ W.
Burley, ID (BYI)	VOR/DME	Lat. 42°34′49″ N., long. 113°51′57″ W.
PIMIE, UT	INT	Lat. 41°49′19″ N., long. 112°18′47″ W.
NAGNE, UT	INT	Lat. 41°10′19″ N., long. 111°15′10″ W.
BONGO, UT	INT	Lat. 40°07′31″ N., long. 109°21′23″ W.
PITMN, CO	INT	Lat. 39°06′03″ N., long. 107°18′31″ W.
TAYLR, CO	INT	Lat. 38°47′36″ N., long. 106°44′03″ W.
GOSIP, CO	INT	Lat. 37°37′15″ N., long. 104°35′50″ W.
KENTO, NM	INT	Lat. 36°44′19″ N., long. 103°05′57″ W.
NOSEW, TX	WP	Lat. 35°31′08″ N., long. 100°59′38″ W.
Bowie, TX (UKW)	VORTAC	Lat. 33°32′09″ N., long. 97°49′17″ W.
Q–156 STEVS, WA to ZZIPR, IA [New]		
STEVS, WA	WP	Lat. 47°14′54″ N., long. 120°32′10″ W.
ZAXUL, WA	INT	Lat. 47°10′03″ N., long. 120°02′42″ W.
FINUT, WA	WP	Lat. 46°44′56″ N., long. 117°05′20″ W.
TUFFY, MT	INT	Lat. 46°42′29″ N., long. 114°05′01″ W.
UPUGE, MT	INT	Lat. 46°38′05″ N., long. 112°10′02″ W.
HEXOL, MT	INT	Lat. 46°36′49″ N., long. 111°09′21″ W.
TOUGH, MT	WP	Lat. 46°13′58″ N., long. 105°12′52″ W.
JELRO, SD	INT	Lat. 45°48′44″ N., long. 102°51′47″ W.
KEKPE, SD	WP	Lat. 45°17′55″ N., long. 100°16′49″ W.
UFFDA, MN	WP	Lat. 44°29′46″ N., long. 96°05′25″ W.
HSTIN, MN	WP	Lat. 44°00′08″ N., long. 93°57′40″ W.
ZZIPR, IA	WP	Lat. 43°11′09″ N., long. 91°39′33″ W.

Issued in Washington, DC, on April 9, 2012.

Gary A. Norek,

Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–8976 Filed 4–13–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30835; Amdt. No. 3472]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective April 16, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 16, 2012.

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

For Examination—

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

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

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

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

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

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

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

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

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

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on

FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 30, 2012.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 3 May, 2012

Dothan, AL, Dothan Rgnl, COPTER VOR RWY 36, Orig
Dothan, AL, Dothan Rgnl, VOR RWY 14, Amdt 4
Ozark, AL, Blackwell Field, VOR RWY 30, Amdt 6B
Chinle, AZ, Chinle Muni, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Fort Huachuca Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, RADAR–1, Orig
Fort Huachuca Sierra Vista, AZ, Sierra Vista Muni-Libby AAF, RADAR–2, Orig
Lake Havasu City, AZ, Lake Havasu City, Takeoff Minimums and Obstacle DP, Amdt 2
Lake Havasu City, AZ, Lake Havasu City, VOR/DME–A, Amdt 1
Fullerton, CA, Fullerton Muni, Takeoff Minimums and Obstacle DP, Amdt 5
San Diego/El Cajon, CA, Gillespie Field, RNAV (GPS) RWY 17, Amdt 2
Danbury, CT, Danbury Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Rensselaer, IN, Jasper County, GPS RWY 18, Orig-A, CANCELLED
Rensselaer, IN, Jasper County, NDB RWY 18, Amdt 3A, CANCELLED
Rensselaer, IN, Jasper County, RNAV (GPS) RWY 18, Orig
Rensselaer, IN, Jasper County, RNAV (GPS) RWY 36, Orig
Cheboygan, MI, Cheboygan County, RNAV (GPS) RWY 28, Amdt 2
Gaylord, MI, Gaylord Rgnl, NDB RWY 9, Amdt 13
Gaylord, MI, Gaylord Rgnl, RNAV (GPS) RWY 9, Orig
Gaylord, MI, Gaylord Rgnl, RNAV (GPS) RWY 27, Orig
Gaylord, MI, Gaylord Rgnl, VOR RWY 9, Amdt 2
Gaylord, MI, Gaylord Rgnl, VOR RWY 27, Amdt 2
Lansing, MI, Capital Region Intl, VOR RWY 24, Amdt 9, CANCELLED
Manistique, MI, Schoolcraft County, RNAV (GPS) RWY 10, Orig
Manistique, MI, Schoolcraft County, RNAV (GPS) RWY 28, Orig
Manistique, MI, Schoolcraft County, VOR RWY 28, Amdt 1
Rogers City, MI, Presque Isle County, Takeoff Minimums and Obstacle DP, Amdt 2
Cambridge, MN, Cambridge Muni, NDB RWY 34, Amdt 7
Cambridge, MN, Cambridge Muni, RNAV (GPS) RWY 16, Orig
Cambridge, MN, Cambridge Muni, RNAV (GPS) RWY 34, Orig
Cloquet, MN, Cloquet Carlton County, VOR/DME–A, Amdt 5B, CANCELLED
Fosston, MN, Fosston Muni, NDB RWY 34, Amdt 4
Fosston, MN, Fosston Muni, RNAV (GPS) RWY 16, Orig
Fosston, MN, Fosston Muni, RNAV (GPS) RWY 34, Orig
Fosston, MN, Fosston Muni, Takeoff Minimums and Obstacle DP, Amdt 2
St Paul, MN, St Paul Downtown Holman Fld, RNAV (GPS) RWY 14, Amdt 1
Cape Girardeau, MO, Cape Girardeau Muni, Takeoff Minimums and Obstacle DP, Amdt 8
Tupelo, MS, Tupelo Rgnl, RNAV (GPS) RWY 18, Orig-A
Tupelo, MS, Tupelo Rgnl, RNAV (GPS) RWY 36, Orig-A
Elmira/Corning, NY, Elmira/Corning Rgnl, RNAV (GPS) RWY 6, Amdt 1
Elmira/Corning, NY, Elmira/Corning Rgnl, RNAV (GPS) RWY 24, Amdt 1
Sheboygan, WI, Sheboygan County Memorial, ILS OR LOC/DME RWY 21, Amdt 4
Sheboygan, WI, Sheboygan County Memorial, VOR RWY 3, Amdt 8, CANCELLED

Effective 31 May, 2012

St Mary's, AK, St Mary's, LOC/DME RWY 17, Amdt 5
St Mary's, AK, St Mary's, NDB RWY 35, Amdt 1, CANCELLED
St Mary's, AK, St Mary's, RNAV (GPS) RWY 17, Amdt 3
St Mary's, AK, St Mary's, RNAV (GPS) RWY 35, Amdt 2

St Mary's, AK, St Mary's, RNAV (GPS) Z RWY 17, Orig, CANCELLED
St Mary's, AK, St Mary's, RNAV (GPS) Z RWY 35, Orig, CANCELLED
Valdez, AK, Valdez Pioneer Field, JMAAL TWO Graphic DP
Headland, AL, Headland Muni, RNAV (GPS) RWY 9, Amdt 1
Headland, AL, Headland Muni, RNAV (GPS) RWY 27, Amdt 1
Jasper, AL, Walker County-Bevill Field, ILS OR LOC/DME RWY 27, Amdt 1
Jasper, AL, Walker County-Bevill Field, RNAV (GPS) RWY 27, Orig
Jasper, AL, Walker County-Bevill Field, Takeoff Minimums and Obstacle DP, Amdt 1
Jasper, AL, Walker County-Bevill Field, VOR/DME–A, Amdt 3
Napa, CA, Napa County, NAPAA TWO Graphic DP
San Luis Obispo, CA, San Luis County Rgnl, ILS RWY 11, Amdt 2
San Luis Obispo, CA, San Luis County Rgnl, LOC RWY 11, Orig
San Luis Obispo, CA, San Luis County Rgnl, RNAV (GPS) RWY 11, Amdt 1
Baxley, GA, Baxley Muni, NDB RWY 8, Amdt 2
Baxley, GA, Baxley Muni, RNAV (GPS) RWY 8, Amdt 1
Baxley, GA, Baxley Muni, RNAV (GPS) RWY 26, Amdt 1
Baxley, GA, Baxley Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Opelousas, LA, St Landry Parish-Ahart Field, NDB RWY 18, Amdt 3
Opelousas, LA, St Landry Parish-Ahart Field, RNAV (GPS) RWY 18, Amdt 1
Opelousas, LA, St Landry Parish-Ahart Field, RNAV (GPS) RWY 36, Amdt 1
Opelousas, LA, St Landry Parish-Ahart Field, Takeoff Minimums and Obstacle DP, Amdt 1
Beaufort, NC, Michael J. Smith Field, NDB RWY 14, Amdt 1
Beaufort, NC, Michael J. Smith Field, NDB RWY 21, Amdt 1
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 3, Amdt 1
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 8, Amdt 1
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 14, Amdt 1
Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 32, Amdt 1
Superior, NE., Superior Muni, RNAV (GPS) RWY 14, Orig
Superior, NE., Superior Muni, RNAV (GPS) RWY 32, Orig
Superior, NE., Superior Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Superior, NE., Superior Muni, VOR/DME–A, Amdt 2
Los Alamos, NM, Los Alamos, RNAV (GPS) Y RWY 27, Amdt 1
Los Alamos, NM, Los Alamos, RNAV (GPS) Z RWY 27, Orig
Los Alamos, NM, Los Alamos, Takeoff Minimums and Obstacle DP, Amdt 1
Wauseon, OH, Fulton County, NDB OR GPS RWY 27, Amdt 7A, CANCELLED
Wauseon, OH, Fulton County, RNAV (GPS) RWY 9, Orig
Wauseon, OH, Fulton County, RNAV (GPS) RWY 27, Orig
Providence, RI, Theodore Francis Green State, VOR RWY 5, Amdt 14
Victoria, TX, Victoria Rgnl, ILS OR LOC/DME RWY 13L, Amdt 12
Victoria, TX, Victoria Rgnl, RNAV (GPS) RWY 13L, Amdt 1
Victoria, TX, Victoria Rgnl, RNAV (GPS) RWY 31R, Amdt 1
Victoria, TX, Victoria Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Victoria, TX, Victoria Rgnl, VOR RWY 13L, Amdt 17
Victoria, TX, Victoria Rgnl, VOR/DME RWY 31R, Amdt 7
Seattle, WA, Boeing Field/King County Intl, Takeoff Minimums and Obstacle DP, Amdt 7
Toledo, WA, Ed Carlson Memorial Field-South Lewis County, ATASY TWO Graphic DP
Tomahawk, WI, Tomahawk Rgnl, RNAV (GPS) RWY 9, Amdt 2
Tomahawk, WI, Tomahawk Rgnl, RNAV (GPS) RWY 27, Amdt 2
Tomahawk, WI, Tomahawk Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Tomahawk, WI, Tomahawk Rgnl, VOR/DME–A, Amdt 1, CANCELLED

RESCINDED: On March 16, 2012 (77 FR 15576), the FAA Published an Amendment in Docket No. 30831, Amdt No. 3468 to Part 97 of the Federal Aviation Regulations Under section 97.33. The following entries, effective 5 April, 2012, Are Hereby Rescinded in Their Entirety

Orlando, FL, Executive, ILS OR LOC/DME RWY 25, Orig.

RESCINDED: On March 28, 2012 (77 FR 18681), the FAA Published an Amendment in Docket No. 30833, Amdt No. 3470 to Part 97 of the Federal Aviation Regulations Under section 97.33. The following entries, effective 3 May, 2012, Are Hereby Rescinded in Their Entirety

Pocatello, ID, Pocatello Rgnl, VOR RWY 3, Amdt 17.

RESCINDED: On March 28, 2012 (77 FR 18681), the FAA Published an Amendment in Docket No. 30833, Amdt No. 3470 to Part 97 of the Federal Aviation Regulations Under section 97.33. The following entries, effective 31 May, 2012, Are Hereby Rescinded in Their Entirety

Lake Havasu City, AZ, Lake Havasu City, Takeoff Minimums and Obstacle DP, Amdt 2
Lake Havasu City, AZ, Lake Havasu City, VOR/DME–A, Amdt 1.

[FR Doc. 2012–8964 Filed 4–13–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30836; Amdt. No. 3473]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective April 16, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 16, 2012.

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

For Examination—

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this

material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

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

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 30, 2012.

John McGraw,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
3–May–12	IA	Sioux City	Sioux Gateway/Col. Bud Day Field.	2/8304	3/20/12	This NOTAM, published in TL 12–09, is hereby rescinded in its entirety.
3–May–12	CA	San Francisco	San Francisco Intl	2/1235	3/20/12	RNAV (RNP) Y RWY 28R, Orig-C
3–May–12	FL	Miami	Miami Intl	2/2210	3/19/12	RNAV (GPS) Z RWY 26L, Amdt 1
3–May–12	MS	Jackson	Jackson-Evers Intl	2/2509	3/19/12	RNAV (GPS) RWY 16R, Amdt 1
3–May–12	MS	Jackson	Jackson-Evers Intl	2/2511	3/19/12	RNAV (GPS) RWY 34R, Amdt 1
3–May–12	MS	Jackson	Jackson-Evers Intl	2/2513	3/19/12	ILS OR LOC RWY 34L, Amdt 5A

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
3–May–12	MS	Jackson	Jackson-Evers Intl	2/2518	3/19/12	RNAV (GPS) RWY 34L, Amdt 2
3–May–12	CA	Palo Alto	Palo Alto Arpt of Santa Clara Co..	2/3358	3/19/12	Takeoff Minimums and Obstacle DP, Orig
3–May–12	SC	Allendale	Allendale County	2/3399	3/20/12	GPS RWY 17, Orig-B
3–May–12	SC	Allendale	Allendale County	2/3400	3/20/12	GPS RWY 35, Amdt 1A
3–May–12	SC	Allendale	Allendale County	2/3402	3/20/12	VOR OR GPS A, Amdt 5A
3–May–12	GA	Atlanta	Fulton County Airport-Brown Field.	2/3814	3/19/12	NDB RWY 8, Amdt 3A
3–May–12	AL	Huntsville	Huntsville Intl—Carl T Jones Field.	2/4557	3/19/12	ILS OR LOC RWY 18R, ILS RWY 18R (CAT II), Amdt 24B
3–May–12	GA	Atlanta	Atlanta/Hartsfield-Jackson Atlanta Intl.	2/4558	3/19/12	ILS OR LOC RWY 9R, ILS RWY 9R (CAT II), ILS RWY 9R (CAT III), Amdt 17C
3–May–12	GA	Atlanta	Atlanta/Hartsfield-Jackson Atlanta Intl.	2/4559	3/19/12	ILS PRM RWY 9R (Sim. Close Parallel), ILS PRM RWY 9R (CAT II) (Sim. Close Parallel), ILS PRM RWY 9R (CAT III) (Sim. Close Parallel), Orig-B
3–May–12	IL	Marion	Williamson County Rgnl	2/4638	3/19/12	RNAV (GPS) RWY 20, Orig-A
3–May–12	IL	Marion	Williamson County Rgnl	2/4639	3/19/12	NDB RWY 20, Amdt 10A
3–May–12	IL	Marion	Williamson County Rgnl	2/4640	3/19/12	VOR RWY 20, Amdt 17A
3–May–12	IL	Marion	Williamson County Rgnl	2/4641	3/19/12	VOR RWY 2, Amdt 13A
3–May–12	IL	Marion	Williamson County Rgnl	2/4642	3/19/12	RNAV (GPS) RWY 2, Orig-A
3–May–12	NC	Burlington	Burlington-Alamance Rgnl	2/5508	3/9/12	ILS OR LOC/NDB RWY 6, Amdt 1
3–May–12	WY	Cheyenne	Cheyenne Rgnl/Jerry Olson Field.	2/5840	3/20/12	RADAR–1, Amdt 1B
3–May–12	AZ	Phoenix	Phoenix Sky Harbor Intl	2/5854	3/22/12	ILS OR LOC RWY 8, Orig-C
3–May–12	AZ	Phoenix	Phoenix Sky Harbor Intl	2/5857	3/22/12	ILS OR LOC RWY 26, Orig-D
3–May–12	DC	Washington	Washington Dulles Intl	2/6475	3/19/12	ILS OR LOC RWY 1R, Amdt 24A
3–May–12	IA	Sioux City	Sioux Gateway/Col. Bud Day Field.	2/6534	3/20/12	NDB RWY 13, Amdt 15C
3–May–12	FL	Miami	Miami Intl	2/6842	3/19/12	Takeoff Minimums and Obstacle DP, Amdt 17
3–May–12	DC	Washington	Washington Dulles Intl	2/7130	3/19/12	ILS RWY 1L (CAT II), Amdt 1A
3–May–12	DC	Washington	Washington Dulles Intl	2/7131	3/19/12	ILS OR LOC/DME RWY 1L, Amdt 1A
3–May–12	DC	Washington	Washington Dulles Intl	2/7136	3/19/12	ILS RWY 1L (CAT III), Amdt 1A
3–May–12	TN	Waverly	Humphreys County	2/8155	3/20/12	NDB RWY 21, Amdt 3B
3–May–12	GA	Athens	Athens/Ben Epps	2/9279	3/19/12	RNAV (GPS) RWY 2, Orig
3–May–12	GA	Athens	Athens/Ben Epps	2/9283	3/19/12	ILS OR LOC/DME RWY 27, Amdt 1
3–May–12	GA	Athens	Athens/Ben Epps	2/9284	3/19/12	NDB RWY 27, Amdt 1
3–May–12	GA	Athens	Athens/Ben Epps	2/9285	3/19/12	RNAV (GPS) RWY 20, Orig
3–May–12	GA	Athens	Athens/Ben Epps	2/9286	3/19/12	RNAV (GPS) RWY 27, Orig
3–May–12	GA	Athens	Athens/Ben Epps	2/9287	3/19/12	VOR RWY 2, Amdt 11A
3–May–12	GA	Athens	Athens/Ben Epps	2/9290	3/19/12	RNAV (GPS) RWY 9, Orig
3–May–12	GA	Athens	Athens/Ben Epps	2/9291	3/19/12	VOR RWY 27, Amdt 12

[FR Doc. 2012–8967 Filed 4–13–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9562]

RIN 1545–BH77

Conduit Financing Arrangements; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9562) that were published in the **Federal Register** on Friday, December 9, 2011 (76 FR 76895) providing guidance on conduit financing arrangements. The final regulations apply to multiple-party financing arrangements that are effected through disregarded entities, and are necessary in order to determine which of those arrangements should be recharacterized as a conduit financing arrangement.

DATES: This correction is effective on April 16, 2012 and is applicable on December 9, 2011.

FOR FURTHER INFORMATION CONTACT: Quyen P. Huynh, (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation (TD 9562) that is the subject of this correction is under section 881 of the Internal Revenue Code.

Need for Correction

As published, TD 9562 contains errors that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

§ 1.881–3 [Amended]

■ **Par. 2.** For each entry in the table in the ''Section'' column, remove the language in the ''Remove'' column and add in its place the language in the ''Add'' column as set forth below:

Section	Remove	Add
Last sentence of paragraph (a)(2)(i)(A)	*Examples 1, 2, 3*	*Examples 1, 2, 3* and *4.*
Last sentence of paragraph (a)(2)(i)(B)	*Examples 4* and *5*	*Examples 5* and *6.*
Last sentence of paragraph (a)(3)(ii)(E)(*2*)(*ii*)	*Example 6*	*Example 7.*
Last sentence of paragraph (a)(4)(ii)(B)	*Examples 7* and *8*	*Examples 8* and *9.*
Last sentence of paragraph (b)(1)	*Examples 11* and *12*	*Examples 12* and *13.*
Last sentence of paragraph (b)(2)(i)	*Examples 13, 14* and *15*	*Examples 14, 15* and *16.*
Last sentence of paragraph (b)(2)(iii)	*Example 16*	*Example 17.*
Last sentence of paragraph (b)(2)(iv)	*Example 17*	*Example 18.*
Last sentence of paragraph (b)(3)(i)	*Examples 21, 22* and *23*	*Examples 22, 23* and *24.*
Last sentence of paragraph (d)(1)(i)	*Example 24*	*Example 25.*
Next to last sentence of paragraph (d)(1)(ii)(A)	*Example 25*	*Example 26.*
Paragraph (e), *Example 21,* paragraph (i)	*Example 19*	*Example 20.*
Paragraph (e), *Example 21,* paragraph (ii)	*Example 20*	*Example 21.*
Paragraph (e), *Example 23,* paragraph (i)	*Example 21*	*Example 22.*
Paragraph (e), *Example 24,* paragraph (i)	*Example 21*	*Example 22.*

Treena V. Garrett,

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

[FR Doc. 2012–8993 Filed 4–13–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9583]

RIN 1545–BI92

Guidance Under Section 267(f); Deferral of Loss on Transactions Between Members of a Controlled Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the deferral of losses on the sale or exchange of property between members of a controlled group and provides guidance as to the time for taking into account those losses. These regulations affect corporations that are members of a controlled group.

DATES: *Effective Date:* These regulations are effective on April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Amie Colwell Breslow (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 267(a)(1) provides that no deduction shall be allowed for any loss on the sale or exchange of property between certain related persons. Section 267(f)(2) contains an exception for a loss on the sale or exchange of property between members of a controlled group. For this purpose, ''controlled group'' has the meaning given to such term in section 1563(a) except that ''more than 50 percent'' is substituted for ''at least 80 percent'' each place it appears. In the case of a sale or exchange of loss property between members of a controlled group, the loss is deferred rather than disallowed. Under section 267(f)(2)(B), the loss is deferred until the property is transferred outside of the controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

The regulations under section 267(f) provide that the timing principles for intercompany sales or exchanges between members of a consolidated group (see generally § 1.1502–13(c)(2)) apply to sales or exchanges of property

at a loss between members of a controlled group. See § 1.267(f)–1(a)(2). The attribute redetermination rules applicable to transactions between members of a consolidated group (see § 1.1502–13(c)(1)), however, do not apply to sales or exchanges between members of a controlled group.

Although the attribute redetermination rule generally does not apply to sales or exchanges between members of a controlled group, § 1.267(f)–1(c)(1)(iv) contains a special rule with respect to losses that would have been redetermined to be a noncapital, nondeductible amount if the consolidated return attribute redetermination rule did apply. Under § 1.267(f)–1(c)(1)(iv), if an intercompany loss between members of a consolidated group would have been redetermined to be a noncapital, nondeductible amount as a result of the attribute redetermination rule applicable to consolidated groups, but is not redetermined because the sale or exchange occurred between members of a controlled group (to which the attribute redetermination rule does not apply), then the loss will be deferred. The loss is taken into account when the selling member (S) and buying member (B) are no longer in a controlled group relationship.

On April 21, 2011, the IRS and Treasury Department published a notice of proposed rulemaking (REG–118761–09) in the **Federal Register** (76 FR 22336). The notice included proposed regulations under section 267(f) providing guidance concerning the Federal income tax treatment of deferred losses on the sale or exchange of property between members of a controlled group, including transactions in which the member acquiring the property subsequently recognizes a corresponding gain with respect to the property. The proposed regulations provided that certain losses on the sale or exchange of property between members of a controlled group, which have been deferred, are taken into account upon the occurrence of either of two events. The deferred loss is taken into account to the extent of any corresponding gain that the member acquiring the property recognizes with respect to the property. Alternatively, the deferred loss is taken into account when the parties to the transaction cease to be in a controlled group relationship. The proposed regulations also provided that for purposes of determining whether the loss is redetermined to be a noncapital, nondeductible amount under the principles of § 1.1502–13, stock held by S, stock held by B, and stock held by all members of the consolidated group that includes S, as well as stock held by any member of a controlled group of which S is a member that was acquired from a member of S's consolidated group, must be taken into account. A public hearing was requested and held on August 3, 2011. The IRS received one formal comment in response to the notice of proposed rulemaking. The comment raised several questions with certain recommendations, which are discussed in the following paragraphs of this preamble.

The commentator suggested that the final regulations incorporate a model that allows a loss to be taken into account based on the arm's length principles contained in section 482 and the regulations thereunder. Specifically, the commentator noted that if the transaction is arm's length in nature and has substance from a business perspective, the loss should be taken into account immediately. The IRS and Treasury Department do not agree with this comment. In a transaction described in these regulations, it is assumed that the parties are acting at arm's length. Section 267(f) serves a different purpose, namely, to determine the timing of when a loss should be taken into account on a sale or exchange of property between members of a controlled group. Accordingly, the final regulations retain the model contained in the proposed regulations.

The commentator also suggested that the proposed regulations do not clearly state how to establish whether a recognized loss is redetermined to be a noncapital, nondeductible amount under the principles of § 1.1502–13. Specifically, the commentator noted that it is unclear whether the proposed regulations, as written, are intended to direct taxpayers to a § 1.1502–34 type of analysis in determining whether the loss is redetermined to be a noncapital, nondeductible amount. Under the rule, stock held by S, stock held by B, and stock held by all members of the consolidated group that includes S, as well as stock held by any member of a controlled group of which S is a member that was acquired from a member of S's consolidated group must be taken into account. After considering the comment, the IRS and Treasury Department believe that the rules in the proposed regulations, as written, are clear in that they expressly list the corporations the stock holdings of which must be taken into account. Furthermore, the IRS and Treasury Department believe that the proposed regulation is appropriately broader than the stock aggregation rule of § 1.1502–34 to account for, among other considerations, the fact that the controlled group definition is broader than the definition of a consolidated group.

In addition, the commentator questioned whether the proposed regulations were consistent with the holdings in *Granite Trust* v. *United States,* 238 F.2d 670 (1st Cir. 1956), and other applicable case law. The IRS and Treasury Department believe that the rules contained in the proposed regulations and these final regulations are consistent with applicable case law. These rules are intended to address the timing for taking into account a loss on a sale of property between members of a controlled group, and do not relate to whether a liquidation otherwise results in the recognition of a loss.

Explanation of Provisions

These final regulations retain the rules of the proposed regulations, but make one revision to clarify the interaction of section 267(f) and § 1.1502–13 principles. The final regulations also make one modification to ensure that taxpayers cannot circumvent the purposes of the proposed regulation through issuances of target corporation stock to controlled group members.

The proposed regulations provided that a deferred loss is taken into account to the extent of any corresponding gain that the member acquiring the property recognizes with respect to the property. For example, assume S sells 30 percent of T's stock to B (a member of S's controlled group) at a loss (in a transaction that is treated as a sale or exchange for Federal income tax purposes). If T's stock appreciates after the sale and before a subsequent event that results in B's recognition of gain, the proposed regulations provided that S's deferred loss may be taken into account to the extent that B recognizes a corresponding gain.

Questions have been raised concerning whether this rule is necessary because the relevant consolidated return provisions currently allow the loss to be taken into account to the extent of the corresponding gain. The IRS and Treasury Department agree that an explicit rule is unnecessary because the timing of taking the loss into account in these circumstances is provided for under § 1.1502–13. Accordingly, the rule in the proposed regulations has been removed from the final regulations and an example has been added to § 1.267(f)–1(j) to illustrate the interaction of these final regulations and the consolidated return regulations.

In addition to this clarification, these final regulations provide that stock

issued to a member of the controlled group by a target corporation is taken into account for purposes of determining whether a loss would be treated as noncapital, nondeductible amount if the rules of § 1.1502–13 applied. For example, assume FP is a foreign corporation that owns all the stock of FS, a foreign subsidiary, and all the stock of P, a domestic corporation. P owns all the stock of T. In Year 1, FS contributes cash to T in exchange for newly issued stock of T that constitutes 40 percent of T's outstanding stock. In Year 2, when the value of the T stock owned by P is less than its basis in P's hands, P sells all of its T stock to FP. In Year 3, in a transaction unrelated to the issuance of the T stock in Year 1, T converts under state law to a limited liability company that is treated as a partnership for Federal income tax purposes.

Under these final regulations, the T stock issued by T to FS is taken into account for purposes of determining whether, upon the conversion of T, P's deferred loss would be treated under the principles of § 1.1502–13 as a noncapital, nondeductible amount.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect controlled groups of corporations which tend to be larger businesses. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

Drafting Information

The principal author of this regulation is Amie Colwell Breslow, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.267(f)–1 is also issued under 26 U.S.C. 267.

■ **Par. 2.** Section 1.267(f)–1 is amended as follows:

■ 1. Paragraph (c)(1)(iv) is revised.

■ 2. Adding *Example 9* to paragraph (j).

■ 3. Adding *Example 10* to paragraph (j).

■ 4. Paragraph (l)(3) is redesignated as paragraph (l)(4) and a new paragraph (l)(3) is added.

The additions and revision read as follows:

§ 1.267(f)–1 Controlled groups.

* * * * *

(c) * * *

(1) * * *

(iv) *B's item is excluded from gross income or noncapital and nondeductible.* To the extent S's loss would be redetermined to be a noncapital, nondeductible amount under the principles of § 1.1502–13, but is not redetermined under paragraph (c)(2) of this section (which generally renders the attribute redetermination rule inapplicable to sales between members of a controlled group), S's loss continues to be deferred. For purposes of this paragraph, stock held by S, stock held by B, stock held by all members of S's consolidated group, stock held by any member of a controlled group of which S is a member that was acquired from a member of S's consolidated group, and stock issued by T to a member of the controlled group must be taken into account in determining whether a loss would be redetermined to be a noncapital, nondeductible amount under the principles of § 1.1502–13. If the loss remains deferred, it is taken into account when S and B (including their successors) are no longer in a controlled group relationship. (If, however, the property is transferred to certain related persons, paragraph (c)(1)(iii) of this section will cause the loss to be permanently disallowed.) For example, if S sells all of the T stock to B at a loss (in a transaction that is treated as a sale or exchange for Federal income tax purposes), and T subsequently liquidates in an unrelated transaction that qualifies under section 332, S's loss is deferred until S and B are no longer in a controlled group relationship. Similarly, if S owns all of the T stock and sells 30 percent of T's stock to B at a loss (in a transaction that is treated as a sale or exchange for Federal income tax purposes), and T subsequently liquidates, S's loss on the sale is deferred until S and B (including their successors) are no longer in a controlled group relationship.

* * * * *

(j) * * *

Example 9. Sale of stock by consolidated group member to controlled group member. (a) *Facts.* P1, a domestic corporation, owns 75% of the outstanding stock of P, the common parent of a consolidated group. P owns all of the outstanding stock of subsidiaries M and S, which are members of P's consolidated group. M and S each own 50% of the only class of stock of L, a nonmember life insurance company. On January 1 of Year 1, S sells 25% of L's stock to P1 for $50 cash. At the time of the sale, S's aggregate basis in the L shares transferred to P1 was $80, and S recognizes a $30 loss. On February 18 of Year 3, at a time when the L shares held by P1 are worth $60, L liquidates. As a result of the liquidation, P1 recognizes a $10 gain.

(b) *Timing.* Under paragraph (a)(2) of this section, S's loss on the sale of the L stock to P1 is deferred. Under paragraph (c)(1)(iv) of this section, upon the liquidation of L, to the extent S's loss would be redetermined to be a noncapital, nondeductible amount under the principles of § 1.1502–13, S's loss continues to be deferred. Under the principles of § 1.1502–13, S's loss is not redetermined to be a noncapital, nondeductible amount to the extent of P1's $10 of gain recognized. Accordingly, S takes into account $10 of loss as a result of the liquidation. In determining whether the remainder of S's $20 loss would be redetermined to be a noncapital, nondeductible amount, under paragraph (c)(1)(iv) of this section, stock held by P1, stock held by M, and stock held by S is taken into account. Accordingly, under the principles of § 1.1502–13, the liquidation of L would be treated as a liquidation qualifying under section 332, and the remainder of S's loss would be redetermined to be a noncapital, nondeductible amount. Thus, under paragraph (c)(1)(iv), S's remaining $20 loss continues to be deferred until S and P1 are no longer in a controlled group relationship.

Example 10. Issuance of stock to controlled group member. (a) *Facts.* FP is a foreign corporation that owns all the stock of FS, a foreign corporation, and all the stock of P, a domestic corporation. P owns all of the single class of outstanding common stock of T. In Year 1, FS contributes cash to T in exchange for newly issued stock of T that constitutes 40 percent of T's outstanding stock. In Year 2, when the value of the T stock owned by P is less than its basis in P's hands, P sells

all of its T stock to FP. In Year 3, in a transaction unrelated to the issuance of the T stock in Year 1, T converts under state law to a limited liability company that is treated as a partnership for Federal income tax purposes.

(b) *Timing.* Under paragraph (a)(2) of this section, P's loss on the sale of its T stock is deferred. Under paragraph (c)(1)(iv) of this section, upon the conversion of T, to the extent P's loss would be redetermined to be a noncapital, nondeductible amount under the principles of § 1.1502–13, P's loss continues to be deferred. In determining whether the loss would be redetermined to be a noncapital, nondeductible amount, stock held by FS (which was acquired from T) and stock held by FP (the buyer of the T stock from P and a member of P's controlled group) is taken into account. Accordingly, under the principles of § 1.1502–13 the deemed liquidation of T resulting from the conversion of T would be treated as a liquidation qualifying under section 332, and P's loss would be redetermined to be a noncapital, nondeductible amount. Thus, under paragraph (c)(1)(iv), P's loss continues to be deferred until P and FP are no longer in a controlled group relationship.

* * * * *

(l) * * *

(3) *Effective/applicability date.* Paragraph (c)(1)(iv) of this section applies to a loss that continues to be deferred pursuant to that paragraph if the event that would cause the loss to be redetermined as a noncapital nondeductible amount under the principles of § 1.1502–13 occurs on or after April 16, 2012.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: April 9, 2012.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–9004 Filed 4–13–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9582]

RIN 1545–BH66

Guidance Under Sections 642 and 643 (Income Ordering Rules)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations under Internal Revenue Code (Code) section 642(c) with regard to the Federal tax consequences of an ordering provision in a trust, a will, or a provision of local law that attempts to determine the tax character of the amounts paid to a charitable beneficiary of the trust or estate. The final regulations also make conforming amendments to the regulations under section 643(a)(5). The final regulations affect estates, charitable lead trusts (CLTs), and other trusts making payments or permanently setting aside amounts for a charitable purpose.

DATES: *Effective Date:* These regulations are effective on April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Liquerman, at (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On June 18, 2008, proposed regulations (REG–101258–08) were published in the **Federal Register** [73 FR 34670]. The proposed regulations contain proposed amendments to the Income Tax Regulations 26 CFR part 1, confirming that a provision in a trust, a will, or a provision of local law that specifically indicates the source out of which amounts are to be paid, permanently set aside, or used for a purpose specified in section 642(c) must have economic effect independent of income tax consequences in order to be respected for Federal tax purposes. If such provision does not have economic effect independent of income tax consequences, income distributed for a purpose specified in section 642(c) will consist of the same proportion of each class of the items of income as the total of each class bears to the total of all classes. The proposed regulations also make conforming changes in the corresponding language in the Income Tax Regulations under section 643(a)(5). The trusts and estates that are the subject of the proposed regulations include, without limitation, charitable lead trusts (CLTs) and trusts and estates making payments or permanently setting aside amounts for a charitable purpose.

The proposed regulations are based on the structure and provisions of Subchapter J (of Chapter 1, Subtitle A, of the Code) as a whole, as well as on an analysis of the existing regulations with their interrelated cross-references. The IRS and Treasury Department believe that the current regulations under §§ 1.642(c)–3(b) and 1.643(a)–5(b) require that a specific provision of the governing instrument or a provision under local law have economic effect independent of income tax consequences in order to be respected for Federal income tax purposes. To make this clearer, the proposed regulations add the principle of economic effect directly to the regulations under sections 642(c) and 643(a), rather than leaving this principle to be reached by cross-reference to other regulations.

Finally, the proposed regulations remove § 1.642(c)–3(b)(4) because the provisions of section 116 referenced therein were repealed by the Tax Reform Act of 1986 (Pub. L. 99–514).

Written comments were received on the proposed regulations. Because there were no requests to speak at the scheduled public hearing, the public hearing was cancelled. The proposed regulations, with certain changes made in response to the written comments received, are adopted as final regulations.

Summary of Comments and Explanation of Provisions

Specific Provisions Must Have Economic Effect Independent of Income Tax Consequences

Commentators suggested that the clarification in the proposed regulations, that a specific provision in a governing instrument or in local law that identifies the source(s) of the amounts to be paid, permanently set aside, or used for a purpose specified in section 642(c) must have economic effect independent of income tax consequences in order for the specific provision in the governing instrument or in local law to be respected for Federal tax purposes, is an interpretation contrary to the clear language of section 642(c) and 643(a)(5) and the existing regulations.

The IRS and Treasury Department have carefully considered these arguments and the analyses suggested by the commentators. The IRS and Treasury Department continue to believe that the position clarified in the proposed regulations, requiring that a specific provision of the governing instrument or a provision under local law have economic effect independent of income tax consequences in order to be respected for Federal tax purposes, is the proper interpretation of the relevant Code provisions and is a principle that applies throughout Subchapter J.

The general rule provided in Subchapter J, which mandates that the tax character of distributions to beneficiaries consists of a pro rata portion of all types of a trust's income, appears in section 652(b) and in several different sections of the regulations under the subchapter. The only

regulatory exception to this pro rata rule is for a specific provision in a governing instrument or a provision under local law that provides as to the tax character of distributions to beneficiaries. This exception to the pro rata rule must have the same meaning throughout the Subchapter J regulations. The chain of regulatory references from §§ 1.642(c)–3(b) and 1.643(a)–5(b), detailed in the preamble to the proposed regulations, incorporates into each of those provisions, by cross-reference to § 1.662(b)–2, ''the principles contained'' in § 1.652(b)–1 and, in turn, § 1.652(b)–2(a) and –2(b), which require a specific provision to have economic effect independent of income tax consequences in order to be respected. The proposed regulations confirm this uniform principle by inserting the terms of §§ 1.652(b)–1 and 1.652(b)–2(a) and –2(b) explicitly into §§ 1.642(c)–3(b) and 1.643(a)–5(b).

Moreover, section 643(a)(7) grants express regulatory authority to ''prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.''

Income Ordering Provisions and Economic Effect Independent of Income Tax Consequences

A commentator suggested that income ordering provisions in CLTs have economic effect independent of income tax consequences because disregarding an income ordering provision could increase a CLT's tax liability, thereby reducing the value of the trust and in turn reducing the annual unitrust payments to the charitable beneficiaries and increasing the risk that the trust's assets will be depleted before the end of the trust term. Although the general pro rata allocation rule may increase a trust's tax liability and thereby reduce the value of the trust's corpus, the effect of the payment of the trust's income tax liability is not an economic effect independent of income tax consequences as described in these regulations. Any possible reduction in the unitrust amount subsequently paid to the charitable beneficiary would be the direct result of the payment of income taxes by the unitrust. The use of an income ordering rule in a CLT, directing the tax characteristics of the unitrust or annuity payments to the charity, is primarily, if not exclusively, an attempt to minimize the tax liabilities of the trust and its remainder beneficiaries. The only effects of the use of an ordering rule are in fact dependent solely upon tax consequences: specifically, the reduced amount of tax paid and the trust's retention of the income tax savings.

Ordering provisions in CLTs will never have economic effect independent of their tax consequences because the amount paid to the charity is not dependent upon the type of income it is allocated. An annuity payment is a fixed amount from year to year, and although a unitrust amount may fluctuate annually, the amount is based upon a predetermined percentage of the trust's value.

Permitting an ordering rule with no economic effect independent of income tax consequences to supersede the pro rata allocation rule generally applicable under Subchapter J would, in effect, permit taxpayers to deviate at will from the general rule imposed throughout Subchapter J in the case of all kinds of complex trusts.

Encouragement of Charitable Gifts

A commentator suggested that the proposed regulations are contrary to the Federal government's long standing policy to encourage charitable gifts and to benefit and protect charities.

The IRS and Treasury Department have carefully considered the merits and implications of this suggestion. The IRS and Treasury Department believe, however, that the proper interpretation of the relevant Code sections does not permit the creation of a special rule for CLTs. A CLT is treated and taxed in the same way as any other complex trust under Subchapter J. Subchapter J does not differentiate between a CLT and a different type of complex trust, and there is no provision of Subchapter J that applies exclusively and expressly to CLTs. Thus, any income tax rule applicable to a CLT will apply in the same way to every other complex trust.

Principal/Income Ordering Rules

A commentator requested that the proposed regulations be expanded to provide that trusts that make distributions to both charitable and noncharitable beneficiaries in the same taxable year must allocate the distributions equally to principal and income as between charitable and noncharitable beneficiaries, unless there is a provision that has economic effect independent of income tax consequences.

This request is beyond the scope of the proposed regulations and might implicate other well settled income tax rules applicable to complex trusts. Section 662 and the regulations thereunder provide the rules for distributions by complex trusts with a charitable beneficiary, and sufficiently address the commentator's concern. If the commentator believes that further guidance is needed or would be helpful to taxpayers, a request for additional guidance may be submitted for consideration to be added to the Priority Guidance Plan.

Economic Effect Independent of Income Tax Consequences Example

A commentator requested an example of a provision in a governing instrument that would have economic effect independent of income tax consequences. Such an example has been added to the final regulations as Example 2.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these proposed regulations is Melissa Liquerman, Office of the Associate Chief Counsel (Passthroughs and Special Industries).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.642(c)–3 is amended by:

■ 1. Revising the heading of paragraph (b) and adding a heading for (b)(1).

■ 2. Revising paragraph (b)(2).
■ 3. Adding a heading to paragraph (b)(3).
■ 4. Removing paragraph (b)(4).

The revisions and addition read as follows:

§ 1.642(c)–3 Adjustments and other special rules for determining unlimited charitable contributions deduction.

* * * * *

(b) *Determination of amounts deductible under section 642(c) and the character of such amounts*—(1) *Reduction of charitable contributions deduction by amounts not included in gross income.* * * *

(2) *Determination of the character of an amount deductible under section 642(c).* In determining whether the amounts of income so paid, permanently set aside, or used for a purpose specified in section 642(c)(1), (2), or (3) include particular items of income of an estate or trust, whether or not included in gross income, a provision in the governing instrument or in local law that specifically provides the source out of which amounts are to be paid, permanently set aside, or used for such a purpose controls for Federal tax purposes to the extent such provision has economic effect independent of income tax consequences. See § 1.652(b)–2(b). In the absence of such specific provisions in the governing instrument or in local law, the amount to which section 642(c) applies is deemed to consist of the same proportion of each class of the items of income of the estate or trust as the total of each class bears to the total of all classes. See § 1.643(a)–5(b) for the method of determining the allocable portion of exempt income and foreign income. This paragraph (b)(2) is illustrated by the following examples:

Example 1. A charitable lead annuity trust has the calendar year as its taxable year, and is to pay an annuity of $10,000 annually to an organization described in section 170(c). A provision in the trust governing instrument provides that the $10,000 annuity should be deemed to come first from ordinary income, second from short-term capital gain, third from fifty percent of the unrelated business taxable income, fourth from long-term capital gain, fifth from the balance of unrelated business taxable income, sixth from tax-exempt income, and seventh from principal. This provision in the governing instrument does not have economic effect independent of income tax consequences, because the amount to be paid to the charity is not dependent upon the type of income from which it is to be paid. Accordingly, the amount to which section 642(c) applies is deemed to consist of the same proportion of each class of the items of income of the trust as the total of each class bears to the total of all classes.

Example 2. A trust instrument provides that 100 percent of the trust's ordinary income must be distributed currently to an organization described in section 170(c) and that all remaining items of income must be distributed currently to B, a noncharitable beneficiary. This income ordering provision has economic effect independent of income tax consequences because the amount to be paid to the charitable organization each year is dependent upon the amount of ordinary income the trust earns within that taxable year. Accordingly, for purposes of section 642(c), the full amount distributed to charity is deemed to consist of ordinary income.

(3) *Other examples.* * * *

* * * * *

■ **Par. 3.** Section 1.643(a)–5 is amended by revising paragraph (b) to read as follows:

§ 1.643(a)–5 Tax-exempt interest.

* * * * *

(b) If the estate or trust is allowed a charitable contributions deduction under section 642(c), the amounts specified in paragraph (a) of this section and § 1.643(a)–6 are reduced by the portion deemed to be included in income paid, permanently set aside, or to be used for the purposes specified in section 642(c). If the governing instrument or local law specifically provides as to the source out of which amounts are paid, permanently set aside, or to be used for such charitable purposes, the specific provision controls for Federal tax purposes to the extent such provision has economic effect independent of income tax consequences. See § 1.652(b)–2(b). In the absence of such specific provisions in the governing instrument or local law, an amount to which section 642(c) applies is deemed to consist of the same proportion of each class of the items of income of the estate or trust as the total of each class bears to the total of all classes. For illustrations showing the determination of the character of an amount deductible under section 642(c), see *Examples 1* and *2* of § 1.662(b)–2 and § 1.662(c)–4(e).

Linda M. Kroening,

(Acting) Deputy Commissioner for Services and Enforcement.

Approved: April 9, 2012.

Emily M. McMahon,

(Acting) Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–8996 Filed 4–13–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Docket No. TTB–2010–0008; T.D. TTB–103; Ref: Notice No. 111]

RIN 1513–AB79

Disclosure of Cochineal Extract and Carmine in the Labeling of Wines, Distilled Spirits, and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is revising its regulations to require the disclosure of the presence of cochineal extract and carmine on the labels of any alcohol beverage product containing one or both of these color additives. This rule responds to a final rule issued by the Food and Drug Administration. Consumers who are allergic to cochineal extract or carmine will now be able to identify and thus avoid alcohol beverage products that contain these color additives.

DATES: *Effective Date:* May 16, 2012. Transitional rules are provided which will require compliance by April 16, 2013. Voluntary compliance with this final rule, including making any required labeling changes, may begin immediately.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, telephone 202–453–1039, ext. 292 or Joanne C. Brady, telephone 202–453–1039, ext. 291; Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

I. TTB's Authority To Prescribe Alcohol Beverage Labeling Regulations

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified at 27 U.S.C. 205(e), sets forth standards for regulation of the labeling of wine (containing at least 7 percent alcohol by volume), distilled spirits, and malt beverages, generally referred to as ''alcohol beverage products'' throughout this final rule. This section gives the Secretary of the Treasury the authority to issue regulations to prevent deception of the consumer, to provide the consumer with ''adequate information'' as to the identity and quality of the product, to prohibit false or misleading statements, and to provide information as to the alcohol content of the product.

Section 105(e) of the FAA Act also requires that a person obtain a certificate of label approval (COLA) for all wines, distilled spirits, or malt beverages introduced into interstate or foreign commerce before bottling the product or removing the product from customs custody, in accordance with regulations prescribed by the Secretary. The labeling provisions of the FAA Act also give the Secretary the authority to prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer. In the case of malt beverages, the labeling provisions of the FAA Act apply only if the laws of the State into which the malt beverages are to be shipped impose similar requirements.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

II. Background

In 1987, the Food and Drug Administration (FDA) and the Bureau of Alcohol, Tobacco and Firearms (ATF), TTB's predecessor agency, entered into a memorandum of understanding (published in the **Federal Register** at 52 FR 45502, November 30, 1987), to clarify the enforcement responsibilities of each agency with respect to alcohol beverages. ATF agreed that ''when FDA has determined that the presence of an ingredient in food products, including alcoholic beverages, poses a recognized public health problem, and that the ingredient or substance must be identified on a food product label, ATF would initiate rulemaking proceedings to promulgate labeling regulations for alcoholic beverages consistent with ATF's health policy with respect to alcoholic beverages.'' TTB operates under the same memorandum of understanding with FDA.

Cochineal extract and carmine are color additives that are permitted for use in foods, including alcohol beverage products, in the United States. The FDA has listed these color additives, and the conditions for their safe use in foods, in § 73.100 of the FDA regulations (21 CFR 73.100). On January 5, 2009, FDA published a final rule in the **Federal Register** (74 FR 207) requiring cochineal extract and carmine to be declared by name on the labels of all food and cosmetic products containing one or both of these color additives. FDA explained that this requirement was adopted in response to reports of severe allergic reactions, including anaphylaxis, to foods containing these color additives. The FDA final rule does not require food or cosmetics labels to disclose that these color additives are derived from insects.

Accordingly, on November 3, 2010, TTB published in the **Federal Register** a Notice of Proposed Rulemaking, Notice No. 111, (75 FR 67669) which proposed to require cochineal extract and carmine to be listed on the labels of any alcohol beverage product containing one or both of these color additives. Specifically, TTB proposed amending §§ 4.32, 5.32, and 7.22 of Title 27 Code of Federal Regulations to require that all alcohol beverage products containing cochineal extract or carmine list the additive(s) prominently and conspicuously on the brand label or on a back label using its respective common or usual name ''cochineal extract'' or ''carmine.'' Beginning on the implementation date, an alcohol beverage product containing cochineal extract or carmine would have to bear the mandatory statement on its label at the time of its removal from bond or from customs custody. TTB sought comments on the proposal as outlined in Notice No. 111. TTB specifically sought comments from affected industry members as to whether an implementation date beginning 90 days from the date of the final rule would provide a sufficient amount of time to incorporate these changes. Commenters had until January 3, 2011, to respond to the proposed rule.

During the comment period, TTB received a request from the Distilled Spirits Council of the United States, Inc. (DISCUS), a national trade association that represents producers and marketers of distilled spirits and importers of wines sold in the United States, to extend the comment period for 60 days to allow more time to collect and review data from domestic and foreign companies regarding the issues raised in the proposed rule.

In response to this request, on December 29, 2010, TTB published in the **Federal Register** Notice No. 114 (75 FR 81949) which extended the comment period for Notice No. 111 an additional 60 days. Accordingly, the comment period for the proposal outlined in Notice No. 111 closed on March 4, 2011.

III. Discussion of Comments and Agency Responses

TTB received a total of six responses to TTB Notice No. 111, in addition to the request to extend the comment period discussed above. The commenters include three individuals, two trade associations (DISCUS and the International Association of Color Manufacturers (IACM)), and one alcohol beverage importer. Two of the individual commenters commented in support of TTB's proposal to require the disclosure of these color additives, which they characterize as known allergens, on alcohol beverage labels. Furthermore, none of the other commenters opposed TTB's proposal to require the disclosure of cochineal extract or carmine on alcohol beverage labels.

With regard to the number of products that would be affected by the proposed rule, the comments did not provide specific numbers. However, DISCUS stated that it believed that ''several'' alcohol beverage products would be affected, and the IACM stated that ''few alcohol beverage products'' contained cochineal extract. Based on the comments, TTB has no reason to believe that a substantial number of industry members would be affected by the proposed rule. Nonetheless, several commenters suggested modifications to the proposed rule. The following is a summary of those comments and TTB's responses.

Comments Concerning Disclosure of the Origin of the Color Additives

One individual commenter supported the requirement to list cochineal extract and carmine on alcohol beverage labels, but suggested that the TTB rule should go further and require statements on labels that disclose that the additives are animal products derived from an insect. The commenter stated that while industry groups may not want to list the source of the dye for fear that consumers would find the thought of insect derivatives unappealing, vegetarians or people of certain faiths may be interested in this information so they can avoid consuming products that conflict with their beliefs.

IACM stated that it did not oppose the disclosure of cochineal extract and carmine on alcohol beverage labels. However, IACM opposed any requirement to disclose that the additives are derived from insects. IACM noted that FDA (in its proposed rule published in the **Federal Register** at 71 FR 4839 on January 30, 2006) specifically stated it saw no need to require the declaration of insect origin

for cochineal extract and carmine, as information on the origin of the additives was readily available to those who wanted it.

TTB Response

As previously noted, the FDA final rule does not require that food or cosmetics labels disclose that these color additives are derived from insects. In the preamble to its final rule, which was published in the **Federal Register** on January 5, 2009 (74 FR 207), FDA explained that it did not agree with the commenters who suggested that declaring these color additives by name would provide insufficient information to consumers who choose to avoid products containing these additives. Similarly, TTB does not believe that the source of the color additives needs to be listed on the alcohol beverage label in order for consumers to have adequate information about the product. The purpose of the rule is to allow persons with sensitivities to cochineal extract or carmine the opportunity to avoid ingestion of or contact with these additives. Providing the common name of the color additives on the label will provide sufficient information to all consumers, including those with sensitivities to the additives as well as those who for other reasons wish to avoid these additives. Accordingly, TTB is not adopting this requested change in the final rule.

Comments Concerning the Implementation Period

In their respective comments, the two trade associations and the alcohol beverage importer suggested that TTB extend the proposed 90-day implementation period in order to lessen the burden on affected industry members. IACM commented that while it does not anticipate that the proposed rule would have a substantial economic impact on color additive manufacturers, TTB should consider extending the implementation date from 90 days to 180 days after the date the final rule is published in order to reduce the burden on small companies that are already facing limited financial resources due to the sluggish economy.

DISCUS stated in its comment that the proposed 90-day implementation period would not provide sufficient time to comply with the proposed labeling requirement. DISCUS suggested that TTB adopt a phased-in approach similar to the one which implemented the sulfite labeling disclosure. For that rule, TTB's predecessor agency, ATF, provided a one year transition period to fully implement the new requirement.

The alcohol beverage importer stated in his comment that he currently imports a product that contains cochineal extract, and that he currently uses a TTB-approved label for this product that states that the product contains artificial color. He stated that although he does not oppose TTB's proposal, he is concerned about the implementation date, as he has a large supply of labels for this product. The commenter requested that the proposed labeling requirements be implemented no less than one year after the date the final rule is published, to allow more time to use up the labels. Alternatively, he requests that TTB grant him permission to use up the rest of his previously approved labels, as he believes the ''artificial color'' statement on the label will prevent consumers from being misled.

TTB Response

After careful consideration of the comments concerning the implementation period, TTB agrees that a longer transition period is appropriate. A longer implementation period will allow more time for bottlers and importers to exhaust their label stocks before the new requirements become effective. Accordingly, the requirement to disclose the presence of cochineal extract and carmine by name on the labels of any alcohol beverage product containing one or both of these color additives will become mandatory for products that are removed on or after one year from the publication of this final rule in the **Federal Register**. TTB believes this longer implementation period will provide sufficient time for industry members to comply with the new labeling requirement, and is the most appropriate alternative to address the concerns expressed by commenters regarding the implementation date.

Bottlers and importers may begin voluntarily complying with the requirements immediately upon publication of this final rule.

Comments Concerning COLA Requirements for New Label Disclosure

In its comment, DISCUS also requested that TTB consider permitting industry members with existing approved COLAs covering affected products to revise the labels solely to include the mandatory declaration without applying for and receiving new label approvals. DISCUS also suggested that TTB allow the addition of a separate strip or neck label that shows the mandatory declaration, instead of having to apply for and receive a new label approval.

TTB Response

TTB agrees with the suggestion by DISCUS that if a label is merely being changed to include the new label disclosure, without altering existing information on the label, an application for a new COLA would be unnecessary. Accordingly, by publication of this document in the **Federal Register**, TTB is adopting the policy that labels covered by existing approved COLAs which are revised solely to include the mandatory cochineal or carmine declaration are considered approved by TTB and do not require further approval. Bottlers and importers also do not require a new COLA to add a new neck or strip label solely to comply with the mandatory cochineal or carmine declaration. Any other changes to the label, other than those permitted in accordance with the instructions listed on the COLA application (TTB F 5100.31 or the electronic COLA submission through COLAS Online) will require the submission of a new COLA for approval.

IV. Changes to TTB Regulations

As proposed in TTB Notice No. 111, this final rule amends §§ 4.32, 5.32(b), and 7.22(b) of the TTB regulations to require the disclosure of the presence of cochineal extract and carmine on the labels of any alcohol beverage product containing one or both of these color additives. With regard to § 7.22(b), TTB is incorporating the amendment in paragraph (b)(5) instead of (b)(8) as originally proposed, and, for clarity, TTB has made some changes from the language originally proposed in the amendments to §§ 4.32, 5.32(b)(6), and 7.22(b). The regulations permit the disclosure to appear on the front, back, neck, or strip label and require that the disclosure be displayed prominently and conspicuously.

V. Regulatory Analysis and Notices

A. Regulatory Flexibility Act

TTB certifies under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities, because relatively few alcohol beverages are made using cochineal extract or carmine as color additives. Furthermore, in response to comments about allowing sufficient time to use up existing inventories of labels, the final rule provides for a one-year implementation

period. Accordingly, a regulatory flexibility analysis is not required.

B. Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

C. Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1513–0087.

The collection of information in this regulation is in 27 CFR 4.32, 5.32, and 7.22, and involves mandatory disclosures of information on labels. This information is required to prevent deception of the consumer and to provide the consumer with adequate information as to the identity and quality of the alcohol beverage product. The likely respondents are businesses or other for-profit entities, including partnerships, associations, and corporations.

This information constitutes only a portion of the labeling information on alcohol beverages required under authority of the FAA Act and approved under control number 1513–0087.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

VI. Drafting Information

The principal authors of this document are Lisa M. Gesser and Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Administrative practice and procedure, Advertising, Customs duties and inspection, Distilled spirits, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Malt Beverages, Reporting and recordkeeping requirements, Trade practices.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB amends 27 CFR, chapter I, parts 4, 5, and 7, as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 2. In § 4.32, add a new paragraph (d) to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(d) *Declaration of cochineal extract or carmine.* There shall be stated on a front label, back label, strip label, or neck label a statement that the product contains the color additive cochineal extract or the color additive carmine, prominently and conspicuously, using the respective common or usual name (''cochineal extract'' or ''carmine''), where either of the coloring materials is used in a product that is removed on or after April 16, 2013. (For example: ''Contains Cochineal Extract'' or ''Contains Carmine'' or, if applicable, ''Contains Cochineal Extract and Carmine'').

* * * * *

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

■ 3. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

■ 4. In § 5.32, add a new paragraph (b)(6) to read as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) * * *

(6) A statement that the product contains the color additive cochineal extract or the color additive carmine, prominently and conspicuously, using the respective common or usual name (''cochineal extract'' or ''carmine''), where either of the coloring materials is used in a product that is removed on or after April 16, 2013. (For example: ''Contains Cochineal Extract'' or ''Contains Carmine'' or, if applicable, ''Contains Cochineal Extract and Carmine''). The statement that the product contains the color additive cochineal extract or the color additive carmine may appear on a strip label or a neck label in lieu of appearing on the brand label or back label.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

■ 5. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 6. In § 7.22, a new paragraph (b)(5) is added to read as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(5) A statement that the product contains the color additive cochineal extract or the color additive carmine, prominently and conspicuously, using the respective common or usual name (''cochineal extract'' or ''carmine''), where either of the coloring materials is used in a product that is removed on or after April 16, 2013. (For example: ''Contains Cochineal Extract'' or ''Contains Carmine'' or, if applicable, ''Contains Cochineal Extract and Carmine''). The statement that the product contains the color additive cochineal extract or the color additive carmine may appear on a strip label or a neck label in lieu of appearing on the brand label or back label.

* * * * *

Signed: March 12, 2012.

John J. Manfreda,

Administrator.

Approved: March 12, 2012.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2012–9101 Filed 4–13–12; 8:45 am]

BILLING CODE 4810–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4003

RIN 1212–AB04

Rules for Administrative Review of Agency Decisions; Section 4071 Penalty Assessments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's administrative review regulation to make it applicable to assessments of

penalties for failure to timely provide certain notices or other material information. Under the rule, such assessments will be subject to reconsideration in accordance with the provisions of the regulation.

DATES: Effective May 16, 2012 and applicable to determinations made on or after that date.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*klion.catherine@pbgc.gov*), Manager, or Deborah C. Murphy (*murphy.deborah@pbgc.gov*), Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR Part 4003) provides rules governing the issuance of initial determinations by PBGC involving the matters set forth in the regulation and procedures for requesting and obtaining PBGC review of those determinations, either by appeal (a more formal proceeding) or by request for reconsideration (a less formal process), depending on the type of matter. A person that fails to exhaust administrative remedies under the regulation with respect to a determination may not be able to raise in court some legal defenses against enforcement of the determination that might otherwise have been available.

Section 4071 of ERISA authorizes PBGC to assess a penalty for failure to timely provide any notice or other material information required under ERISA sections 4001–4071 or 303(k)(4) or regulations thereunder. PBGC published policy guidance on its assessment and review of section 4071 penalties on March 3, 1992 (at 57 FR 7605), and July 18, 1995 (at 60 FR 36837).[1] On January 12, 2001 (at 66 FR 2857), PBGC published a proposed rule on Assessment of and Relief from Penalties under both ERISA section 4007 (dealing with payment of premiums) and ERISA section 4071.[2] Among the proposed actions was amendment of the administrative review regulation to make determinations with respect to penalties under section 4071 subject to that regulation, in the class of matters reviewable by reconsideration.[3] No comments were received on the proposal.[4]

This final rule amends the administrative review regulation consistent with the 2001 proposal. This change will promote uniformity in PBGC's procedures for making and reviewing determinations. The provisions of the administrative review regulation will supersede any inconsistent provisions of the 1992 and 1995 penalty policy statements; in other respects, those policy statements will be unaffected.

Applicability

The amendment made by this rule applies to determinations under section 4071 made on or after May 16, 2012.

Compliance With Rulemaking Guidelines

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

This rule is not subject to notice and comment rulemaking requirements under section 553 of the Administrative Procedure Act because it deals only with PBGC procedural rules. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply. See 5 U.S.C. 601(2), 603, 604.

This action is associated with retrospective review and analysis in PBGC's Plan for Regulatory Review[5] issued in accordance with Executive Order 13563 on ''Improving Regulation and Regulatory Review.''

[1] The 1995 policy statement generally replaced the 1992 statement.

[2] Although it was published as a proposal with an invitation for public comment, the 2001 penalty policy proposed rule was (as its preamble stated) not subject to notice and comment rulemaking requirements under section 553 of the Administrative Procedure Act because it dealt only with general statements of PBGC policy and with PBGC procedural rules. On November 17, 2006 (at 71 FR 66867), PBGC published a final rule adding a penalty policy appendix, drawn from the 2001 proposed rule, to its regulation on Payment of Premiums.

[3] Premium penalties under ERISA section 4007 are already covered by the administrative review regulation. Premium penalty determinations are in the class of matters for which reconsideration is provided.

[4] On May 7, 2004 (at 69 FR 25797), PBGC proposed a new penalty policy for failures to issue Participant Notices as required under ERISA section 4011 and PBGC's regulation on Disclosure to Participants (29 CFR part 4011), the provisions of which are inapplicable to plan years starting after 2006. Comments received on that proposal were relevant to some aspects of the 2001 proposal, but not to the administrative review provisions.

[5] See *www.pbgc.gov/documents/plan-for-regulatory-review.pdf.*

List of Subjects in 29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

For the reasons given above, PBGC is amending 29 CFR part 4003 as follows.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

■ 1. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

■ 2. In § 4003.1, paragraph (a) is amended by removing the words ''(b)(1) through (b)(4)'' and adding in their place the words ''(b)(1) through (b)(5)'' and by removing the words ''(b)(5) through (b)(10)'' and adding in their place the words ''(b)(6) through (b)(11)''; paragraphs (b)(5) through (b)(10) are redesignated as paragraphs (b)(6) through (b)(11); and a new paragraph (b)(5) is added to read as follows:

§ 4003.1 Purpose and scope.

* * * * *

(b) *Scope.* * * *

(5) Determinations with respect to penalties under section 4071 of ERISA;

* * * * *

Issued in Washington, DC, this 6th day of April 2012.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2012–9095 Filed 4–13–12; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2010–0929]

RIN 1625–AA01

Special Anchorage Regulations, Newport Bay Harbor, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is expanding the boundaries of the special anchorage areas in Newport Bay Harbor, California, to encompass and replace temporary anchorage grounds C–1 and C–2, and anchorage ground C–3. This rule realigns anchorage boundaries to reflect the way the harbor currently is used.

DATES: This rule is effective May 16, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0929 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0929 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Lucas Mancini, Coast Guard District Eleven, telephone 510–437–3801, email *Lucas.W.Mancini@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 16, 2011 we published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulations: Subpart A—Special Anchorage Regulations, Newport Bay Harbor, CA'' in the **Federal Register** (76 FR 78185). We received no comments on the proposed rule. No request for public meeting was made.

Basis and Purpose

The legal basis for this rule is: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

This rule expands the designated special anchorage areas in Newport Bay Harbor, and removes other anchorage grounds, to align with the actual placement of existing mooring areas and reflect the way the harbor is currently used.

Background

Due to enhanced anchorage population over the years, the mooring areas being used in Newport Bay Harbor are nominally larger than the special anchorage areas originally charted in 33 CFR 110.95. As moorings were added or overhauled, the new moorings would fall outside the existing boundaries, resulting in moorings lying outside the charted areas. Similarly, the anchorage grounds designated in 33 CFR 110.212 were originally used as temporary overflow anchorages, but are now used regularly. Harbor users have been accustomed to this placement for the last 10 years.

The Mooring Master Plan Subcommittee of the City of Newport Harbor Commission led an outreach campaign involving a series of public meetings about aligning the anchorage regulations with actual harbor use patterns, and we understand that it did not receive any opposition from the waterway users. After these public meetings, the City of Newport asked the Coast Guard to amend its anchorage regulations. The Coast Guard therefore solicited public comment on proposed changes in the NPRM mentioned above. We received no comment on the proposal.

Discussion of Changes

The Coast Guard is finalizing the proposal without changes and realigning the anchorage boundaries in order to reflect the way the harbor currently is used. This rule removes § 110.212 and the three anchorage grounds found therein (anchorages C–1, C–2, C–3). The area covered by those anchorages is incorporated into the special anchorage area regulations at § 110.95. Anchorage C–1 is incorporated into area B–1 under revised § 110.95(m), and anchorages C–2 and C–3 is incorporated into area A–11 under revised § 110.95(k). An image of the anchorage areas is available in the docket.

The enlargement of the special anchorage areas does not pose any waterway or navigational hazard, or restrict harbor use in any way. The Army Corps of Engineers has been consulted and did not have any opposition. We anticipate that this rule would have no impact on fishing or boating because the amendment adjusts the lines to fit the current layout of moorings in Newport Harbor. Small craft are not restricted in the harbor. Berthing and anchoring in Newport Harbor also is regulated by Orange County ordinance and the City of Newport's municipal code. The enlargement of the special anchorages does not impact these laws; for the convenience of the reader we have included references pertaining to local municipal codes in the rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard is realigning anchorage boundaries in order to reflect the way the harbor currently is used. The enlargement of the anchorages does not restrict harbor use in any way.

Small Entities

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

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

(1) This rule may affect the following entities, some of which might be small entities: The owners or operators of commercial and recreational vessels intending to transit or anchor in the affected area.

(2) The impact to these entities will not, however, be significant since this area will encompass only a small portion of the waterway and vessels can safely navigate around the anchored vessels.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An ''Environmental Analysis Check List'' and a categorical exclusion determination supporting this determination are available in the docket where indicated under **ADDRESSES**. This rule involves changing the size of special anchorage areas.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.95 to read as follows:

§ 110.95 Newport Bay Harbor, Calif.

(a) *Area A–1.* The entire water area within beginning at latitude 33°36′09.3″ N., longitude 117°53′52.6″ W.; thence to latitude 33°36′11.4″ N., longitude 117°53′51.2″ W.; thence to latitude 33°36′04.0″ N., longitude 117°53′33.4″ W.; thence to latitude 33°36′03.9″ N., longitude 117°53′20.4″ W.; thence to 33°36′01.1″ N., longitude 117°53′09.9″ W.; thence to 33°36′01.1″ N., longitude 117°53′32.7″ W.; thence to 33°36′03.9 N., longitude 117°53′41.9″ W.; returning to latitude 33°36′09.3″ N., longitude 117°53′52.6″ W.

(b) *Area A–2.* The entire water area within beginning at latitude 33°36′12.9″ N., longitude 117°53′44.2″ W; thence to latitude 33°36′14.2″ N., longitude 117°53′44.3″ W.; thence to latitude 33°36′14.2″ N., longitude 117°53′20.6″ W.; thence to latitude 33°36′10.8″ N., longitude 117°53′20.5″ W.; thence to latitude 33°36′12.7″ N., longitude 117°53′29.9″ W.; thence to latitude 33°36′12.7″ N., longitude 117°53′35.4″ W.; thence to latitude 33°36′12.9″ N., longitude 117°53′37.0″ W.; returning to latitude 33°36′12.9″ N., longitude 117°53′44.2″ W.

(c) *Area A–3.* The entire water area within beginning at latitude 33°36′22.7″ N., longitude 117 54′12.6″ W.; thence to latitude 33°36′24.9″ N., longitude 117°54′12.6″ W.; thence to latitude 33°36′26.2″ N., longitude 117°54′11.3″ W.; thence to latitude 33°36′18.7″ N., longitude 117°54′00.5″ W.; thence to latitude 33°36′16.2″ N., longitude 117°54′02.9″ W.; returning to latitude 33°36′22.7″ N., longitude 117°54′12.6″ W.

(d) *Area A–4.* The entire water area within beginning at latitude 33°36′ 32.7″ N., longitude 117°53′56.6″ W.; thence to latitude 33°36′33.6″ N., longitude 117°53′56.6″ W.; thence to latitude 33°36′33.5″ N., longitude 117°53′26.2″ W.; thence to latitude 33°36′32.9″ N.,

longitude 117°53′26.2″ W.; thence to latitude 33°36′32.6″ N., longitude 117°53′33.8″ W.; thence to latitude 33°36′32.4″ N., longitude 117°53′36.7″ W.; thence to latitude 33°36′31.7″ N., longitude 117°53′40.9″ W.; thence to 33°36′31.7″ N., longitude 117°53′46.3″ W.; thence to latitude 33°36′32.6″ N., longitude 117°53′50.9″ W.; returning to latitude 33°36′ 32.7″ N., longitude 117°53′56.6″ W.

(e) *Area A–5.* The entire water area within beginning at latitude 33°36′29.1″ N., longitude 117°54′55.3″ W.; thence to latitude 33°36′27.8″ N., longitude 117°54′55.8″ W.; thence to latitude 33°36′24.1″ N., longitude 117°54′41.8″ W.; thence to latitude 33°36′26.7″ N., longitude 117°54′40.8″ W.; thence to latitude 33°36′26.7″ N., longitude 117°54′46.3″ W.; returning to latitude 33°36′29.1″ N., longitude 117°54′55.3″ W.

(f) *Area A–6.* The entire water area within beginning at latitude 33°36′43.3″ N., longitude 117°54′26.4″ W.; thence to latitude 33°36′51.7″ N., longitude 117°54′22.8″ W.; thence to latitude 33°36′51.4″ N., longitude 117°54′21.5″ W.; thence to latitude 33°36′42.9″ N., longitude 117°54′25.2″ W.; returning to latitude 33°36′43.3″ N., longitude 117°54′26.4″ W.

(g) *Area A–7.* The entire water area within beginning at latitude 33°36′32.1″ N., longitude 117°55′12.5″ W.; thence to latitude 33°36′37.7″ N., longitude 117°55′11.0″ W.; thence to latitude 33°36′35.1″ N., longitude 117°55′01.3″ W.; thence to latitude 33°36′30.4″ N., longitude 117°55′02.6″ W.; thence to latitude 33°36′31.2″ N., longitude 117°55′06.7″ W.; returning to latitude 33°36′32.1″ N., longitude 117°55′12.5″ W.

(h) *Area A–8.* The entire water area within beginning at latitude 33°36′34.2″ N., longitude 117°55′27.3″ W.; thence to latitude 33°36′36.2″ N., longitude 117°55′26.7″ W.; thence to latitude 33°36′39.5″ N., longitude 117°55′20.9″ W.; thence to latitude 33°36′38.9″ N., longitude 117°55′15.4″ W.; thence to latitude 33°36′37.9″ N., longitude 117°55′11.7″ W.; thence to latitude 33°36′32.1″ N., longitude 117°55′13.3″ W.; returning to latitude 33°36′34.2″ N., longitude 117°55′27.3″ W.

(i) *Area A–9.* The entire water area within beginning at latitude 33°36′53.5″ N., longitude 117°55′28.2″ W.; thence to latitude 33°36′54.0″ N., longitude 117°55′27.0″ W.; thence to latitude 33°36′43.4″ N., longitude 117°55′20.4″ W.; thence to latitude 33°36′42.9″ N., longitude 117°55′21.6″ W.; returning to latitude 33°36′53.5″ N., longitude 117°55′28.2″ W.

(j) *Area A–10.* The entire water area within beginning at latitude 33°36′07.4″ N., longitude 117°53′19.2″ W.; thence to latitude 33°36′14.2″ N., longitude 117°53′19.4″ W.; thence to latitude 33°36′14.2″ N., longitude 117°53′06.9″ W.; thence to latitude 33°36′08.1″ N., longitude 117°53′04.9″ W.; thence to latitude 33°36′06.5″ N., longitude 117°53′08.9″ W.; thence to latitude 33°36′06.5″ N., longitude 117°53′16.3″ W.; returning to latitude 33°36′07.4″ N., longitude 117°53′19.2″ W.

(k) *Area A–11.* The entire water area within beginning at latitude 33°36′04.7″ N., longitude 117°53′01.9″ W.; thence to latitude 33°36′06.1″ N., longitude 117°53′00.5″ W.; thence to latitude 33°36′06.2″ N., longitude 117°52′59.0″ W.; thence to latitude 33°35′59.4″ N., longitude 117°52′51.1″ W.; thence to latitude 33°35′57.5″ N., longitude 117°52′50.9″ W.; thence to latitude 33°36′01.9″ N., longitude 117°52′57.3″ W.; thence to latitude 33°36′03.0″ N., longitude 117°53′00.4″ W.; returning to latitude 33°36′04.7″ N., longitude 117°53′01.9″ W.

(l) *Area A–12.* The entire water area within beginning at latitude 33°36′27.9″ N., longitude 117°54′40.4″ W.; thence to latitude 33°36′23.9″ N., longitude 117°54′41.8″ W.; thence to latitude 33°36′20.8″ N., longitude 117°54′29.9″ W.; thence to latitude 33°36′28.5″ N., longitude 117°54′20.2″ W.; returning to latitude 33°36′27.9″ N., longitude 117°54′40.4″ W.

(m) *Area B–1.* The entire water area within beginning at latitude 33°36′35.1″ N., longitude 117°54′28.8″ W.; thence to latitude 33°36′32.1″ N., longitude 117°54′22.1″ W.; thence to latitude 33°36′30.6″ N., longitude 117°54′22.8″ W; thence to latitude 33°36′30.5″ N., longitude 117°54′30.9″ W.; returning to latitude 33°36′35.1″ N., longitude 117°54′28.8″ W.

Note to § 110.95: These anchorage areas are reserved for recreational and other small craft. Local law, including the City of Newport Beach Municipal Code 17.25.020, may provide for fore and aft moorings for recreational and small craft of such size and alignment as permitted by the harbor master.

■ 3. Remove § 110.212.

Dated: April 1, 2012.

J.R. Castillo,

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

[FR Doc. 2012–9006 Filed 4–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0144]

RIN 1625–AA09

Drawbridge Operation Regulations; Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operating regulations governing the operation of the Atlantic Beach Bridge, mile 0.4, across Reynolds Channel at Lawrence, New York. The owner of the bridge has requested a temporary change to the regulations to facilitate major rehabilitation at the bridge. It is expected that this temporary change to the regulations will help facilitate the bridge rehabilitation. This interim rule is intended to better meet the present needs of navigation by allowing the bridge rehabilitation repairs to continue on schedule while providing the public the opportunity to submit comments.

DATES: This interim rule is effective from April 23, 2012 through May 15, 2013. Comments and related material must reach the Coast Guard on or before May 15, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0144 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 interim rule,

call or email Ms. Judy Leung-Yee, the Coast Guard Project Officer; telephone 212–668–7165, email *judy.k.leung-yee@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–2012–0144), indicate the specific section of this document to which each comment applies, and give the reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2012–0144'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

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* and click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0144'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 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 using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Regulatory Information

The Coast Guard is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because sufficient time to promulgate a notice of proposed rulemaking with a comment period and then a final rule would result in the temporary final rule not going into effect until July 2012, which would then impact two boating seasons instead of just one, and delay of the bridge rehabilitation would result in significant additional taxpayer expense.

We received the bridge owner's request for deviation on February 9, 2012. The bridge owner mistakenly believed they were required to provide only 30 days notice to the Coast Guard to implement the temporary regulation change.

The Coast Guard normally requires 30 days advance notice for temporary deviations from the drawbridge operation regulations of less than 180 days in total duration.

In this case, the total time the regulations will be temporarily changed exceeds 180 days, which requires at least 90 days notice in order to allow sufficient time for the Coast Guard to promulgate a notice of proposed rulemaking with a comment period and a final rule.

Failure to commence the rehabilitation project on April 23, 2012 will cause a significant delay to this project. The bridge rehabilitation repairs scheduled to commence April 23, 2012, include the removal and replacement of the following: The primary and secondary gear drive motors, brakes, shafts, couplings, bearings, lubrication lines, span lock motors, span lock reducers, span lock guides, receiver bushings, electrical bridge controls, bridge power and lighting, motor control center, navigation lighting, and electrical conduits and wiring.

The contractor has arranged for personnel and equipment to be available between April 2012 and May 2013 to conduct the bridge rehabilitation repairs. Should the project not commence on April 23, 2012, a significant financial loss to the bridge owner and taxpayers would result, and this bridge rehabilitation project would continue into a second recreational boating season further impacting marine interests.

As a result of the information above, the Coast Guard believes that delaying this bridge repair project would be contrary to the best interest of the general public and the marine transportation system that transit Reynolds Channel.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists, for the reasons discussed above, for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

The Atlantic Beach Bridge, mile 0.4, across Reynolds Channel at Lawrence, New York, has a vertical clearance in the closed position of 25 feet at mean high water and 30 feet at mean low water. The drawbridge operation

regulations are listed at 33 CFR 117.799(e).

The existing drawbridge operation regulations require the draw to open on signal October 1 through May 14. From May 15 through September 30 the draw shall open on signal, except that it need only open on the hour and half hour from 4 p.m. to 7 p.m. on weekdays, and from 11 a.m. to 9 p.m. on Saturday and Sunday, Memorial Day, Independence Day, and Labor Day.

The Coast Guard received a request from the owner of the bridge, Nassau County, asking permission to temporarily change the drawbridge operation regulations to help facilitate major rehabilitation at the bridge.

During the bridge rehabilitation project only one of the two movable spans will be raised for the passage of vessel traffic when work is underway.

In order to facilitate the extensive rehabilitation required at the bridge, scheduled bridge openings will be necessary from April 23, 2012 through May 15, 2013.

The horizontal clearance of the navigable channel is 125 feet when both spans are opened. A horizontal clearance of 62.5 feet, available during single span openings, is expected to be sufficient for the anticipated vessel traffic transiting the bridge during the bridge rehabilitation period.

The owner of the bridge and the Coast Guard coordinated and discussed this rehabilitation project and the necessary temporary changes to the drawbridge regulations with the commercial and recreational waterway users that normally transit the bridge. Users of the waterway consist of oil barges and tugs as well as power and sail recreational craft. No objections were raised.

As a result of the above coordination, the drawbridge regulations will be temporarily changed from April 23, 2012 through May 15, 2013, to facilitate the bridge repairs. Based on our coordination with the waterway users it is expected that this action will meet the reasonable needs of navigation.

Because the temporary change to the operating schedule of the drawbridge will be greater than 180 days, we are issuing a temporary interim rule requesting public comment in order to both facilitate completion of the bridge rehabilitation and to have the public participate in the rulemaking process.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily suspend 33 CFR 117.799(e) and add a temporary paragraph (k) from April 23, 2012 through May 15, 2013, to read as follows:

From April 23, 2012 through September 30, 2012, except for the closure period identified in the following paragraph, from Monday through Friday the Atlantic Beach Bridge, mile 0.4, across Reynolds Channel, may operate a single span every two hours on the even hour between 6 a.m. and 8 p.m. and on signal between 8 p.m. and 6 a.m. On weekends and holidays the bridge shall open both spans every hour on the hour from Friday at 8 p.m. through Monday at 6 a.m.

From July 23, 2012 through July 30, 2012, the bridge may remain in the closed position between 12 a.m. and 5 a.m., daily.

From October 1, 2012 through May 15, 2013, the bridge shall operate a single span, Monday through Sunday, at 6 a.m., 12 p.m., 4 p.m., and 8 p.m. Between 8 p.m. and 6 a.m. the bridge will operate a single span on signal. During the above time period the bridge will open both spans for commercial vessel traffic at all times after at least a 48 hour advance notice is given.

Regulatory Analysis

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

Regulatory Planning and Review

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

The Coast Guard determined that this rule is not a significant regulatory action because the bridge will continue to open on a set schedule that was discussed with the waterway users in advance and no objections were received.

Small Entities

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

The Coast Guard certifies under section 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the bridge between April 23, 2012 and May 15, 2013. The bridge will open on a set schedule that was discussed with the waterway users in advance and no objections were received.

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 interim final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander (dpb), First Coast Guard District Bridge Branch, One South Street, New York, NY 10004. The telephone number is (212) 668–7165. The Coast Guard will not retaliate against small entities that question or complain about this interim rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

Environment

We have analyzed this interim rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this interim rule.

Under figure 2–1, paragraph (32)(e) of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. Effective April 23, 2012 through May 15, 2013, § 117.799 is amended by suspending paragraph (e) and adding a temporary paragraph (k) to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(k) The draw of the Atlantic Beach Bridge at mile 0.4, across Reynolds Channel shall open on signal as follows:

(1) Except as provided in paragraph (k)(2) of this section, from April 23, 2012 through September 30, 2012, Monday through Friday, the draw may operate a single span on signal, every two hours, on the even hour, between 6 a.m. and 8 p.m. Monday through Friday from 8 p.m. through 6 a.m. the draw may operate a single span on signal. On weekends and holidays from Friday at 8 p.m. through Monday at 6 a.m. the bridge shall open both spans every hour on the hour.

(2) From July 23, 2012 through July 30, 2012, the bridge may remain in the closed position between 12 a.m. and 5 a.m., daily.

(3) From October 1, 2012 through May 15, 2013, the draw may operate a single span on signal at 6 a.m., 12 p.m., 4 p.m., and 8 p.m. and at any time between 8 p.m. and 6 a.m. The draw shall open both spans at all times for commercial vessel traffic after at least a 48 hour advance notice is given by calling the number posted at the bridge.

Dated: March 23, 2012.

Daniel A. Neptun,

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

[FR Doc. 2012–9056 Filed 4–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0032]

RIN 1625–AA00

Safety Zone; Lake Pontchartrain, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone extending out approximately 3,000 feet from the South shores of Lake Pontchartrain adjacent to the East bank of the Lakefront Airport runways. This safety zone is necessary to protect persons and vessels from the potential safety hazards associated with high-speed aerobatic displays by the participants of the 1812 Blue Angels Air Show, during the War of 1812 Commemoration. The Air Show

includes a 12,000′ × 3,000′ aerobatic display area and requires the surface of the water to be sterile of non-participants.

DATES: This rule is effective from 10 a.m. on April 19, 2012 until 5 p.m. on April 22, 2012. This rule will be enforced on April 19, 2012 through April 22, 2012 between the hours of 10 a.m. to 5 p.m.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2012–0032 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0032 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Marcie Kohn, Sector New Orleans, Coast Guard; telephone 504–365–2281, email *Marcie.L.Kohn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 21, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Lake Pontchartrain, New Orleans, LA in the **Federal Register** (77 FR 9879). We received no comments on the proposed rule, and no requests for a public meeting. As part of this rulemaking we made available the environmental checklist showing no significant adverse environmental impacts are expected as described in the National Environmental Policy Act of 1969 (NEPA).

The Coast Guard is issuing this temporary final rule without full 30 day notice pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without full 30 day notice when the agency for good cause finds that such notice would be ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The preceding NPRM provided for a comment period and notice to the public that this safety zone would be needed for the subject air show. The air show is scheduled in conjunction with the events surrounding the War of 1812 Commemoration. The community and event sponsors have planned for the air show and are relying on the air show to take place accompanied by the necessary safety precautions provided by this safety zone. It is impracticable and unnecessary to interfere with the planned air show and surrounding events by delaying this safety zone rule for a full 30 days notice.

Basis and Purpose

In conjunction with the War of 1812 Commemoration celebrations taking place in the city of New Orleans, the Coast Guard received an application request for a marine permit in support of the Blue Angels Air Show, to take place over the waters of Lake Pontchartrain. The request calls for a safety zone to be created on the lake to protect the public from the dangers inherent to an aerobatic air show. The Coast Guard determined that the safety zone is necessary to protect persons and vessels from the potential safety hazards associated with the high speed aerobatic displays of the air show participants.

Background

The Coast Guard is establishing this safety zone at the request of the event organizers and due to Federal Aviation Administration's requirement that the area be sterile of non-participants.

Discussion of Comments and Changes

No comments were received and no changes are made to the safety zone regulation as proposed.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The impacts on routine navigation are expected to be minimal because the enforcement periods are short in duration. Additionally, closure of the Inner Harbor Navigation Canal entrance to Lake Pontchartrain, in support of the Seabrook Surge Barrier construction project by the Army Corps of Engineers, restricts the majority of commercial traffic. As a result, the safety zone will have minimal impact, if any, on the area which is used primarily by recreational boaters.

Small Entities

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

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

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone will be activated, and thus subject to enforcement, for only 7 hours daily during the Air Show display. The small entities that may be affected include small entities engaged in the business of recreational boating in the area or other marine traffic in the area. Vessel traffic could pass safely around the safety zone.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone and as such is not categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T08–0032 to read as follows:

§ 165.T08–0032 Safety Zone; Lake Pontchartrain, New Orleans, LA.

(a) *Location.* The following area is a temporary safety zone: All waters on the South shores of Lake Pontchartrain adjacent to the East bank of Lakefront Airport runways, extending along the Southern banks of the Lake, and including the Inner Harbor Navigational Canal entrance to Lake Pontchartrain.

The coordinates are: Latitude 30° 02′ 38.37″ N, longitude 90° 01′ 53.56″ W to latitude 30° 02′38.37″ N, longitude 90° 04′ 10.05″ W to latitude 30° 02′07.71″ N, longitude 90° 04′ 10.05″ W to latitude 30° 02′07.71″ N, longitude 90° 01′ 53.56″ W.

(b) *Effective Dates.* This rule is effective April 19, 2012 through April 22, 2012 daily between the hours of 10 a.m. and 5 p.m. local time.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165 Subpart C of this title, entry into this zone is prohibited unless authorized by the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at (504) 365–2543.

(2) Vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port New Orleans, or a designated representative. They may be contacted on VHF 16, or by telephone at (504) 365–2543.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

Dated: April 4, 2012.

J.J. Arenstam,

Captain, U.S. Coast Guard, Acting Captain of the Port New Orleans.

[FR Doc. 2012–9050 Filed 4–13–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0073; FRL–9651–5]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Small Container Exemption From VOC Coating Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Illinois State Implementation plan (SIP) submitted by the Illinois Environmental Protection Agency (Illinois EPA) on November 14, 2011. This SIP revision consists of amendments to the Illinois Administrative Code (Ill. Adm. Code) by adding a ''small container exemption'' for pleasure craft surface coating operations in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas. These exemptions are approvable because they are consistent with EPA volatile organic compound (VOC) reasonably available control technology (RACT) policy.

DATES: This direct final rule will be effective June 15, 2012, unless EPA receives adverse comments by May 16, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0073, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0073. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

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

I. Background
II. What action is EPA taking and what is the basis for this action?
III. Statutory and Executive Order Reviews

I. Background

On November 14, 2011, Illinois EPA submitted a revision to its ozone SIP. This revision consists of an amendment to 35 Ill. Adm. Code sections 218.208 (Exemptions from VOC Emission Limitations for Coating Operations for the Chicago 8-hour ozone nonattainment area) and 219.208 (Exemptions from VOC Emission Limitations for Coating Operations for the Metro-East St. Louis 8-hour ozone nonattainment area) by adding a ''small container exemption'' for pleasure craft surface coating operations. EPA previously approved sections 218.208(c) and 219.208(c) which specify that Illinois' surface coating VOC emission limitations shall not apply to touch-up and repair coatings used by a can, coil, vinyl, metal furniture and magnet wire coating operation, provided that the source-wide volume of such coatings used does not exceed 1 quart per 8-hour period or exceed 55 gallons/year for any rolling 12 month period. (61 FR 5511 on February 13, 1996). The SIP revision which is the subject of this action extends the exemption in sections 218.208(c) and 219.208(c) to the pleasure craft surface coating limits set out in sections 218.204(q)(5) and 219.204(q)(5). Illinois' SIP revision also amends 35 Ill. Adm. Code 218.208(e) and 219.208(e), the recordkeeping and reporting provisions, to add pleasure craft coating operations that are exempted from the limitations in 218.204(q) and 219.204(q) to the coating operations subject to recordkeeping requirements. Sections 218.208(e) and 219.208(e) contain sufficient recordkeeping requirements to establish whether these exemptions have been exceeded.

II. What action is EPA taking and what is the basis for this action?

EPA is approving the State's request to add a ''small container exemption'' for pleasure craft surface coating operations in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas for the reasons stated below.

EPA published the Miscellaneous Metal and Plastic Part Coatings Control Technique Guidelines (MMPPC CTG) on October 7, 2008 (73 FR 58486). Members of the pleasure craft coatings industry contacted EPA requesting reconsideration of the pleasure craft VOC limits contained in EPA's 2008 MMPPC CTG. In response, EPA issued a memorandum on June 1, 2010, titled ''Control Technique Guidelines for Miscellaneous Metal and Plastic Part Coatings—Industry Request for

Reconsideration,'' recommending that the pleasure craft industry work with State agencies during their RACT rule development process to assess what is reasonable for the specific sources regulated. EPA stated that States can use the recommendations from the MMPPC CTG to inform their own determinations as to what constitutes RACT for pleasure craft coating operations in their particular ozone nonattainment area. As stated in the memorandum, EPA will evaluate State-developed RACT rules and determine whether the submitted rules meet the RACT requirements of the Clean Air Act (CAA).

In 2010 and 2011 Illinois promulgated rules on VOC RACT emission limitations for coating operations (See November 30, 2011 proposed approval at 76 FR 74014). During that rulemaking the American Coatings Association (ACA) commented to Illinois EPA that many VOC coating regulations include a small container exemption not to exceed a liter or a quart. The ACA stated that the basis for these exemptions is to allow for small repairs and touch ups to existing coatings at the end of the painting line to avoid having to completely recoat the product, thus resulting in lower VOC emissions overall and supported a small container exemption for pleasure craft coating operations.

As a result of this comment and EPA's June 2010 memorandum discussing the CTG and the pleasure craft industry, Illinois EPA amended its small container exemptions to add the pleasure craft coating operations. These exemptions limit the quantity of touch-up and repair coatings used to a maximum quantity of 55 gallons per year of such coatings.

Illinois' approach is generally consistent with EPA's August 10, 1990, policy memorandum regarding an allowed ''Exemption for Low-Use Coatings'' which states that ''[a] low-use exemption for specialty or other coatings may be reasonable for a source that uses small quantities for intermittent or specialty-type operations.'' In this policy EPA stated that a plant-wide cutoff of 55 gallons per rolling 12-month period for all low-use coatings in the aggregate used at a facility is reasonable. Also, EPA has previously approved the small container exemption for Illinois' can, coil, vinyl, metal furniture and magnet wire coating operations.

EPA concludes that Illinois' small container exemption for pleasure craft coating operations added to 35 Ill. Adm. Code sections 218.208 and 219.208 satisfies RACT requirements of the CAA. As noted above, the exemption is for a source category identified by EPA as appropriate for state consideration and development of what is reasonable for the specific source category, the exemption may result in lower emissions because allowing higher VOC touch-up and repair coatings could result in less total coating use (and lower overall VOC emissions) and the exemption is restricted to no more than 55 gallons per year of these coatings, which is consistent with EPA's policy on exemptions for low-use coatings.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective June 15, 2012 without further notice unless we receive relevant adverse written comments by May 16, 2012. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective June 15, 2012.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds.

Dated: March 12, 2012.

Bharat Mathur,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. § 52.720 is amended by adding paragraph (c)(190) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(190) On November 14, 2011, the Illinois Environmental Protection Agency (Illinois EPA) submitted amendments to 35 Illinois Administrative Code 218.208 and 219.208. These sections add a ''small container exemption'' for pleasure craft surface coating operations in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas. These exemptions are consistent with EPA volatile organic compound (VOC) reasonably available control technology (RACT) policy.

(i) *Incorporation by reference.* The following sections of Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, are incorporated by reference.

(A) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart F: Coating Operations, Section 218.208 Exemptions From Emission Limitations; effective October 25, 2011.

(B) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart F: Coating Operations, Section 219.208 Exemptions From Emission Limitations; effective October 25, 2011.

[FR Doc. 2012–8952 Filed 4–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0825; FRL–9657–8]

Approval and Promulgation of State Implementation Plans; Missouri: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule; New Source Review Reform

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Missouri State Implementation Plan (SIP) relating to regulation of Greenhouse Gases (GHGs) under Missouri's Prevention of Significant Deterioration (PSD) program, and to other portions of Missouri's New Source Review (NSR) program. The GHG-related SIP revisions are designed to align Missouri's regulations with the GHG emission thresholds established in EPA's ''PSD and Title V Greenhouse Gas Tailoring Final Rule,'' which EPA issued by notice dated June 3, 2010. The other NSR revisions are to the Construction Permits Required Rule and the Emissions Banking and Trading Rule and are intended to address changes to the Federal NSR regulations, which were promulgated by EPA on December 31, 2002 (the NSR Reform rules). In today's action, EPA is approving both the GHG (as it relates to the PSD program) and NSR revisions because the Agency has determined that these SIP revisions, already adopted by Missouri as final effective rules, are in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding PSD permitting for GHGs and NSR.

DATES: This final rule is effective on May 16, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R07–OAR–2011–0825. All documents in the docket are listed on the *http://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the GHG portion of the Missouri SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez's telephone number is (913) 551–7041, and his email address is *gonzalez.larry@epa.gov.* For information regarding the NSR Reform portion of the Missouri SIP, contact Ms. Amy Bhesania, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Ms. Bhesania's telephone number is (913) 551–7147, and her email address is *bhesania.amy@epa.gov.*

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

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I. What GHG-related final action is EPA taking in this final rule?

In a letter dated August 8, 2011, MDNR submitted a request to EPA to approve revisions to the State's SIP and Title V program to incorporate recent rule amendments adopted by the Missouri Air Conservation Commission. These adopted rules became effective in the Missouri Code of State Regulations on August 30, 2011. These amendments establish thresholds for GHG emissions in Missouri's PSD and Title V regulations at the same emissions thresholds and in the same time-frames as those specified by EPA in the ''PSD and Title V Greenhouse Gas Tailoring; Final Rule'' (75 FR 31514), hereinafter referred to as the ''Tailoring Rule,'' ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The amendments to the SIP clarify the applicable thresholds in the Missouri SIP, address the flaw discussed in the ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans Final Rule,'' 75 FR 82536 (December 30, 2010) (the ''PSD SIP Narrowing Rule''), and incorporate state rule changes adopted at the state level into the Federally-approved SIP.

On October 28, 2011, EPA published a proposed rulemaking to approve Missouri's SIP revision. The proposal addressed SIP revisions associated with both the Federal ''tailoring rule'' revisions and ''NSR reform'' rules. *See* 76 FR 66882. EPA did not receive any public comments in response to the proposal. In this final rule, pursuant to section 110 of the CAA, EPA is approving these revisions into the Missouri SIP.[1]

II. What is the background for the GHG-related PSD SIP Approval in this final rule?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this final action. More detailed discussion of the background is found in the proposal for this rulemaking, 76 FR 66882, and in the EPA rulemakings cited in the proposal. In particular, the background is contained in what we called the PSD SIP Narrowing Rule,[2] and in the preambles to the actions cited therein.

A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for this final action on the Missouri SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[3] the ''Johnson Memo Reconsideration,''[4] the ''Light-Duty Vehicle Rule,''[5] and the ''Tailoring Rule.'' Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In many states, such as Missouri, PSD is implemented through the SIP. In December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP Call and, for some of these states, a Federal Implementation Plan (FIP).[6] Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the ''error correction'' provisions of CAA section 110(k)(6).

B. Missouri's Actions

On July 27, 2010, Missouri submitted a letter to EPA, in accordance with a request to all states from EPA in the proposed Tailoring Rule, with confirmation that the State of Missouri has the authority to regulate GHGs in its PSD program. The letter also confirmed Missouri's intent to amend its air quality rules for the PSD program for GHGs to match the thresholds set in the Tailoring Rule. See the docket for this final rulemaking for a copy of Missouri's letter.

In the PSD SIP Narrowing Rule, published on December 30, 2010, EPA withdrew its approval of Missouri's SIP (among other SIPs) to the extent that the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.[7] As a result, Missouri's current approved SIP provides the State with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and requires new and modified sources to receive a Federal PSD permit based on GHG emissions only if they emit or have potential to emit at or above the Tailoring Rule thresholds.

The basis for this SIP revision is that limiting PSD applicability to GHG sources with the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that require assurances of adequate resources, and thereby

[1] As stated in the proposal, EPA intends to address Missouri's August 8, 2011 request to approve revisions to the Title V program relating to GHGs in a subsequent rulemaking.

[2] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

[3] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[4] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[5] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[6] Specifically, by action dated December 13, 2010, EPA finalized a ''SIP Call'' that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,'' 75 FR 77698 (December 13, 2010). EPA made findings of failure to submit in some states which were unable to submit the required SIP revision by their deadlines, and finalized FIPs for such states. *See, e.g.* ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,'' 75 FR 81874 (December 29, 2010); ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,'' 75 FR 82246 (December 30, 2010). Because Missouri's SIP already authorizes Missouri to regulate GHGs once GHGs became subject to PSD requirements on January 2, 2011, Missouri is not subject to the SIP Call or FIP.

[7] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

addresses the flaw in the SIP that led to the PSD SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that states provide ''necessary assurances that the State * * * will have adequate personnel [and] funding * * * to carry out such [SIP].'' In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources, in part, because the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,[8] and no state, including Missouri, asserted that it did have adequate resources to do so.[9] In the PSD SIP Narrowing Rule, EPA found that the affected states, including Missouri, had a flaw in their SIP at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.[10] Accordingly, for each affected state, including Missouri, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.[11] EPA recommended that states adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under state law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally approved SIP by clarifying that the SIP applies only to sources at or above the Tailoring Rule thresholds.[12]

Missouri's August 8, 2011, SIP submission establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Missouri's PSD program. Specifically, the SIP revision includes changes—which are already effective in Missouri's Code of State Regulations (CSR)—revising rule 10 CSR 10–6.060(8)(A) to incorporate by reference all of the revisions of the Federal PSD rules at 40 CFR 52.21 published in the Tailoring Rule.[13] These revisions specifically define the term ''subject to regulation'' for the PSD program and define ''greenhouse gases (GHGs)'' and ''tpy CO_2 equivalent emissions (CO_2e).'' Additionally, the revisions to 10 CSR 10–6.060 specify the methodology for calculating an emissions increase for GHGs, the applicable thresholds for GHG emissions subject to PSD, and the schedule for when the applicability thresholds take effect.

Missouri is currently a SIP-approved State for the PSD program, and has previously incorporated EPA's 2002 NSR Reform revisions for PSD into its SIP. *See* 71 FR 36486 (June 27, 2006).[14] In that rulemaking, at the State's request, EPA did not act on the portions of Missouri's rule which reflected the vacated and remanded provisions in EPA's NSR Reform rule.[15] The changes to Missouri's PSD program regulations are substantively the same as the Federal provisions amended in EPA's Tailoring Rule.

III. GHG-Related Final Action

Pursuant to section 110 of the CAA, EPA is approving Missouri's August 8, 2011 revisions to the Missouri SIP, relating to PSD requirements for GHG-emitting sources. EPA has made the determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. The detailed rationale for this action is set forth in the proposed rulemaking referenced above, and in this final rule.

Since EPA is finalizing its approval of Missouri's changes to its air quality regulations to incorporate appropriate thresholds for GHG permitting applicability into Missouri's SIP, then section 52.1323(n) of 40 CFR part 52, added in EPA's PSD SIP Narrowing Rule to codify the limitation of its approval of Missouri's PSD SIP to exclude the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds, is no longer necessary. In this action, EPA is also amending section 52.1323(n) of 40 CFR part 52 to remove this unnecessary regulatory language.

IV. What NSR reform-related final action is EPA taking in this final rule?

In this final rule, we are also approving MDNR's request to include as a revision to Missouri's SIP, amendments to rule 10 CSR 10–6.060 ''Construction Permit Required'' and 10 CSR 10–6.410 ''Emission Banking and Trading.'' These rules were adopted by the Missouri Air Conservation Commission on March 26, 2009, and became effective under state law on July 30, 2009. The rules were submitted to EPA for inclusion into the Missouri SIP in a letter dated November 30, 2009. The submission included comments on the rules made during the State's adoption process and the State's response to comments. Missouri submitted these revisions to align its rules with EPA's revisions to the Federal NSR program (NSR Reform), as it relates to nonattainment areas in the State. Pursuant to section 110 of the CAA, EPA is approving these SIP revisions with several exceptions. First, in today's final action, EPA is not taking action on Missouri's submittal of changes to the applicability of the PSD program to exclude ethanol production facilities from the definition of ''chemical processing plants'' (the Ethanol Rule) (72 FR 24060, May 1, 2007). *See* letter from James L. Kavanaugh, Director, MDNR, to EPA, April 10, 2008. Second, because Missouri has not adopted EPA's ''Fugitive Emissions Rule'' (73 FR 77882, Dec. 19, 2008), as it relates to NSR in nonattainment areas, today's action also does not address the Fugitive Emissions Rule.[16]

On October 28, 2011, EPA published a proposed rulemaking to approve Missouri's SIP revision. The proposal addressed SIP revisions associated with both the Federal ''tailoring rule'' revisions and ''NSR reform'' rules. *See* 76 FR 66882. EPA did not receive any public comments in response to the proposal. Therefore, in this final rule, pursuant to section 110 of the CAA,

[8] Tailoring Rule, 75 FR at 31517.

[9] PSD SIP Narrowing Rule, 75 FR at 82540.

[10] *Id.* at 82542.

[11] *Id.* at 82544.

[12] *Id.* at 82540.

[13] The revised rule states that all of the subsections of 40 CFR 52.21, other than subsections (a), (q), (s), and (u), promulgated as of July 1, 2009, including the revision published at 75 FR 31606–07 (effective August 2, 2010), are incorporated by reference into 10 CSR 10–6.060(8)(A).

[14] In sections IV through VI of this final action, EPA is approving several of Missouri's other revisions to its rules for incorporation into the Missouri SIP.

[15] These portions included provisions relating to pollution control projects, the ''clean unit'' exemption, and the recordkeeping requirements for certain sources using the ''actual to projected actual'' test for applicability of PSD (the ''reasonable possibility'' provision in section 52.21(r)(6)). *See* 71 FR 36487 for a more detailed discussion of EPA's approval of Missouri's NSR reform rule relating to PSD. We are not acting on those provisions, including the recordkeeping aspect of the ''reasonable possibility'' provision, in today's action. (*See* section V of this preamble for a more detailed discussion of the vacated and remanded provisions.) We are also not acting on Missouri's rule incorporating EPA's 2007 revision of the definition of ''chemical processing plants'' (the ''Ethanol Rule,'' 72 FR 24060 (May 1, 2007)) or EPA's 2008 ''fugitive emissions rule,'' 73 FR 77882 (December 19, 2008). *See* Section IV for more details.

[16] The November 30, 2009 submittal from MDNR also proposed revisions to 10 CSR 10–6.350 ''Emission Limitations and Emissions Trading of Oxides of Nitrogen'' and 10 CSR 10–6.360 ''Control of NO_X Emissions from Electric Generating Units and Non-Electric Generating Boilers.'' In a letter dated April 20, 2011, Missouri withdrew this submission of revisions to these two rules, and therefore today's action does not include them.

EPA is approving these revisions into the Missouri SIP.[17]

V. What is the background for the NSR reform-related approval in this final rule?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA's PSD and Nonattainment NSR programs (''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects''). On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. In that November 7, 2003, final action, EPA added the definition of ''replacement unit,'' and clarified an issue regarding PALs. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.''

In brief, the 2002 NSR Reform Rules made changes to five areas of the NSR programs (concerning both PSD and nonattainment NSR).[18] The 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plantwide applicability limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.''

After the 2002 NSR Reform Rules were finalized and effective, industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping, *e.g.* 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform Rules.

On February 25, 2005, Missouri submitted a request to include EPA's 2002 NSR Reform Rules in attainment and unclassifiable areas in to the SIP, and EPA approved these revisions through a final rule published on June 27, 2006 (71 FR 36486).[19]

VI. NSR Reform-Related Final Action

Pursuant to section 110 of the CAA, EPA is approving revisions to Missouri's regulations 10 CSR 10–6.060 and 10 CSR 10–6.410, as submitted on November 30, 2009, for inclusion in the Missouri SIP. EPA has determined that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations implementing the NSR program, including NSR Reform. The detailed rationale for this action is set forth in the proposal for this rule, 76 FR 66882, and in this notice.

VII. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 15, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

[17] As stated in the proposal, EPA intends to address Missouri's August 8, 2011 request to approve revisions to the Title V program relating to GHGs in a subsequent rulemaking.

[18] For more background information about the 2002 NSR Reform rules, *see* 67 FR 80186.

[19] As stated in section II above, EPA did not act on the portions of Missouri's rule which related to the vacated and remanded provisions of the EPA rule.

List of Subjects in 40 CFR Part 52

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

Dated: March 30, 2012.

Karl Brooks,

Regional Administrator, Region 7.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. Section 52.1320(c) is amended by revising the entries for 10 CSR 10–6.060 (Construction Permits Required) and 10 CSR 10–6.410 (Emissions Banking and Trading) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.060	Construction Permits Required.	8/30/11	4/16/12 [*insert FR page number where the document begins*].	This revision incorporates by reference elements of EPA's NSR reform rule published December 31, 2002. Provisions of the incorporated reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved. In addition, we are not approving Missouri's rule incorporating EPA's 2007 revision of the definition of ''chemical processing plants'' (the ''Ethanol Rule,'' 72 FR 24060 (May 1, 2007) or EPA's 2008 ''fugitive emissions rule,'' 73 FR 77882 (December 19, 2008). Otherwise, this revision also incorporates by reference the other provisions of 40 CFR 52.21 as in effect on August 2, 2010, which supersedes any conflicting provisions in the Missouri rule. Section 9, pertaining to hazardous air pollutants, is not SIP approved.
10–6.410	Emissions Banking and Trading.	7/30/09	4/16/12 [*insert FR page number where the document begins*].	
*	*	*	*	*

§ 52.1323 [Amended]

■ 3. Section 52.1323 is amended by removing and reserving paragraph (n).

[FR Doc. 2012–8920 Filed 4–13–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA–07–29364 (HM–231A)]

RIN 2137–AE32

Hazardous Materials; Packages Intended for Transport by Aircraft

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations to require closures of inner packagings containing liquids within a combination packaging intended for transportation by aircraft to be secured by a secondary means or, where a secondary closure cannot be applied or it is impracticable to apply, permit the use of a leakproof liner. These amendments are consistent with the 2011–2012 edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions).

DATES: *Effective Date:* This rule is effective July 1, 2012.

Voluntary Compliance Date: Voluntary compliance with all amendments are authorized May 16, 2012.

FOR FURTHER INFORMATION CONTACT: Michael G. Stevens, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, telephone (202) 366–8553, or Janet McLaughlin, Office of Security and Hazardous Materials Safety, Federal Aviation Administration, U.S. Department of Transportation, 490 L'Enfant Plaza SW., Suite 8100, Washington, DC 20024, telephone (202) 385–4897.

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I. Executive Summary

In this final rule, PHMSA is adopting the requirement that, when transported by air, the closure of an inner packaging containing a liquid hazardous material must be secured by a secondary means of closure. A Packing Group I liquid must be further packaged in a rigid leakproof receptacle or rigid intermediate packaging containing sufficient absorbent material to absorb the entire contents of the inner packaging, before being placed in its outer package. For liquids assigned to Packing Groups II or III, however, a leakproof liner may be used where a secondary closure cannot be applied or it is impracticable to apply. These amendments are consistent with the reformatted packing instructions in the 2011–2012 edition of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). Because most shippers already prepare shipments in accordance with the ICAO Technical Instructions, as a result, no new costs or benefits are anticipated.

During the rulemaking process, PHMSA, in consultation with the FAA, considered four possible alternatives to strengthen packaging requirements for air shipments of liquid hazardous materials:

Alternative 1: Harmonize with the 2011–2012 edition of the ICAO Technical Instructions by requiring that friction and screw type closures (i.e., all closure types) of inner packagings intended to contain liquids as part of a combination packaging be secured by a secondary means of closure. Under this alternative, we would adopt packaging amendments included in the 2011–2012 edition of the ICAO Technical Instructions that require friction and screw type closures of inner packagings intended to contain liquids as part of a combination packaging to be secured by a secondary means of closure. For liquids assigned to Packing Groups II or III, a leakproof liner could be used to satisfy the secondary closure requirement where it could not be applied or would be impracticable to apply. For liquids of Packing Group I, a secondary means of closure, absorbent material and a leakproof liner would be required. Alternative 1 would address most of the safety issues associated with the transportation of liquid hazardous materials by preventing releases or containing releases that do occur within the packaging. It does not address problems associated with the current pressure differential capability standard.

Alternative 2: Require enhanced pressure differential capability requirements on all inner packagings intended to contain liquids as part of a combination packaging. Current rules require that all packages transported by air and for which retention of liquids is a basic function must be capable of withstanding, without leakage, a certain pressure differential, which is usually 95 kilopascals (kPa) (§ 173.27[c]). This integrity standard applies to both specification and non-specification packaging. Under this alternative, PHMSA would require packaging manufacturers to conduct testing to confirm that a combination packaging intended for the air transportation of liquid hazardous materials is capable of withstanding the pressures encountered on board aircraft and to maintain a documented record of the test results.

Alternative 3: Adopt the provisions in both Alternatives 1 and 2. Under this alternative, PHMSA would adopt the new and revised regulatory provisions summarized in the discussion of Alternatives 1 and 2 above.

Alternative 4: Do nothing. Under this alternative, the current domestic regulatory scheme applicable to air shipment of hazardous liquids would continue in place and the U.S. standards would not be harmonized with the international community. Because most countries and international air carrier organizations have already adopted the changes in this rulemaking, a do-nothing approach could result in complications in the movement of these materials and the U.S. will not meet its obligations outlined in the Convention on International Civil Aviation—also known as the Chicago Convention. Future inconsistencies with international transport standards may result in foreign authorities refusing to accept hazardous material shipments prepared in accordance with the HMR. To successfully participate in international markets, U.S. companies would be required to conform to dual regulations. Inconsistent domestic and international regulations can also have an adverse safety impact by making it more difficult for shippers and carriers to understand and comply with all applicable requirements.

II. Background

A. Current Requirements in the HMR

Currently under the HMR, stoppers, corks, or other such friction-type closures must be held securely, tightly, and effectively in place by positive means. See § 173.27(d). However, a screw-type closure on any packaging must only be secured to prevent the closure from loosening due to ''vibration or substantial change in temperature.'' We have stated in letters of clarification that a secured closure should incorporate a secondary means of maintaining a seal, such as a shrink-wrap band or heat-sealed liner. Additionally, laboratory studies conducted on behalf of PHMSA and FAA concluded that a simple application of tape on a screw-type closure prevented ''back-off'' under even extreme conditions.

B. Summary of Proposals in NPRM

1. Incorporation of Certain ICAO Technical Instructions Reformatted Packing Provisions

In the May 14, 2010 [75 FR 27273] NPRM, we proposed to amend the HMR by adopting certain packaging provisions that were inclusive of what was adopted in the 2011–2012 ICAO Technical Instructions. We proposed to amend § 173.27(d) by requiring that all friction and screw type closures must be secured by a secondary means. A Packing Group I liquid would also be required to be further packaged in a rigid, leakproof receptacle or intermediate packaging containing sufficient absorbent material to absorb the entire contents of the inner packaging. We also proposed that, for liquids assigned to Packing Groups II or III, a leakproof liner or bag may be used to satisfy the secondary closure requirement where it could not be applied or it would be impracticable to apply. Additionally, we noted:

■ A liner or secondary means of positive closure should not affect an existing UN standard packaging design because it would not ordinarily be considered a new design type.

■ Liners typically must be manually inserted into a packaging before filling. Because most packaging systems can be automated or are already automated with some form of secondary closure being applied, costs and regulatory burden to shippers should be minimal.

■ The HMR and ICAO Technical Instructions already require a leakproof receptacle for most Packing Group I liquids through special provisions and packing instructions, respectively.

Lastly, because organic peroxide liquids are no longer required to be packaged with absorbent material under the newly reformatted packing instructions of the ICAO Technical Instructions, we proposed to remove the reference to Division 5.2 materials from the § 173.27(e) introductory text.

2. Testing Requirements To Simulate Packages in the Air Transport Environment

In the May 14, 2010 [75 FR 27273] NPRM, we also proposed to establish new testing standards for packaging, relative to pressure differential requirements in §§ 173.27(c) and 178.605. Some of the recommended test methods proposed were intended to provide an equivalent alternative to current HMR test requirements, and ultimately reduce the overall failure rate of packages by ensuring packaging capable of withstanding the pressure differentials and vibrations encountered in air transport.

Current HMR test requirements for air transport packaging are based on a 50-year old regulatory regime. Compared to the air transportation environment 50 years ago, today's air cargo transportation environment has become more automated, relies on a more complex cargo feeder system, and utilizes aircraft traveling longer distances without suitable airports to land in the event of an emergency.

For these reasons, DOT will continue with its comprehensive review of air packaging standards as appropriate. In this review, data will be collected on the pressure differential, vibration, ground handling characteristics, temperature fluctuations, and other environmental characteristics typically experienced by packages in air transport. This data will also be analyzed to describe the cumulative impact that today's operational environment may have on packaging systems. As a result, DOT will assess whether such review merits further action.

III. Discussion and Resolution of Comments Submitted in Response to NPRM

In response to the NPRM, we received comments from the following:

1. Dangerous Goods Advisory Council (DGAC)
2. Council on Safe Transportation of Hazardous Materials Articles, Inc. (COSTHA)
3. Association of Hazmat Shippers, Inc. (AHS)
4. Laboratory Corporation of America (LabCorp)
5. Saf-T-Pak
6. Air Line Pilots Association, International (ALPA)
7. High Q Testing, LLC
8. Lonnie Jaycox
9. European Chemistry Industry Council (CEFIC)

A. Secondary Means of Closure

Three major trade associations (COSTHA, DGAC and AHS) who commented support the amendments proposed in the NPRM primarily due to their alignment with the ICAO Technical Instructions and the minimal economic and regulatory burden placed on their members. The bulk of their membership, however, appears to consist of large companies who most likely already comply with some or all of the proposals made in the NPRM. Additionally, these trade associations request that PHMSA, at the earliest possible date, bring any regulatory differences to the international standards bodies' attention to ensure a level playing field exists among domestic and international shippers and carriers. We will continue to propose international alignment with the HMR to the ICAO Dangerous Goods Panel when appropriate.

COSTHA, DGAC and AHS request that PHMSA consider automated closure systems as an acceptable alternative to applying a secondary means of closure to an inner packaging with a screw-type closure. In their comments, they assert because modern automated closure systems provide a consistent level of integrity, the time it takes to individually apply another means of closure (e.g., tape) is not economically viable when compared to simply using some form of secondary containment such as a leakproof liner. LabCorp also opposes the secondary means of closure requirement as it would be manually accomplished—a major burden. LabCorp and the two DOT-approved testing laboratories (High Q Testing, LLC and Lonnie Jaycox) request that PHMSA allow the use of a leakproof liner to satisfy the ''impractical'' secondary means of closure requirement proposed in the NPRM.

In response to comments submitted by LabCorp and the two DOT-approved testing laboratories (High Q Testing, LLC and Lonnie Jaycox), in the final rule, we are doing so and providing that for liquids of Packing Groups II and III, the use of a leakproof liner, bag or other form of secondary containment will satisfy the secondary means of closure requirement. However, Packing Group I liquids on passenger-carrying and cargo-carrying aircraft must be contained in an inner packaging with a secondary means of closure applied that is further packaged in a rigid leakproof receptacle or intermediate packaging containing sufficient absorbent material to absorb the entire contents of the inner packaging before being placed in its outer package. This requirement is consistent with current air-related § 172.102 Special provisions in the HMR (A3, A6), and Packing Instructions 360 and 361 in the ICAO Technical Instructions. Unless otherwise specified through a § 172.102 Special provision, absorbent material is not required for liquids of Packing Groups II and III. It should be noted, however, that although not required under these provisions, absorbent material would remain a requirement if included as part of an assembled package during design testing and is also permitted as an additional mitigation procedure if desired.

We accept the suggestions to ''improve'' upon the proposed amendments in the NPRM by allowing certain closures of high integrity (e.g., acid cap) to meet the secondary means of closure requirements of this final rule. The methods indicated in proposed § 173.27(d) are some examples of ways in which to satisfy the closure requirements and are not intended to be all-inclusive. We do not accept, however, the recommendations that successful pressure differential testing itself should satisfy the secondary means of closure or liner requirement. Some commenters state it would not be needed (and is overly redundant) if a packaging successfully meets the performance standard for pressure differential capability as proposed in the NPRM. We disagree and contend that the air transport environment is unique in that a certain amount of redundancy is necessary to maintain or enhance the safe transportation of hazardous materials.

B. Pressure Differential Testing

PHMSA received comments on the pressure differential testing aspects of the NPRM from Saf-T-Pak, AHS, and CEFIC. Saf-T-Pak supports the proposals

in the NPRM to require pressure differential testing and requests that PHMSA: (1) Allow any acceptable test method that achieves the proposed goal of the rule; (2) require similar testing requirements for biological substances in § 173.199 as proposed in § 173.27; and (3) lower the duration for flexible packagings used primarily in medical and pharmaceutical industries. AHS requests that PHMSA allow reduced pressure differential capability (75 kPa) for all consumer commodities in the ORM–D–AIR hazard class. CEFIC represents national chemical federations and chemical companies in Europe. In its comments, CEFIC states that it supports global harmonization of hazardous materials transport standards and regulations, but actual testing of packagings to verify pressure differential capability as proposed in the NPRM is inconsistent with the ICAO Technical Instructions. As a result, PHMSA has elected to not adopt the pressure differential proposals published in the NPRM at this time. DOT will continue to assess the pressure differential and vibration test proposals published in the NPRM in a broader context once additional data has been collected and considered.

C. Conclusion

In this rulemaking action, PHMSA is adopting, consistent with packaging amendments made to the 2011–2012 edition of the ICAO Technical Instructions, the requirement that closures of inner packagings be secured by a secondary means of closure. The effective date of the amendments adopted in this final rule is July 1, 2012. This delayed compliance date will assist shippers in assessing their packaging stock for integrity and is consistent with amendments recently adopted under Docket HM–215K (76 FR 3308, January 19, 2011) that align the HMR with certain amendments adopted in the 2011–2012 ICAO Technical Instructions.

This final rule adopts the requirements that friction and screw type closures (i.e., all closures) of inner packagings intended to contain liquids, as part of a combination packaging, must be secured by a secondary means of closure. For liquids assigned to Packing Groups II or III, a leakproof liner may be used to satisfy the secondary closure requirement where it cannot be applied or it is impracticable to apply. For liquids of Packing Group I, a secondary means of closure, absorbent material, and a rigid and leakproof receptacle or intermediate packaging is required. We believe the amendments adopted in this final rule will achieve our objective of prescribing a cost-effective systems approach to aviation safety that provides redundancy where necessary and promotes compliance.

PHMSA and FAA will continue to focus on enforcement of the current air packaging requirements. We will also build on our efforts to better understand and characterize the environmental conditions that packages are subjected to in today's air transport system.

IV. Rulemaking Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 et seq.) Section 5103(b) of Federal hazmat law requires the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.

B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This notice is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This notice is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Additionally, E.O. 13563 supplements and reaffirms E.O. 12866, stressing that, to the extent permitted by law, an agency rulemaking action must be based on benefits that justify its costs, impose the least burden, consider cumulative burdens, maximize benefits, use performance objectives, and assess available alternatives.

During the rulemaking process, PHMSA, in consultation with the FAA, considered four possible alternatives to strengthen packaging requirements for air shipments of liquid hazardous materials:

Alternative 1: Harmonize with the 2011–2012 edition of the ICAO Technical Instructions by requiring that friction and screw type closures (i.e., all closure types) of inner packagings intended to contain liquids as part of a combination packaging be secured by a secondary means of closure. Under this alternative, we would adopt packaging amendments included in the 2011–2012 edition of the ICAO Technical Instructions that require friction and screw type closures of inner packagings intended to contain liquids as part of a combination packaging to be secured by a secondary means of closure. For liquids assigned to Packing Groups II or III, a leakproof liner could be used to satisfy the secondary closure requirement where it could not be applied or would be impracticable to apply. For liquids of Packing Group I, a secondary means of closure, absorbent material and a rigid leakproof receptacle or intermediate packaging would be required. Alternative 1 would address most of the safety issues associated with the transportation of liquid hazardous materials by preventing releases or containing releases that do occur within the packaging. It does not address problems associated with the current pressure differential capability standard.

Alternative 2: Require enhanced pressure differential capability requirements on all inner packagings intended to contain liquids as part of a combination packaging. Current rules require that all packages transported by air and for which retention of liquids is a basic function must be capable of withstanding, without leakage, a certain pressure differential, which is usually 95 kilopascals (kPa) (§ 173.27[c]). This integrity standard applies to both specification and non-specification packaging. Under this alternative, PHMSA would require packaging manufacturers to conduct testing to confirm that a combination packaging intended for the air transportation of liquid hazardous materials is capable of withstanding the pressures encountered on board aircraft and to maintain a documented record of the test results.

Alternative 3: Adopt the provisions in both Alternatives 1 and 2. Under this alternative, PHMSA would adopt the new and revised regulatory provisions summarized in the discussion of Alternatives 1 and 2 above.

Alternative 4: Do nothing. Under this alternative, the current domestic regulatory scheme applicable to air shipment of hazardous liquids would continue in place and the U.S. standards would not be harmonized with the international community. Because most countries and international air carrier organizations have already adopted the changes in this rulemaking, a do-nothing approach could result in complications in the movement of these materials and the U.S. will not meet its obligations outlined in the Convention on International Civil Aviation—also known as the Chicago Convention. Future inconsistencies with international transport standards may result in foreign authorities refusing to accept hazardous material shipments prepared in accordance with the HMR. To successfully participate in

international markets, U.S. companies would be required to conform to dual regulations. Inconsistent domestic and international regulations can also have an adverse safety impact by making it more difficult for shippers and carriers to understand and comply with all applicable requirements.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements but does not propose any regulation with substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (2) and (5) described above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption of this final rule will be 90 days from publication in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. A regulatory evaluation for this final rule, which includes a detailed small business impact analysis, is in the public docket for this rulemaking. Based on the analysis in the public docket, I certify that the requirements adopted in this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure potential impacts of draft rules on small entities are properly considered.

F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $141.3 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. This final rule does not identify a new or revised information collection request that PHMSA will be required to submit to OMB for approval.

H. Environmental Assessment

The National Environmental Policy Act (NEPA), §§ 4321–4375, requires Federal Agencies to analyze regulatory actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require Federal Agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

Purpose and Need. As discussed elsewhere in this preamble, PHMSA is amending requirements in the Hazardous Materials Regulations to enhance the integrity of inner packagings or receptacles of combination packagings containing liquid hazardous material by ensuring they remain intact when subjected to the reduced pressure and other forces encountered in air transportation. In order to substantially decrease the likelihood of an unintentional hazardous materials release to the environment, the amendments adopted in this final rule require that closures of inner packagings be secured by a secondary means of closure.

Alternatives: PHMSA considered four possible alternatives to strengthen packaging requirements for air shipments of liquid hazardous materials:

Alternative 1: Require that friction and screw type closures of inner packagings intended to contain liquids as part of a combination packaging to be secured by a secondary means of closure. Under this alternative, we would adopt the packaging amendments included in the 2011–2012 edition of the ICAO Technical Instructions. Specifically, we would require friction and screw type closures of inner packagings intended to contain liquids as part of a combination packaging to be secured by a secondary means of closure. For liquids assigned to Packing Groups II or III, a leakproof liner could be used to satisfy the secondary closure requirement where it could not be applied or would be impracticable to apply. For liquids of Packing Group I, a secondary means of closure, absorbent material, and a rigid and leakproof receptacle or intermediate packaging would be required. This regulatory alternative was selected. This

alternative harmonizes domestic packaging requirements with international standards, thereby reducing confusion, promoting safety, and facilitating efficient transportation.

Alternative 2: Require enhanced pressure differential capability requirements on all inner packagings intended to contain liquids as part of a combination packaging. Current rules require that all packages transported by air and for which retention of liquids is a basic function must be capable of withstanding, without leakage, a certain pressure differential, which is usually 95 kilopascals (kPa) (§ 173.27[c]). This integrity standard applies to both specification and non-specification packaging. Under this alternative, PHMSA would require packaging manufacturers to conduct testing to confirm that a combination packaging intended for the air transportation of liquid hazardous materials is capable of withstanding the pressures encountered on board aircraft and to maintain a documented record of the test results.

Alternative 3: Adopt the provisions in both Alternatives 1 and 2. Under this alternative, PHMSA would adopt the new and revised regulatory provisions summarized in the discussion of Alternatives 1 and 2 above.

Alternative 4: Do nothing. Under this alternative, the current regulatory scheme applicable to air shipment of hazardous liquids would continue in place. We did not select this alternative because clearly-identified safety risks would not be addressed.

Analysis of Environmental Impacts. Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Releases of hazardous materials can result in explosions or fires, while radioactive, toxic, infectious, or corrosive hazardous materials can have short- or long-term exposure effects on humans or the environment.

We have reviewed the risks associated with transporting combination packages containing liquid hazardous materials by aircraft and by surface transportation to and from aircraft. The amount of liquid hazardous material contained in air-eligible combination packages to which this rulemaking applies is minimal and ranges anywhere from 0.5L to 450L. However, hazardous materials that pose the highest risk to humans and the environment are packaged in much smaller quantities when transported by aircraft, or are not authorized transportation by aircraft at all, thereby minimizing any consequences to both should a package fail and release its contents. For these reasons, we conclude the amendments adopted in this final rule will result in little or no impact on the environment.

I. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit ''*http://dms.dot.gov*''.

J. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 2. In § 173.27, paragraphs (a), (d), and (e) are revised to read as follows:

§ 173.27 General requirements for transportation by aircraft.

(a) The requirements of this section are in addition to requirements prescribed elsewhere under this part and apply to packages offered or intended for transportation aboard aircraft. Except for materials not subject to performance packaging requirements in subpart E of this part, a packaging containing a Packing Group III material with a primary or subsidiary risk of Division 4.1, 4.2, 4.3, 5.1, or Class 8 must meet the Packing Group II performance level when offered for transportation by aircraft.

* * * * *

(d) *Closures.* The body and closure of any packaging must be constructed to be able to adequately resist the effects of temperature and vibration occurring in conditions normally incident to air transportation. Inner packaging or receptacle closures of combination packages containing liquids must be held securely, tightly and effectively in place by secondary means. Examples of such secondary methods include: Adhesive tape, friction sleeves, welding or soldering, locking wires, locking rings, induction heat seals, and child-resistant closures. The closure device must be designed so that it is unlikely that it can be incorrectly or incompletely closed. Closures must be as follows:

(1) *Packing Group I.* An inner packaging containing liquids of Packing Group I must have a secondary means of closure applied and packed in accordance with paragraph (e) of this section.

(2) *Packing Groups II and III.* When a secondary means of closure cannot be applied or is impracticable to apply to an inner packaging containing liquids of Packing Groups II and III, this requirement may be satisfied by securely closing the inner packaging and placing it in a leakproof liner or bag before placing the inner packaging in its outer packaging.

(e) *Absorbent materials.* Except as otherwise provided in this subchapter, Packing Group I liquid hazardous materials of Classes 3, 4, or 8, or Divisions 5.1 or 6.1 that are packaged in combination packagings and offered for air transport in glass, earthenware, plastic, or metal inner packagings must be packed using absorbent material as follows:

(1) Inner packagings must be packed in a rigid and leakproof receptacle or intermediate packaging containing sufficient absorbent material to absorb the entire contents of the inner packaging before packing the inner packaging in its outer package.

(2) Absorbent material must not react dangerously with the liquid (see §§ 173.24 and 173.24a.).

* * * * *

Issued in Washington, DC, on April 10, 2012 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2012–8978 Filed 4–13–12; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 77, No. 73
Monday, April 16, 2012

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2011–0028]

RIN 0579–AD61

Importation of Fresh Bananas From the Philippines Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh bananas from the Philippines into the continental United States. As a condition of entry, the bananas would have to be produced in accordance with a systems approach that would include requirements for importation of commercial consignments, monitoring of fruit flies to establish low-prevalence places of production, harvesting only of hard green bananas, and inspection for quarantine pests by the national plant protection organization of the Philippines. The bananas would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were grown, packed, and inspected and found to be free of quarantine pests in accordance with the proposed requirements. This action would allow the importation of bananas from the Philippines while continuing to protect against the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive on or before June 15, 2012.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0028-0001*.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2011–0028, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0028* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Jones, Regulatory Coordination Specialist, PPQ, RPM, RCC, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 851–2289.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of the Philippines has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow bananas from the Philippines to be imported into the continental United States. Currently, bananas may not be imported from the Philippines. Historically, bananas have been imported into the United States only from Central and South America and have been moved interstate from Hawaii to the continental United States.

As part of our evaluation of the Philippines' request, we prepared a pest risk assessment (PRA), titled ''Importation of Bananas, *Musa* spp., as Fresh, Hard Green Fruit from the Philippines to the Continental United States, A Qualitative Pathway-Initiated Risk Assessment'' (July 21, 2009). The PRA evaluated the risks associated with the importation of green bananas into the United States from the Philippines.

The PRA identified 16 pests of quarantine significance present in the Philippines that could be introduced into the United States through the importation of green bananas:

Fruit flies:
- *Bactrocera musae*
- *B. occipitalis*
- *B. philippinensis*

Scales:
- Red wax (*Ceroplastes rubens*)
- Green (*Coccus viridis*)

Beetle:
- Longhorned (*Sybra alternans*)

Mealybugs:
- Gray pineapple (*Dymicoccus neobrevipes*)
- Coffee root (*Geococcus coffeae*)
- Hibiscus (*Maconellicoccus hirsutus*)
- Coffee (*Planococcus lilacinus*)
- Pacific (*Planococcus minor*)
- Cryptic (*Pseudococcus cryptus*)
- Mango (*Rastrococcus invadens*)
- Philippine mango (*Rastrococcus spinosus*)

Fungi
- *Cercospaora hayi* Calpouzos
- *Guignardia musae* Racib.

The PRA rated the fruit flies as high risk; the beetle, both scales, and all the mealybugs as medium risk; and the fungi as low risk. Pests with low risk ratings do not typically require specific mitigation measures. Based on the information contained in the PRA, APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by the quarantine pests with high and medium pest risk potential. To recommend specific measures to mitigate those risks, we prepared a risk management document (RMD). Copies of the PRA and RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the recommendations of the RMD, we are proposing to allow the importation of bananas from the Philippines into the continental United States only if they are produced in accordance with a systems approach. The systems approach we are proposing would require:

- Registration, monitoring, and oversight of places of production;

• Trapping for the *Bactrocera* spp. fruit flies to establish low-prevalence places of production;
• Covering bananas with pesticide bags during the growing season;
• Harvesting only of hard green bananas;
• Requirements for culling, safeguarding, and identifying the fruit; and
• Inspection by the NPPO of the Philippines for quarantine pests.

Bananas from the Philippines would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the bananas were grown, packed, and inspected in accordance with the proposed requirements.

We are proposing to add the systems approach to the regulations in a new § 319.56–57 governing the importation of bananas from the Philippines into the United States. The mitigation measures in the proposed systems approach are discussed in greater detail below.

Proposed Systems Approach

General Requirements

Paragraph (a) of § 319.56–57 would set out general requirements for the NPPO of the Philippines and for growers and packers producing bananas for export to the United States.

Paragraph (a)(1) would require the NPPO of the Philippines to provide a workplan to APHIS that details activities that the NPPO of the Philippines will, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56–57. The implementation of a systems approach typically requires a bilateral workplan to be developed. A bilateral workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Bilateral workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific export programs. Bilateral workplans also establish how specific phytosanitary issues are dealt within the exporting country and make clear who is responsible for dealing with those issues.

Paragraph (a)(2) would require bananas to be grown at places of production that are registered with the NPPO of the Philippines and that meet the proposed requirements for places of production that are discussed later in this document. We would also require that each registered place of production renew its registration annually.

Paragraph (a)(3) would require bananas to be packed for export to the United States in packinghouses that meet the packinghouse requirements that are described later in this document.

Paragraph (a)(4) would require bananas from the Philippines to be imported in commercial consignment only. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe and is often grown with little or no pest control.

Monitoring and Oversight

The systems approach we are proposing includes monitoring and oversight requirements in paragraph (b) of proposed § 319.56–57 to ensure that the required phytosanitary measures are properly implemented throughout the process of growing and packing of bananas for export to the United States.

Paragraph (b)(1) would require the NPPO of the Philippines to visit and inspect registered places of production monthly, starting at least 3 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the requirements and follow pest control guidelines, when necessary, to reduce quarantine pest populations. If fruit fly trapping is conducted, the NPPO of the Philippines would also have to verify that the growers are complying with the fruit fly trapping requirements and would have to certify that each place of production has effective fruit fly trapping programs. Any personnel conducting trapping would have to be trained and supervised by the NPPO of the Philippines. APHIS would monitor the places of production by conducting random and scheduled inspections.

Under paragraph (b)(2), if the NPPO of the Philippines finds that a place of production or a packinghouse is not complying with the proposed regulations, no fruit from the place of production or packinghouse would be eligible for export to the United States until APHIS and the NPPO of the Philippines conduct an investigation and appropriate remedial actions have been implemented.

Paragraph (b)(3) would require the NPPO of the Philippines to retain all forms and documents related to export program activities in groves and packinghouses for at least 1 year and, as requested, provide them to APHIS for review. Such forms and documents would include (but would not necessarily be limited to) fruit fly trapping and inspection records.

Fruit Fly Trapping To Establish Places of Production With Low Pest Prevalence

Paragraph (c) of proposed § 319.56–57 would provide for the use of trapping to demonstrate that registered places of production have a low prevalence of the *Bactrocera* spp. fruit flies. Although the PRA has determined that the three *Bactrocera* spp. are potential pests of bananas from the Philippines, bananas are known to be poor hosts to most species of fruit flies. However, *B. musae* is recorded as attacking green bananas. Trapping to demonstrate an area of low pest prevalence would therefore be an appropriate mitigation for fruit flies.

Beginning at least 3 months before harvest begins and continuing through the end of the harvest, trapping would have to be conducted in registered places of production with at least 1 trap per 0.2 square kilometers to demonstrate that the places of production have a low prevalence of the *Bactrocera* spp. fruit flies. APHIS-approved traps baited with APHIS-approved plugs would have to be used and serviced at least once every 2 weeks.

During the trapping, when traps are serviced, if the *Bactrocera* spp. fruit flies are trapped at a registered place of production at cumulative levels above 2 flies per trap per day, pesticide bait treatments would have to be applied in the affected place of production in order for the place of production to remain eligible to export bananas to the United States. The NPPO of the Philippines would have to keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request.

Although the *Bactrocera* spp. fruit flies have been identified as pests of banana in the Philippines, we do not want to impose trapping requirements if they are not justified by the presence of fruit fly larvae in Philippine bananas; as noted earlier, bananas are poor hosts of fruit flies in general, especially when harvested green. Under the heading

''NPPO of the Philippines Inspection'' later in this document, we describe requirements for cutting bananas to inspect for internal feeders such as fruit fly larvae. We are proposing to provide that the fruit fly trapping requirements described in proposed paragraph (c) would no longer apply if, after 2 years from the effective date of a final rule following this proposed rule, such inspections do not find any larvae of the *Bactrocera* spp. fruit flies. In general, we consider 2 years' worth of data on how fruit flies affect a commodity to be sufficient to make determinations on how to regulate for these pests.

The date on which trapping would no longer be required would be included in the regulations. If no fruit fly larvae are found, we would publish a notice in the **Federal Register** to confirm that fruit fly trapping would no longer be required. If fruit fly larvae are found, we would amend the regulations to address the demonstrated risk.

Bagging Requirements

Paragraph (d) would provide that plastic bags impregnated with pesticides must cover the bananas during the growing period. If a pesticide bag falls off or is torn, that fruit would no longer be eligible for export to the United States. This growing requirement would prevent quarantine pests from attacking bananas.

Harvesting Requirements

Paragraph (e) of § 319.56–57 sets out requirements for harvesting bananas. Under paragraph (e)(1), bananas would have to be harvested at a hard green stage. Harvesting bananas at a hard green stage (i.e., bananas with no yellow or green color break) is a standard industry practice for banana production in Central and South America, Hawaii, and most of the world because ripe bananas are more likely to be infested by fruit flies. Inspectors at the port of entry would determine that:

- Bananas shipped by air are still green upon arrival in the United States;
- Bananas shipped by sea are either green upon arrival in the United States or yellow but firm.

Under paragraph (e)(2), harvested bananas would have to be placed in field cartons or containers that are marked with the official registration number of the place of production. The fruit would have to be safeguarded from exposure to fruit flies from harvest to export, including being packaged so as to prevent access by fruit flies and other injurious insect pests. These requirements would ensure that APHIS and the NPPO of the Philippines could identify the place of production where the bananas were produced if inspectors find quarantine pests in the fruit either before export or at the port of entry. Places of production with quarantine pests would be removed from the program.

Post-Harvesting Processing

Paragraph (f) of proposed § 319.56–57 would provide that all damaged fruit would have to be culled at the packinghouse. Fruit with broken or bruised skin is more susceptible to infestation by pests than undamaged fruit. In addition, the fruit would have to be washed with a high pressure water spray and with soap and water. This requirement would remove mealy bugs and other quarantine pests from the fruit prior to export.

Packinghouse Requirements

We are proposing several requirements for packinghouse activities, which would be contained in paragraph (g) of proposed § 319.56–57. Paragraph (g)(1) would provide that the packinghouse would have to have double doors at the entrance to the facility and at the interior entrance to the area where the bananas are packed. This proposed requirement is designed to exclude fruit flies from the packinghouse.

Paragraph (g)(2) would require that bananas for export be packed into new, clean boxes, crates, or other packing material. We would also require bananas intended for export to the United States to be labeled with the name and location of the packinghouse marked on the boxes, and segregated from bananas intended for other markets. These requirements would ensure that APHIS and the NPPO of the Philippines could identify the packinghouse at which the fruit was packed if inspectors find quarantine pests in the fruit either before export or at the port of entry.

Paragraph (g)(3) would require that shipping documents accompanying consignments of bananas from the Philippines that are exported to the United States include the official registration number of the place of production at which the bananas were grown and must identify the packinghouse in which the fruit was processed and packed. This identification must be maintained until the fruit is released for entry into the United States.

Paragraph (g)(4) would require that the packinghouse operations for export of bananas be monitored by the NPPO of the Philippines. This requirement would ensure that the packinghouses remain compliant with the regulations.

NPPO of the Philippines Inspection

To ensure that the mitigations required in the systems approach are effective at producing fruit free of the targeted quarantine pests, we would require the NPPO of the Philippines to inspect the fruit after harvest. Paragraph (h)(1) of proposed § 319.56–57 would require inspectors from the NPPO of the Philippines to certify that bananas were harvested at the hard green stage.

Under paragraph (h)(2), the NPPO of the Philippines would be required to inspect a biometric sample of the fruit from each place of production at a rate to be determined by APHIS. The inspectors would have to visually inspect fruit from each place of production for all the quarantine pests. The inspectors would also have to cut fruit to inspect for quarantine pests that are internal feeders, which include larvae of the three *Bactrocera* fruit fly species (*B. musae, B. occipitalis, B. philippinensis*) and the beetle *Sybra alternans.* We have determined that inspection can serve as an effective mitigation for the risk associated with these pests in bananas exported from the Philippines.

If any *Bactrocera* spp. fruit flies are detected in this inspection, the place of production where the infested bananas were grown would immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of the Philippines and appropriate mitigations have been implemented. If other quarantine pests are detected in this inspection, the consignment will be rejected from the export program.

Phytosanitary Certificate

To certify that the bananas from the Philippines have been grown and packed in accordance with the requirements of proposed § 319.56–57, proposed paragraph (i) would require each consignment of bananas imported from the Philippines into the United States to be accompanied by a phytosanitary certificate issued by the NPPO of the Philippines with an additional declaration stating that the bananas in the consignment were grown, packed, and inspected in accordance with the systems approach in proposed § 319.56–57.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the

potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The United States is a minor producer but a major importer of bananas. Banana imports from the Philippines would compete against existing U.S. banana imports from other countries. The volume of bananas expected to be imported from the Philippines is not more than 100 containers per year at most, or approximately 1,814 metric tons annually. This quantity is equivalent to about 0.05 percent of U.S. imports. Compared to the volume of current imports, the quantity of bananas expected to be imported from the Philippines is negligible. Moreover, bananas from the Philippines will be allowed only into the continental United States, not into Hawaii. For these reasons, any impact of the rule for U.S. banana producers in Hawaii would be small.

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

Executive Order 12988

This proposed rule would allow bananas to be imported into the United States from the Philippines. If this proposed rule is adopted, State and local laws and regulations regarding bananas imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2011–0028. Please send a copy of your comments to: (1) Docket No. APHIS–2011–0028, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Allowing the importation of fresh bananas from the Philippines into the continental United States will require the completion of the following information: A bilateral workplan, registration of production sites, monitoring and oversight of production sites, maintenance of records, forms, and documents, marking of production sites with registration numbers, and a phytosanitary certificate.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency s functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.76892 hours per response.

Respondents: Foreign government, importers and growers of bananas from the Philippines.

Estimated Annual Number of Respondents: 46.

Estimated Annual Number of Responses per Respondent: 5,456.

Estimated Annual Number of Responses: 251.

Estimated total annual burden on respondents: 193 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

2. A new § 319.56–57 is added to read as follows:

§ 319.56–57 Bananas from the Philippines.

Bananas (*Musa* spp., which include *M. acuminate* cultivars and *M. acuminate* x *M. balbisiana* hybrids) may be imported into the continental United States from the Philippines only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Bactrocera musae* (Tryon), *Bactrocera occipitalis* (Bezzi), and *Bactrocera philippinensis* (Drew and Hancock) fruit flies; *Ceroplastes rubens* (Maskell), the red wax scale; *Coccus viridis* (Green), the green scale; *Sybra alternans* (Wiedemann), a longhorned beetle; *Dymicoccus neobrevipes* (Beardsley), the gray pineapple mealybug; *Geococcus coffeae* (Green), the coffee root mealybug; *Maconellicoccus hirsutus* (Green), the hibiscus mealybug; *Planococcus lilacinus* (Cockerell), the coffee mealybug; *Planococcus minor*

(Maskell), the pacific mealybug; *Pseudococcus cryptus* (Hempel), the cryptic mealybug; *Rastrococcus invadens* (Williams), the mango mealybug; and *Rastrococcus spinosus* (Robinson), the Philippine mango mealybug.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of the Philippines must provide an operational workplan to APHIS that details the activities that the NPPO of the Philippines will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section.

(2) Bananas must be grown at places of production that are registered with the NPPO of the Philippines and that meet the requirements of this section. Registration must be renewed annually.

(3) Bananas must be packed for export to the United States in packinghouses that meet the requirements of this section.

(4) Bananas from the Philippines may be imported in commercial consignments only.

(b) *Monitoring and oversight.* (1) The NPPO of the Philippines must visit and inspect registered places of production monthly, starting at least 3 months before harvest begins and continuing through the end of the shipping season, to verify that the growers are complying with the requirements of this section and follow pest control guidelines, when necessary, to reduce quarantine pest populations. When trapping is required under paragraph (c) of this section, the NPPO of the Philippines must also verify that the growers are complying with the requirements in that paragraph and must certify that each place of production has an effective fruit fly trapping program. Any personnel conducting trapping under paragraph (c) of this section must be trained and supervised by the NPPO of the Philippines. APHIS may monitor the places of production as necessary to ensure compliance.

(2) If the NPPO of the Philippines finds that a place of production or packinghouse is not complying with the requirements of this section, no fruit from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of the Philippines conduct an investigation and appropriate remedial actions have been implemented.

(3) The NPPO of the Philippines must retain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(c) *Fruit fly trapping to establish places of production with low pest prevalence.* Beginning at least 3 months before harvest begins and continuing through the end of the harvest, trapping must be conducted in registered places of production with at least 1 trap per 0.2 square kilometers to demonstrate that the places of production have a low prevalence of *Bactrocera* spp. fruit flies. APHIS-approved traps baited with APHIS-approved plugs must be used and serviced at least once every 2 weeks. During the trapping, when traps are serviced, if fruit flies are trapped at a particular place of production at cumulative levels above 2 flies per trap per day, pesticide bait treatments must be applied in the affected place of production in order for the place of production to remain eligible to export bananas to the United States. The NPPO of the Philippines must keep records of fruit fly detections for each trap, update the records each time the traps are checked, and make the records available to APHIS inspectors upon request. If no *Bactrocera* spp. larvae have been found in the inspections required in paragraph (h) of this section by [*Insert date 2 years after the effective date of final rule*], the activities described in this paragraph are no longer required.

(d) *Bagging requirements.* Plastic bags impregnated with pesticides must cover the bananas. During the growing period, if a pesticide bag falls off or is torn, the fruit in that bag may not be exported to the United States.

(e) *Harvesting requirements.* (1) Bananas must be harvested at a hard green stage and inspected at the port of entry to determine that:

(i) Bananas shipped by air are still green upon arrival in the United States;

(ii) Bananas shipped by sea are either green upon arrival in the United States or yellow but firm.

(2) Harvested bananas must be placed in field cartons or containers that are marked to show the official registration number of the production site. The identification of the place of production must be maintained from the time when the fruit leaves the place of production until the fruit is released for entry into the United States.

(f) *Post-harvest processing.* After harvest, all damaged or diseased fruit must be culled at the packinghouse. Fruit must be washed with a high pressure water spray, and washed with soap and water.

(g) *Packinghouse requirements.* (1) Packinghouses must prevent the entry of pests with a double-door entry system designed to exclude quarantine pests of concern.

(2) Bananas for export must be packed into new, clean boxes, crates or other packing materials. Bananas intended for export to the United States must be labeled with the name and location for the packinghouse, and segregated from bananas intended for other markets.

(3) The shipping documents accompanying the consignment of bananas from the Philippines that are exported to the United States must include the official registration number of the place of production at which the bananas were grown and must identify the packinghouse in which the fruit was processed and packed. This identification must be maintained until the fruit is release for entry into the United States.

(4) The packinghouse operations for export of bananas must be monitored by the NPPO of the Philippines.

(h) *NPPO of the Philippines inspection.* (1) Following any post-harvest processing, inspectors from the NPPO of the Philippines must certify that bananas were harvested at the hard green stage.

(2) Inspectors from the NPPO of the Philippines must inspect a biometric sample of the fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for quarantine pests listed in the introductory text of this section and must cut fruit to inspect for quarantine pests that are internal feeders. If *Bactrocera* spp. fruit flies are found upon inspection, the export program will be suspended until an investigation has been conducted by APHIS and the NPPO of the Philippines and appropriate mitigations have been implemented. If other quarantine pests are detected in this inspection, the consignment will be destroyed and the registered place of production will be rejected from the export program.

(i) *Phytosanitary certificate.* Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of the Philippines that contains an additional declaration stating that the bananas in the consignment were grown, packed, and inspected in accordance with the systems approach in 7 CFR 319.56–55.

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–9063 Filed 4–13–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–141268–11]

RIN 1545–BK73

Allocation of Earnings and Profits in Tax-Free Transfers From One Corporation to Another

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 312 of the Internal Revenue Code (Code). The proposed regulations clarify the regulations under section 312 regarding the allocation of earnings and profits in tax-free transfers from one corporation to another. The proposed regulations affect corporations involved in these transfers and their shareholders.

DATES: Written or electronic comments and requests for a public hearing must be received by July 16, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–141268–11), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–141268–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Submissions may also be sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–141268–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephanie D. Floyd at (202) 622–7930 or Isaac W. Zimbalist at (202) 622–7550 (not toll-free numbers); concerning submissions of comments and/or requests for a public hearing, Oluwafunmilayo (Fumni) Taylor, at 202–622–7180.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains proposed amendments to 26 CFR part 1 concerning the allocation of earnings and profits in tax-free transfers from one corporation to another. The IRS has historically interpreted the regulations under section 312 as providing that the earnings and profits of the transferor corporation do not move to the transferee in whole or in part other than in a transfer described in section 381 or, to the extent provided under § 1.312–10, in a divisive reorganization. Furthermore, the IRS has interpreted the regulations to provide that in a corporate reorganization described in section 381, the acquiring corporation, as defined in § 1.381(a)–1(b)(2), succeeds to the full earnings and profits account of the transferor corporation. Thus, the earnings and profits account is not divided if the acquiring corporation in an acquisitive asset reorganization subsequently transfers target assets to one or more controlled subsidiaries. Practitioners have suggested that this result may be unclear under current law. *See* § 1.381(c)(2)–1(d) (providing that where part of the acquired assets is transferred to one or more controlled corporations, or all of the acquired assets are transferred to two or more controlled corporations, the allocation of earnings and profits is made without regard to section 381); § 1.312–11(a) (providing for proper adjustment and allocation of earnings and profits with respect to asset transfers in connection with reorganizations, and cross-referencing the section 381 regulations for specific rules).

Consistent with the longstanding administrative position, the proposed regulations clarify that, except as provided in § 1.312–10, if property is transferred from one corporation to another and no gain or loss is recognized, no allocation of the earnings and profits of the transferor is made to the transferee unless the transfer is described in section 381(a). The proposed regulations further clarify that, in a transfer described in section 381(a), only the acquiring corporation, as defined in § 1.381(a)–1(b)(2), succeeds to the earnings and profits of the distributor or transferor corporation (within the meaning of § 1.381(a)–1(a)).

The IRS and Treasury Department believe the proposed rule is appropriate because earnings and profits measures the capacity of a corporation to pay dividends to its shareholders and the corporation that has an interest, directly or indirectly, in all of the target's assets has the dividend-paying capacity that is most comparable to that of the target. Further, the IRS and Treasury Department believe the rules for the allocation of earnings and profits should conform to the rules for the allocation of other tax attributes under section 381.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Stephanie D. Floyd of the Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.312–11 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 1.312–11 Effect on earnings and profits of certain other tax-free exchanges, tax-free distributions, and tax-free transfers from one corporation to another.

(a) In a transfer described in section 381(a), the acquiring corporation, as defined in § 1.381(a)–1(b)(2), and only that corporation, succeeds to the earnings and profits of the distributor or transferor corporation (within the

meaning of § 1.381(a)–1(a)). Except as provided in § 1.312–10, in all other cases in which property is transferred from one corporation to another and no gain or loss is recognized (or is recognized only to the extent of the property received other than that permitted to be received without the recognition of gain), no allocation of the earnings and profits of the transferor is made to the transferee.

* * * * *

(e) *Effective/Applicability date.* Paragraph (a) of this section applies to transactions occurring on or after the date of publication of the Treasury decision adopting this rule as a final regulation in the **Federal Register**.

§ 1.381(c)(2)–1(d) [Removed]

Par. 3. Section 1.381(c)(2)–1(d) is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–9003 Filed 4–13–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–139991–08]

RIN 1545–BI84

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to regulations under section 337(d) of the Internal Revenue Code. The proposed regulations provide guidance concerning certain transfers of property from a C corporation to a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT) and will affect the parties to such transactions. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by July 16, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–139991–08), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–139991–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–139991–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grid Glyer (202) 622–7930 or Maury Passman (202) 622–7750 with respect to the corporate issues, and David H. Kirk (202) 622–3060 with respect to the partnership issues; concerning submissions of comments, Oluwafunmilayo Taylor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Congress repealed the *General Utilities* doctrine in the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085), as amended by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342), when sections 336 and 337 of the Internal Revenue Code were amended to require corporations to recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d)(1) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of *General Utilities* repeal, including rules to ''ensure that such purposes may not be circumvented * * * through the use of a regulated investment company, a real estate investment trust, or tax-exempt entity * * *.''

On March 18, 2003, regulations under § 1.337(d)–7 (the regulations) were published in the **Federal Register** (TD 9047, 68 FR 12817). The regulations generally provide (in paragraphs (a) and (b)(1)) that if property of a C corporation (the C corporation transferor) becomes the property of a RIC or REIT by the qualification of that C corporation as a RIC or REIT or by the transfer of assets of that C corporation to a RIC or REIT (a conversion transaction), then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the underlying regulations. This treatment, however, does not apply if the C corporation transferor elects to recognize gain and loss as if it sold the converted property to an unrelated party at fair market value (deemed sale treatment).

Explanation and Summary of Comments

This preamble first discusses the proposal as it relates to net built-in gain property acquired by a RIC or REIT either in a like-kind exchange (where the C corporation transferor's gain is not recognized by reason of section 1031) or in an involuntary conversion (where such gain is not recognized by reason of section 1033). This preamble then discusses a proposed revision to the definition of a C corporation in the regulations, which provides that a transfer of property by a tax-exempt entity to a RIC or REIT is not treated as a conversion transaction unless the tax-exempt entity would have been subject to tax if a deemed sale election had been made.

In addition, the proposed regulations also add definitions for the terms RIC, REIT, and S corporation. While these terms are not explicitly defined in the regulations, their meanings are both self-evident and unambiguous in that context. Nonetheless, for clarification and ease of use, the proposed regulations add explicit definitions.

A. Like-Kind Exchanges and Involuntary Conversions

The current regulations generally provide that if property of a C corporation becomes the property of a RIC or REIT in a conversion transaction, then, absent a deemed sale election, the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the underlying regulations (as modified in paragraph (b) of the regulations), as if the RIC or REIT were an S corporation.

Commentators have expressed concern that the general rule may inappropriately expose property transferred in certain exchanged basis transactions—specifically, like-kind exchanges and involuntary conversions—to this treatment. In these transactions, the C corporation transferor replaces property it transferred to a RIC or REIT with property that has an equivalent basis and built-in gain, and as a result, the built-in gain remains subject to corporate tax in the hands of the transferor. Therefore, there would not be any circumvention of the purposes of *General Utilities* repeal. Section 1.337(d)–4(b)(3) provides an exception in an analogous context (where a C corporation transfers all or substantially all of its assets to a tax-exempt entity) to the extent the transaction qualifies for nonrecognition treatment under section 1031 or section 1033.

Accordingly, the proposed regulations provide an exception from the general rule of the current regulations for a transfer of property by a C corporation to a RIC or REIT to the extent that the transfer qualifies for non-recognition treatment under either section 1031 or 1033. In such a transaction, the C corporation transferor's basis in the property it receives is derived from its basis in the transferred property, and thus reflects the built-in gain. At the same time, the basis of the transferee RIC or REIT in the converted property has no relation to the C corporation transferor's basis therein.

Treasury and the IRS are not proposing to extend this treatment to all exchanged basis transactions, such as exchanges that would otherwise qualify for nonrecognition treatment under section 351 of the Code, out of a concern that such an exemption could create opportunities to avoid corporate-level tax on built-in gains and would give rise to administrative difficulties that could be addressed only through extensive rulemaking.

B. Transfers by Tax-Exempt Entities

The regulations apply to property transferred by a C corporation directly to a RIC or REIT, and indirectly through a partnership to the extent of any C corporation partner's proportionate share of the transferred property (the partnership rule). The regulations state that if the partnership elects deemed sale treatment with respect to such transfer, then any net gain recognized by the partnership on the deemed sale must be allocated to the C corporation partner.

Commentators have expressed concern that the partnership rule presents unintended effects when the partnership has multiple C corporation partners including both taxable and tax-exempt entities. If such a partnership transfers built-in gain property to a RIC or REIT in a conversion transaction without making a deemed sale election (that is, section 1374 treatment applies), and if the transferee RIC or REIT sells the converted property during the recognition period, then the RIC or REIT is subject to a corporate-level tax on the net built-in gain, including the portion of the net built-in gain that otherwise would have been allocated to tax-exempt C corporation partners had a deemed sale election been made. This is because the net recognized built-in gain is determined with reference to the amount of gain that would have been allocated to all C corporation partners, regardless of their taxable or tax-exempt status. In contrast, if the transferring partnership were to make a deemed sale election, the taxable C corporation partners would recognize gain that otherwise could have been deferred if section 1374 treatment had applied.

Treasury and the IRS believe that the inclusion of direct or indirect transfers by tax-exempt entities in the scope of the final regulations furthers the purposes of *General Utilities* repeal only to the extent that those entities would have been subject to tax had a deemed sale election been made (for example, if a deemed sale election would have generated unrelated business taxable income or would have adversely affected the entity's tax-exempt status). Accordingly, the proposed regulations would amend the final regulations to provide that the definition of a C corporation excludes tax-exempt entities within the meaning of § 1.337(d)–4(c)(2). As a result, transfers of property by a tax-exempt entity to a RIC or REIT (or by a partnership to a RIC or REIT to the extent of a tax-exempt partner's distributive share of the gain in the transferred property) generally will not be subject to section 1374 treatment. For this purpose, however, an entity will not be considered to be tax-exempt to the extent it would be subject to tax (such as under section 511) under Title 26 of the United States Code with respect to gain (if any) resulting from a deemed sale election if such an election were made under § 1.337(d)–7(c)(5) with respect to the transfer. Thus, for example, if a partnership in which a tax-exempt C corporation described in § 1.337(d)–4(c)(2) is a partner transfers property to a RIC or REIT in a conversion transaction, and the tax-exempt entity would not have been subject to unrelated business income tax under section 511 or to tax under any other provision of the Code had the partnership made a deemed sale election in connection with the transfer, the transfer would be excluded from the scope of the final regulations (and the transferee RIC or REIT will not be subject to section 1374 treatment) to the extent of the tax-exempt entity's distributive share of the built-in gain or loss in the converted property. However, to the extent the tax-exempt partner would have been subject to unrelated business income tax under section 511 or to tax under any other provision of the Code with respect to its distributive share of the built-in gain on the property, the transferee RIC or REIT would be subject to tax on the built-in gain on the property under the rules of section 1374 as if the RIC or REIT were an S corporation unless the transferring partnership elects deemed sale treatment.

Section 1.337(d)–7(e) provides that the principles of § 1.337(d)–7 apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's distributive share of the gain or loss in the transferred property. The proposed regulations provide that § 1.337(d)–7(e) also applies to determine the distributive share of the gain or loss in the transferred property of a C corporation partner of a higher-tier partnership in a tiered partnership structure in which the transferor partnership is a lower-tier partnership.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13565. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities because the proposed regulations limit the situations in which these regulations apply to all businesses, including small businesses. This certification is based on the fact that these proposed regulations do not create additional obligations for, or impose an economic impact on, small entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Treasury and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Grid Glyer and Maury Passman of the Office of Associate Chief

Counsel (Corporate). Other personnel from Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.337(d)–7 is also issued under 26 U.S.C. 337(d) * * *

Par. 2. Section 1.337(d)–7 is amended by:

1. Revising paragraphs (a)(2), (d)(1), (e) and (f)
2. Adding paragraph (d)(3),

The revisions and addition read as follows:

§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) * * *

(2) *Definitions.* For purposes of this section:

(i) *C corporation.* The term *C corporation* has the meaning provided in section 1361(a)(2) except that the term does not include a RIC, a REIT, or a tax-exempt entity within the meaning of paragraph (a)(2)(vi) of this section.

(ii) *Conversion transaction.* The term *conversion transaction* means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(iii) *RIC.* The term *RIC* means a regulated investment company within the meaning of section 851(a).

(iv) *REIT.* The term *REIT* means a real estate investment trust within the meaning of section 856(a).

(v) *S corporation.* The term *S corporation* has the meaning provided in section 1361(a)(1).

(vi) *Tax-exempt entity.* The term *tax-exempt entity,* with respect to a conversion transaction, means an entity—

(A) Described in § 1.337(d)–4(c)(2), and

(B) That would not be subject to tax under Title 26 of the United States Code with respect to gain (if any) resulting from a deemed sale election if such an election were made under paragraph (c)(5) of this section with respect to the conversion transaction.

* * * * *

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction by the C corporation that either qualifies as a RIC or a REIT or that transfers property to a RIC or REIT. See, for example, sections 311(b), 336(a), 351(b), 351(e), 356, 357(c), 367, 368(a)(2)(F), 1001, 1031(b), and 1033(b).

* * * * *

(3) *Special rules for like-kind exchanges and involuntary conversions*—(i) *In general.* Paragraph (a) of this section does not apply to a conversion transaction to the extent that a C corporation transfers property with a built-in gain to a RIC or REIT and the C corporation's gain is not recognized by reason of either section 1031 or 1033.

(ii) *Clarification regarding exchanged property previously subject to section 1374 treatment.* Notwithstanding paragraph (d)(3)(i) of this section, if, in a transaction described in paragraph (d)(3)(i) of this section, a RIC or REIT surrenders property that was subject to section 1374 treatment immediately prior to the transaction, the rules of section 1374(d)(6) will apply to continue section 1374 treatment to the replacement property acquired by the RIC or REIT in the transaction.

(iii) *Examples.* The rules of this paragraph (d)(3) are illustrated by the following examples. In each of the examples, X is a REIT, Y is a C corporation, and X and Y are not related.

Example 1. Section 1031(a) exchange. (i) *Facts.* X owned a building that it leased for commercial use (Property A). Y owned a building leased for commercial use (Property B). On January 1, Year 3, Y transferred Property B to X in exchange for Property A in a transaction that qualified for nonrecognition treatment under section 1031(a). Immediately before the exchange, Properties A and B each had a value of $100, X had an adjusted basis of $60 in Property A, Y had an adjusted basis of $70 in Property B, and X was not subject to section 1374 treatment with respect to Property A.

(ii) *Analysis.* The transfer of property (Property B) by Y (a C corporation) to X (a REIT) is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction qualified for nonrecognition treatment under section 1031(a) as to Y; thus, Y did not recognize any of its $30 gain. Therefore, the conversion transaction is not subject to paragraph (a) of this section by reason of paragraph (d)(3)(i) of this section.

Example 2. Section 1031(a) exchange of section 1374 property. (i) *Facts.* The facts are the same as in *Example 1,* except that X had acquired Property A in a conversion transaction in Year 2, and immediately before the Year 3 exchange X was subject to section 1374 treatment with respect to $25 of net built-in gain in Property A.

(ii) *Analysis.* The Year 3 transfer of Property B by Y to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction qualified for nonrecognition treatment under section 1031(a) as to Y; thus, Y did not recognize any of its $30 gain. Therefore, the Year 3 transfer is not subject to paragraph (a) of this section by reason of paragraph (d)(3)(i) of this section. However, X had been subject to section 1374 treatment with respect to $25 of net built-in gain in Property A immediately before the Year 3 transfer, and X's basis in Property B is determined (in whole or in part) by reference to its adjusted basis in Property A. Accordingly, the rules of section 1374(d)(6) apply and X is subject to section 1374 treatment on Property B with respect to the $25 net built-in gain. See paragraph (d)(3)(ii) of this section.

Example 3. Section 1031(b) exchange. (i) *Facts.* The facts are the same as in *Example 1,* except that immediately before the Year 3 exchange Property A had a value of $92, and X transferred Property A and $8 to Y in exchange for Property B in a transaction that qualified for nonrecognition treatment under section 1031(b).

(ii) *Analysis.* The transfer of Property B by Y to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction qualified for nonrecognition treatment as to Y under section 1031(b) (resulting from the receipt of $8 in money or other property in addition to the replacement property); as a result, Y recognized $8 of its $30 gain, and did not recognize the remaining $22 of gain. Paragraph (a) of this section does not apply to the transaction to the extent of the $8 gain recognized by Y by reason of paragraph (d)(1) of this section, or to the extent of the $22 gain realized but not recognized by Y by reason of paragraph (d)(3)(i) of this section.

Example 4. Section 1033(a) involuntary conversion of property held by a C corporation transferor. (i) *Facts.* Y owned uninsured, improved property (Property 1) that was involuntarily converted (within the meaning of section 1033(a)) in a fire. Y sold Property 1 for $100 to X, which owned an adjacent property and wanted Property 1 for use as a parking lot. Y had a $70 basis in Property 1 immediately before the sale. Y elected to defer gain recognition under section 1033(a)(2), and purchased qualifying replacement property (Property 2) for $100 from an unrelated party prior to the expiration of the period described in section 1033(a)(2)(B).

(ii) *Analysis.* The transfer of Property 1 by Y to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction (combined with Y's purchase of Property 2) qualified for nonrecognition treatment under section 1033(a) as to Y; thus, Y did not recognize any of its $30 gain. Therefore, the conversion transaction is not subject to paragraph (a) of this section by reason of paragraph (d)(3)(i) of this section.

Example 5. Section 1033(a) involuntary conversion of property held by a REIT. (i)

Facts. X owned property (Property 1). On January 1, Year 2, Property 1 had a fair market value of $100 and a basis of $70, and X was not subject to section 1374 treatment with respect to Property 1. On that date, when Property 1 was under a threat of condemnation, X sold Property 1 to an unrelated party for $100 (First Transaction). X elected to defer gain recognition under section 1033(a)(2), and purchased qualifying replacement property (Property 2) for $100 from Y (Second Transaction) prior to the expiration of the period described in section 1033(a)(2)(B).

(ii) *Analysis.* The transfer of Property 2 by Y to X in the Second Transaction is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The Second Transaction (combined with the First Transaction) qualified for nonrecognition treatment under section 1033(a) as to X, but not as to Y. Assume no nonrecognition provision applied to Y; thus, Y recognized gain or loss on its sale of Property 2 in the Second Transaction, and the Second Transaction is not subject to paragraph (a) of this section by reason of paragraph (d)(3)(i) of this section.

(e) *Special rule for partnerships*—(1) *In general.* The principles of this section apply to property transferred by a partnership to a RIC or REIT to the extent of any gain or loss in the converted property that would be allocated directly or indirectly, through one or more partnerships, to a C corporation if the partnership sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (c)(3) of this section). If the partnership were to elect deemed sale treatment under paragraph (c) of this section in lieu of section 1374 treatment under paragraph (b) of this section with respect to such transfer, then any net gain recognized by the partnership on the deemed sale must be allocated to the C corporation partner, but does not increase the capital account of any partner. Any adjustment to the partnership's basis in the RIC or REIT stock as a result of deemed sale treatment under paragraph (c) of this section shall constitute an adjustment to the basis of that stock with respect to the C corporation partner only. The principles of section 743 apply to such basis adjustment.

(2) Example. Transfer by partnership of property to REIT. (i) *Facts.* PRS, a partnership for Federal income tax purposes, has three partners: TE, a tax-exempt entity (within the meaning of § 1.337(d)–7(a)(2)(vi)), owns 50 percent of the capital and profits of PRS; A, an individual, owns 30 percent of the capital and profits of PRS; and Y, a C corporation (within the meaning of § 1.337(d)–7(a)(2)(i)), owns the remaining 20 percent. PRS owns a building that it leases for commercial use (Property 1). On January 1, Year 2, when PRS has an adjusted basis in Property 1 of $100 and Property 1 has a fair market value of $500, PRS transfers Property 1 to X, a REIT, in exchange for stock of X in an exchange described in section 351. PRS does not elect deemed sale treatment under paragraph (c) of this section.

(ii) *Analysis.* The transfer of Property 1 by PRS to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section to the extent of any gain or loss that would be allocated to any C corporation partner if PRS sold Property 1 at fair market value to an unrelated party on the deemed sale date. Y is a C corporation, but neither TE nor A is a C corporation within the meaning of paragraph (a)(2)(i) of this section. Therefore, the transfer of Property 1 by PRS to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section to the extent of Y's share of any such gain of PRS in Property 1. If PRS were to sell Property 1 to an unrelated party at fair market value on the deemed sale date, PRS would allocate $80 of built-in gain to Y. Thus, X is subject to section 1374 treatment on Property 1 with respect to $80 of built-in gain.

(f) *Effective/Applicability date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to conversion transactions that occur on or after January 2, 2002. For conversion transactions that occurred on or after June 10, 1987, and before January 2, 2002, see §§ 1.337(d)–5 and 1.337(d)–6.

(2) *Special rule.* Paragraphs (a)(2), (d)(1), (d)(3) and (e) of this section apply to conversion transactions that occur on or after [*INSERT DATE OF PUBLICATION OF THE TREASURY DECISION ADOPTING THESE RULES AS FINAL REGULATIONS IN THE* ***FEDERAL REGISTER***]. However, taxpayers may apply paragraphs (a)(2), (d)(1), (d)(3) and (e) of this section to conversion transactions that occurred before [*INSERT DATE OF PUBLICATION OF THE TREASURY DECISION ADOPTING THESE RULES AS FINAL REGULATIONS IN THE* ***FEDERAL REGISTER***]. For conversion transactions that occurred on or after January 2, 2002 and before [*INSERT DATE OF PUBLICATION OF THE TREASURY DECISION ADOPTING THESE RULES AS FINAL REGULATIONS IN THE* ***FEDERAL REGISTER***], see § 1.337(d)–7 as contained in 26 CFR part 1 in effect on April 1, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–8995 Filed 4–13–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1215–AB76 and RIN 1235–AA03

The Family and Medical Leave Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Extension of comment period.

SUMMARY: This document extends the period for filing written comments until April 30, 2012 on the proposed revisions to certain regulations of the Family and Medical Leave Act of 1993 (FMLA). On February 15, 2012, the Department published a Notice of Proposed Rulemaking to revise certain regulations the FMLA, primarily to implement recent statutory amendments to the Act. The comment period is scheduled to close on April 16, 2012. The Department of Labor (Department) is taking this action in order to provide interested parties additional time to submit comments.

DATES: The agency must receive comments on or before April 30, 2012. The period for public comments, which was to close on April 16, 2012, will be extended to April 30, 2012.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA03, by electronic submission through the Federal eRulemaking Portal *http://www.regulations.gov.* Follow instructions for submitting comments. You may also submit comments by mail. Address written submissions to Mary Ziegler, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit only one copy of your comments by only one method. All submissions must include the agency name and RIN, identified above, for this rulemaking. Please be advised that comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided, and should not include any individual's personal medical information. Mailed written submissions commenting on these provisions must be received by the date indicated for consideration in this rulemaking. For questions concerning the application of the FMLA provisions, individuals may contact the Wage and Hour Division (WHD) local district offices. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the WHD's Web site for a nationwide listing of WHD district and area offices at *http://www.dol.gov/whd/america2.htm.* For additional information on submitting comments and the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll free number). Copies of this notice of proposed rulemaking may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0675. TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this document may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling the Wage and Hour Division's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's Web site for a nationwide listing of Wage and Hour District and Area Offices at: *http://www.dol.gov/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Electronic Access and Filing Comments

Public Participation: This notice of proposed rulemaking is available through the **Federal Register** and the *http://www.regulations.gov* Web site. You may also access this document via the Department's Web site at *http://www.dol.gov/whd/.* To comment electronically on federal rulemakings, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* which will allow you to find, review, and submit comments on federal documents that are open for comment and published in the **Federal Register.** Please identify all comments submitted in electronic form by the RIN docket number (1235–AA03). Because of delays in receiving mail in the Washington, DC area, commenters should transmit their comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov,* or submit them by mail early to ensure timely receipt prior to the close of the comment period. Submit one copy of your comments by only one method.

II. Request for Comment

The Notice of Proposed Rulemaking (NPRM) proposes revisions to the Family and Medical Act (FMLA) regulations to implement amendments to the military leave provisions of the FMLA made by the National Defense Authorization Act for Fiscal Year 2010, which extends the availability of FMLA leave to family members of members of the Regular Armed Forces for qualifying exigencies arising out of the servicmember's deployment; defines those deployments covered under these provisions; and extends FMLA military caregiver leave to family members of certain veterans with serious injuries or illnesses. The NPRM also proposes to amend the regulations to implement the Airline Flight Crew Technical Corrections Act, which established new FMLA leave eligibility requirements for airline flight crewmembers and flight attendants. In addition, the proposal includes changes concerning the calculation of leave; reorganization of certain sections to enhance clarity; the removal of the forms from the regulations; and technical corrections of inadvertent drafting errors in the current regulations. The NPRM, complete with background information, economic impact analyses and proposed regulatory text, was published in the **Federal Register** on February 15, 2012 (77 FR 8960) requesting public comments on the proposed revisions to the regulations. Interested parties were requested to submit comments on or before April 16, 2012.

The Department has received requests to extend the period for filing public comments from various organizations. Because of the interest that has been expressed in this matter, the Department has decided to provide an additional extension of the period for submitting public comment until April 30, 2012.

Dated: April 11, 2012.

Nancy J. Leppink,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 2012–9084 Filed 4–13–12; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0926]

RIN 1625–AA09

Drawbridge Operation Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the regulation governing six bridges across Bayou Lafourche, south of the Gulf Intracoastal Waterway (GIWW). Currently, these bridges remain closed to navigation at various times on weekdays during the school year. The Louisiana Department of Transportation and Development (LADOTD), in conjunction with the Lafourche Parish Council, would like to change the beginning date of the regulation to coincide with the change in the beginning of the school year. All other aspects of the regulation will remain the same. These changes will alleviate any confusion that the bridge tenders and mariners may have as to the bridge schedule now that the school year begins earlier than the regulation effective date.

DATES: Comments and related material must reach the Coast Guard on or before May 16, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0926 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jim Wetherington; Bridge

Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0926), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2011–0926'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0926'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Basis and Purpose

The six draw bridges across Lafourche Bayou that are affected by this proposed rule are described as follows:

The SR 308 (Golden Meadow) Bridge, mile 23.9, at Golden Meadow; the Galliano Pontoon Bridge, mile 27.8, at Galliano; the SR 308 (South Lafourche (Tarpon)) Bridge, mile 30.6, at Galliano; the Cote Blanche Pontoon Bridge, mile 33.9, at Cutoff; the Cutoff Vertical Lift Bridge, mile 36.3, at Cutoff; and the SR 310 (Larose Pontoon) Bridge, mile 39.1, at Larose.

The purpose of the underlying regulation is to implement a specific operating schedule that is effective only during the school year to accommodate the change in bridge traffic during the school year. Beginning in 2011, the school year started a full week before the regulation's current yearly start date and multiple complaints were received by the parish about the vessel traffic holding up the peak-time vehicle traffic. Vessel traffic in the area is accustomed to the restrictions effective during the school year. This proposed change, moving the effective date by approximately two weeks to accommodate the earlier start for the school year, will not unduly impact vessel traffic. The reason for the two week change is to ensure that we encompass any changes to the school start date in the future. It will, however, revise the published bridge schedule to reflect its original intent. The Louisiana Department of Transportation and Development (LADOTD) and the Lafourche Parish Council (each agency owning three of the bridges) would like to change the beginning date of the regulation from August 15 of each year to August 1 of each year. The purpose of this proposed change is to eliminate confusion and conflict between the current published schedule and changes in the school year, causing vessel traffic holdups during the beginning of coming school years. All other aspects of the regulation will remain the same.

Discussion of Rule

The Coast Guard proposes changing the regulation in 33 CFR 117.465(a) so that it reflects the intent of the current rule allowing the bridge to remain closed to vessel traffic during peak traffic times during the entire school year. The proposed change will make the beginning date for the restriction August 1 instead of August 15. This proposed change will only minimally affect vessel operators using the waterway. All other aspects of the regulation will remain the same.

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. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard does not consider this proposed rule to be a ''significant'' regulatory action because it is a merely a change in the start date for the restriction and does not further change existing or impose new restrictions affecting the way vessels operate on the waterway.

Small Entities

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

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

This proposed rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the bridges Monday through Friday except Federal holidays during the hours of 7 a.m. to 8:30 a.m., from 2 p.m. to 4 p.m., and from 4:30 p.m. to 5:30 p.m. from August 1 through August 14.

This action will not have a significant economic impact on a substantial number of small entities because the change only adds two weeks to the current regulation. The current rule has been in effect for these vessels and waterway users since 2006. This change extends the effective period for the known restrictions to coincide with the full school year, which was the original intent of this rule.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Jim Wetherington; Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, email *james.r.wetherington@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on

the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.465(a) to read as follows:

§ 117.465 Lafourche Bayou.

(a) The draws of the following bridges shall open on signal; except that, from August 1 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 7 a.m. to 8:30 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m.:

* * * * *

Dated: March 23, 2012.

Roy A. Nash,

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

[FR Doc. 2012–9074 Filed 4–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0189]

RIN 1625–AA00

Safety Zone; 2012 Ocean City Air Show; Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone on the navigable waters of the Atlantic Ocean in Ocean City, MD. This action is necessary to provide for the safety of life on navigable waters during the 2012 Ocean City Air Show. This action is intended to restrict vessel traffic movement to protect mariners from the hazards associated with air show events.

DATES: Comments and related material must be received by the Coast Guard on or before May 16, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0189 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 Christopher O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Christopher.A.ONeal@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–2012–0189), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0189'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0189'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one 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**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Chris O'Neal at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

On June 8, 2012 through June 10, 2012, the Town of Ocean City will host an air show event over the Atlantic Ocean in Ocean City, MD. In recent years, there have been unfortunate instances of jets and planes crashing during performances at air shows. Along with a jet or plane crash, there is typically a wide area of scattered debris that also damages property and could cause significant injury or death to mariners observing the air shows. Due to the need to protect mariners and the public transiting the Atlantic Ocean immediately below the air show from hazards associated with the air show, a Coast Guard established safety zone bound by the following coordinates will be enforced: 38°,21′,38″ N/075°,04′,04″ W, 38°,21′,27″ N/075°,03′,29″ W, 38°,19′,35″ N/075°,04′,19″ W, 38°,19′,45″ N/075°,04′,54″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone on specified waters of the Atlantic Ocean bounded by the following coordinates: 38°,21′,38″ N/075°,04′,04″ W, 38°,21′,27″ N/075°,03′,29″ W, 38°,19′,35″ N/075°,04′,19″ W, 38°,19′,45″ N/075°,04′,54″ W (NAD 1983), in the vicinity of Talbot Street and 33rd Street in Ocean City, MD. This safety zone is proposed in the interest of public safety during the 2012 Ocean City Air Show and will be enforced from 10 a.m. until 4 p.m. on June 8, 2012, from 10 a.m. until 4 p.m. on June 9, 2012, and 10 a.m. until 4 p.m. on June 10, 2012. Access to the safety zone will be restricted during the specified date and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Atlantic Ocean from 10 a.m. until 4 p.m. on June 8, 2012, from 10 a.m. until 4 p.m. on June 9, 2012, and from 10 a.m. until 4 p.m. on June 10, 2012.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Christopher O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Christopher.A.Oneal@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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Upon receipt of consultation comments all documentation will be made available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0189 to read as follows:

§ 165.T05–0189 Safety Zone; 2012 Ocean City Air Show, Atlantic Ocean, Ocean City, MD.

(a) *Regulated Area.* The following area is a safety zone: Specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of the Atlantic Ocean in Virginia Beach, VA bound by the following coordinates: 38°,21′,38″ N/ 075°,04′,04″ W, 38°,21′,27″ N/ 075°,03′,29″ W, 38°,19′,35″ N/ 075°,04′,19″ W, 38°,19′,45″ N/ 075°,04′,54″ W (NAD 1983), in the vicinity of Ocean City, Maryland.

(b) *Definition:* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period:* This regulation will be enforced from 10 a.m. until 4 p.m. on June 8, 2012, from 10 a.m. until 4 p.m. on June 9, 2012, and from 10 a.m. until 4 p.m. on June 10, 2012.

Dated: March 14, 2012.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2012–9061 Filed 4–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1000]

RIN 1625–AA00

Safety Zone; Swim Events in the Captain of the Port New York Zone; Hudson River, East River, Upper New York Bay, Lower New York Bay; New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish seven temporary safety zones

for swim events within the Captain of the Port (COTP) New York Zone. These proposed zones will be established on the navigable waters of the Hudson River, East River, Upper New York Bay and Lower New York Bay. These temporary safety zones are necessary to protect the maritime public and event participants from the hazards associated with these events. Persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless authorized by the COTP New York or the designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 16, 2012. Requests for public meetings must be received by the Coast Guard on or before May 7, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1000 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 Ensign Kimberly Farnsworth, Coast Guard; telephone (718) 354–4163, email *Kimberly.A. Farnsworth@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1000), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–1000'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1000'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1266, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

Marine events are frequently held on the navigable waters within the COTP Sector New York Zone. The COTP has determined that swimming events in close proximity to marine traffic pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, and large numbers of swimmers in the water has the potential to result in serious injuries or fatalities. In order to protect the safety of all waterway users including event participants and spectators, this temporary rule establishes temporary safety zones for the duration of the events.

This rule prevents vessels from entering into, transiting through, mooring or anchoring within the areas specifically designated as the regulated areas during the periods of enforcement unless authorized by the COTP, or the designated representative.

Discussion of Proposed Rule

In previous years, the Coast Guard has established special local regulations, regulated areas, and safety zone for these annual recurring events on a case by case basis to ensure the protection of the maritime public and event

participants from hazards associated with these events. The Coast Guard has not received public comments or concerns regarding the impact to waterway traffic from these events.

These swim events pose significant risks to participants, spectators and the boating public because of the number of swimmers, kayakers and recreational vessels that are expected in the area of these events.

This temporary rule creates safety zones for seven swim events on the navigable waters of the Hudson River, East River, Upper New York Bay and Lower New York Bay. A portion of the navigable waters will be closed during the effective periods to all vessel traffic except local, state or Coast Guard patrol crafts. The events and locations are as follows:

(1) The Iron Man Open Water Swim Clinics: All waters of the Hudson River in the vicinity of Palisades State Park, NJ.

(2) The New York Triathlon Swim Clinics: within the waters of the Lower Hudson River in the vicinity of West 100th Street and West 81st Street, Manhattan, NY.

(3) The Verrazano Bridge Swim: Within the waters of Lower New York Bay in the vicinity of Fort Hamilton, Brooklyn, NY and Fort Wadsworth, Staten Island, NY.

(4) The Rose Pitonof Swim: within the waters of the East River, Upper New York Bay and Lower New York Bay, from East 26th Street, Manhattan, NY to Steeplechase Pier, Coney Island, NY.

(5) The Liberty to Freedom Swim: within the waters of the Upper New York Bay, from Liberty Island, NJ to North Cove, New York, NY.

(6) Ederle Swim: Within the waters of the Hudson River between North Cove Marina, New York, NY and Sandy Hook, NJ.

(7) Brooklyn Bridge Swim: Within the waters of the East River in the vicinity of Brooklyn Bridge Park, Brooklyn, NY and East River Park, New York, NY.

The proposed regulation would prevent vessels from transiting areas designated as safety zones during the periods of enforcement to ensure protection of the maritime public and event participants from hazards associated with the listed swim events.

Only event sponsors, designated participants, and official patrol vessels will be allowed to enter the regulated areas. Spectators and other vessels not registered as event participants may not enter the safety zones without permission of the COTP or the designated representative.

The specific times, dates, regulated areas, and enforcement period for each event will be provided through the Local Notice to Mariners, Broadcast Notice to Mariners and online at *http://homeport.uscg.mil/newyork.*

The final rule will not be published 30 days before the event and the effective date of this proposed rule as is generally required by 5 U.S.C. 553(d)(3). The Coast Guard will accept comments on this shortened period and address them in the final rule.

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.

Executive Order 12866 and Executive Order 13563

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

These safety zones will be of limited duration, and vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas. Furthermore, vessels may be authorized to transit these zones with the permission of the COTP New York or the designated representative.

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. No new or additional restrictions would be imposed on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit, fish or anchor in the designated safety zones during the enforcement period of the swim events.

The safety zones will not have significant economic impact on a substantial number of small entities for the following reasons: Vessels will only be restricted from safety zone areas for a short duration of time; vessels may transit in portions of the affected waterway except for those areas covered by the proposed regulated areas; the Coast Guard has promulgated safety zones in accordance with 33 CFR Part 165 for all event areas in the past and has not received notice of any negative impact caused by any of the safety zones; and 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 process.

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 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and

have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which 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 appears to be one of a category of actions which do not individually or cumulatively have a significant effect on the human environment.

A preliminary environmental analysis checklist supporting this determination will be available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of four temporary safety zones for swim events. This rule appears to be categorically excluded, under figure 2–1, paragraph (34)(g), by the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T01–1000 to read as follows:

§ 165.T01–1000 Swim Events in the Captain of the Port New York Zone, Hudson River, East River, Upper New York Bay, Lower New York Bay, New York, NY.

(a) *Regulation.* The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the swim events listed in TABLE 1 of § 165.T01–1000. These regulations will be enforced for the duration of each swim event. Notifications of exact dates and times of the enforcement period will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners. 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) New York Zone to act on his or her behalf.

(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. 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.

(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 or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) 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 or the 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 or the 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 swim events listed in Table 1 to § 165.T01–1000, vessels not associated with the event shall maintain a separation of at least 100 yards from the participants.

TABLE 1 TO § 165.T01–1000

1.0	Hudson River
1.1 Iron Man Open Water Swim Clinics	• Date: June 30 and July 14, 2012. • Rain Date: NA. • Enforcement Period: 8 a.m. to 10:30 a.m. • Location site: All waters of the Hudson River in the vicinity of Ross Docks Camp Ground, bound by the following points: 40°51′41″ N, 073°57′13″ W; thence to 40°51′41″ N, 074°56′12″ W; thence to 40°54′00″ N, 073°54′57″ W; thence to 40°54′00.0″ N, 073°56′06″ W; thence along the shoreline to the point of origin.
1.2 NYC Triathlon Swim Clinic	• Date: June 17, 2012. • Rain Date: June 16 or June 24, 2012. • Enforcement Period: 10 a.m. to 11:30 a.m. • Location: All waters of the Hudson River in the vicinity of Ross Docks Camp Ground, bound by the following points: 40°48′0.15″ N, 073°58′30.59″ W; thence to 40°48′19.17″ N, 073°59′9.76″ W; thence to 40°47′33.29″ N, 073°59′43.51″ W; thence to 40°47′12.76″ N, 073°59′3.87″ W thence along the shoreline to the point of origin.
2.0	Lower New York Bay
2.1 Verrazano Bridge Swim	• Date: July 21, 2012. • Rain Date: NA. • Enforcement Period: 12:30 p.m. to 1:30 p.m. • Location: All waters of the Lower New York Bay in the vicinity of the Verrazano Bridge, bound by the following points: 40°36′12.74″ N, 074°3′12.92″ W; thence to 40°35′59.20″ N, 074°3′8.72″ W; thence to 40°36′27.30″ N, 074°2′3.101″ W; thence to 40°36′32.91″ N, 074°2′9.30″ W; thence along the shoreline to the point of origin.
3.0	East River, Upper New York Bay, Lower New York Bay
3.1 Rose Pitonof Swim	• Date: August 18, 2012. • Rain Date: NA. • Enforcement Period: 9 a.m. to 5 p.m. • Location: All waters of the East River, Upper and Lower New York Bays, bound by the following points: 40°44′11.55″ N, 073°58′21.58″ W; thence to 40°44′19.63″ N, 073°57′45.25″ W; thence to 40°34′10.43″ N, 073°58′59.88″ W; thence to 40°32′16.62″ N, 074°2′34.30″ W; thence to 40°36′13.95″ N, 074°3′8.58″ W; thence to 40°38′38.81″ N, 074°4′15.14″ W; thence back to the point of origin.
4.0	Upper New York Bay, Hudson River
4.1 Liberty to Freedom Swim	• Date: September 15, 2012. • Rain Date: NA. • Enforcement Period: 3 p.m. to 5 p.m. • Location: All waters of the East River, Upper and Lower New York Bays, bound by the following points: 40°41′24.15″ N, 074°2′33.47″ W; thence to 40°41′35.25″ N, 074°1′10.95″ W; thence to 40°42′48.91″ N, 074°1′3.44″ W; thence to 40°43′0.17″ N, 074°1′47.99″ W; thence to 40°41′27.55″ N, 074°2′49.72″ W; thence back to the point of origin.
5.0	Upper New York Bay, Hudson River
5.1 Brooklyn Bridge Swim	• Date: July 15, 2012. • Rain Date: NA. • Enforcement Period: 7:15 a.m. to 9:15 a.m.

TABLE 1 TO § 165.T01–1000—Continued

	• Location: All waters of the East River, bound by the following points: 40°42′17.04″ N, 073°59′21.87″ W; thence to 40°42′12.03″ N, 073°59′46.17″ W; thence to 40°42′24.48″ N, 074°0′4.09″ W; thence to 40°42′34.19″ N, 073°59′31.41″ W; thence back to point of origin.
6.0	Upper New York Bay, Lower New York Bay
6.1 Ederle Swim	• Date: August 18, 2012. • Rain Date: August 19, 2012. • Enforcement Period: 10 a.m. to 7:30 p.m. • Location: All waters of the Hudson River, Upper and Lower New York Bays, bound by the following points: 40°42′48.13″ N, 074°0′58.74″ W; thence to 40°42′3.20″ N, 073°59′54.84″ W; thence to 40°36′32.70″ N, 074°2′10.73″ W; thence to 40°28′4.43″ N, 073°59′38.14″ W; thence to 40°28′41.58″ N, 074°0′55.27″ W; thence to 40°38′38.77″ N, 074°4′15.05″ W; thence to 40°43′0.31″ N, 074°1′48.11″ W; thence back to point of origin.

Dated: March 23, 2012.

L.L. Fagan,

Rear Admiral, U.S. Coast Guard, Captain of the Port of New York.

[FR Doc. 2012–9064 Filed 4–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0167]

RIN 1625–AA00

Safety Zone; Fireworks, Hudson River, Rhinecliff, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of the Hudson River in the vicinity of Rhinecliff, NY for a fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This rule is intended to restrict all vessels from a portion of the Hudson River before, during, and immediately after the fireworks event.

DATES: Comments and related material must be received by the Coast Guard on or before June 15, 2012.

Requests for public meetings must be received by the Coast Guard on or before May 7, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0167 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 Ensign Kimberly Farnsworth, Coast Guard; Telephone (718) 354–4163, email *Kimberly.A.Farnsworth@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–2012–0167), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0167'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then

become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0167'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C 1226, 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

This proposed safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display. Based on the inherent hazards associated with fireworks, the Captain of the Port (COTP) New York has determined that fireworks launches in close proximity to water crafts pose a significant risk to public safety and property. The combination of increased number of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris especially burning debris falling on passing or spectator vessels has the potential to result in serious injuries or fatalities. The proposed temporary safety zone will restrict vessel movement in the Hudson River around the location of the fireworks launch platform before, during, and after the fireworks display.

Discussion of Proposed Rule

Legion Fireworks is putting on a fireworks display for a wedding ceremony on the waters of the Hudson River in the vicinity of Rhinecliff, NY. The proposed safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

The fireworks display will occur from 10 p.m. until 10:15 p.m. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, this zone will be enforced from 9:30 p.m. until 10:45 p.m. on June 23, 2012.

The proposed safety zone will include all navigable waters of the Hudson River within a 165-yard radius of the fireworks barge located in approximate position 41°55′13.83″N, 073°57′18.52″W, in the vicinity of Rhinecliff, NY, approximately 210 yards west of Rhinecliff Landing, Rhinecliff, NY. Vessels will still be able to transit the surrounding area and may be authorized to transit through the proposed safety zone with the permission of the COTP or the designated representative. The COTP does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on the proposed zone location, size, and length of time the zone will be activated.

The final rule will not be published 30 days before the event and the effective date of this proposed rule as is generally required by 5 U.S.C. 553(d)(3). The Coast Guard will accept comments on this shortened period and address them in the final rule.

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.

Executive Order 12866 and Executive Order 13563

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

The Coast Guard's enforcement of this proposed safety zone will be of short duration, approximately 75 minutes. The proposed safety zone will restrict access to only a small portion of the navigable waters of the Hudson River. Vessels will be able to navigate around the proposed safety zone. Furthermore, vessels may be authorized to transit through the proposed safety zone with the permission of the COTP or the designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a small portion of the Hudson River during the effective period.

This proposed safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone would be activated and thus subject to enforcement, for only 75 minutes late at night when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the activation of the zone, the Coast Guard will issue maritime advisories widely available to users of the river.

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 Ensign Kimberly Farnsworth, Coast Guard Sector New York Waterways Management Division; telephone 718–354–4163, email *Kimberly.A.Farnsworth@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 State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a temporary safety zone on a portion of the Hudson River and appears to be categorically excluded, under figure 2–1, paragraph (34)(g), the Commandant Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

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

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

2. Add § 165.T01–0167 to read as follows:

§ 165.T01–0167 Safety Zone; Fireworks, Hudson River, Rhinecliff, NY.

(a) *Regulated Area.* The following area is a temporary safety zone: All navigable waters of the Hudson River within a 165-yard radius of the fireworks barge located in approximate position 41°55′13.83″ N, 073°57′18.52″ W, in the vicinity of Rhinecliff, NY, approximately 210 yards west of Rhinecliff Landing, Rhinecliff, NY.

(b) *Definitions.* For purposes of this section ''Designated representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port New York (COTP) to act on the COTP's behalf.

(c) *Effective Period.* This rule will be effective from 9:30 p.m. to 10:45 p.m. on June 23, 2012.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to transit the safety zone without the permission of the COTP or the designated representative.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

Dated: March 23, 2012.

L.L. Fagan,

Rear Admiral, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2012–9007 Filed 4–13–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0353; FRL–9659–2]

Approval and Promulgation of Implementation Plans; Tennessee; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8–Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, and conditionally approve in part, the State Implementation Plan (SIP) submission, submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), to demonstrate that the State meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. TDEC certified that the Tennessee SIP contains provisions that ensure the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as ''infrastructure submission''). EPA is proposing to conditionally approve sub-element 110(a)(2)(E)(ii) of Tennessee's December 14, 2007, submission because the current Tennessee SIP does not include provisions to comply with the requirements of this sub-element. With the exception of sub-element 110(a)(2)(E)(ii), EPA is proposing to determine that Tennessee's infrastructure submission, provided to EPA on December 14, 2007, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

DATES: Written comments must be received on or before May 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0353, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2011–0353,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2011–0353. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. *See* 62 FR 38856. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 1997 8-hour ozone NAAQS to EPA no later than June 2000. However, intervening litigation over the 1997 8-hour ozone NAAQS created uncertainty about how to proceed and many states did not provide the required ''infrastructure'' SIP submission for these newly promulgated NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the ''infrastructure'' requirements for the 1997 8-hour ozone NAAQS. EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a **Federal Register** notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS by December 15, 2007. Subsequently, EPA received an extension of the date to complete this **Federal Register** notice until March 17, 2008, based upon agreement to make the findings with respect to submissions made by January 7, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state as of January 7, 2008.

On March 27, 2008, EPA published a final rulemaking entitled, ''Completeness Findings for Section 110(a) State Implementation Plans; 8–Hour Ozone NAAQS,'' making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. *See* 73 FR 16205. For those states that did receive findings, such as Tennessee, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs. However, the findings of failure to submit did not impose sanctions or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements contained in the Title I part D plan for nonattainment areas as required under section 110(a)(2)(I). Additionally, the findings of failure to submit for the infrastructure submittals are not a SIP call pursuant to section 110(k)(5).

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Tennessee's infrastructure submission was received by EPA on December 14, 2007, and was determined to be complete on March 27, 2008, for all elements with the exception of 110(a)(2)(C) and (J). Tennessee was among other states that received a finding of failure to submit because its infrastructure submission was not complete for elements (C) and (J) for the 1997 8-hour ozone NAAQS by March 1, 2008. Tennessee has since met the completeness requirements for 110(a)(2)(C) and (J) and these infrastructure elements were federally approved on March 14, 2012. *See* 77 FR 14976.

Today's action is proposing to approve in part, and conditionally approve in part, Tennessee's infrastructure submission for which EPA made the completeness determination on March 27, 2008. This action is not approving any specific rule, but rather proposing that Tennessee's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below [1] and in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.''

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[2]
- 110(a)(2)(D): Interstate transport.[3]

[1] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[2] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[3] Today's proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport

- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[4]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and fine particulate matter ($PM_{2.5}$) NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[5] Those Commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). In light of the comments, EPA believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth. It is important to emphasize that EPA is taking the same position with respect to these four substantive issues in this action on the infrastructure SIPs for the 1997 8-hour ozone NAAQS from Tennessee.

EPA intended the statements in the other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a re-approval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit re-approval of any existing provisions that relate to these four substantive issues. EPA is reiterating that position in this action on the infrastructure SIP for Tennessee.

Unfortunately, the Commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPs are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This

requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address interstate transport. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule''). That rule was recently stayed by the D.C. Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

[4] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

[5] See Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket #EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the state's implementation plans. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. *See* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] *See Id.,* 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. *See* ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] See ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[12] *Id.,* at page 2.

about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [14] However, for the one exception to that general assumption (*i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS), EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's implementation plans for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[15] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS (e.g., the requirements of section 110(a)(2)(D)(i) that EPA had bifurcated from the other infrastructure elements for those specific 1997 ozone and $PM_{2.5}$ NAAQS). Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals for other states mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions. The same holds true for this action on the infrastructure SIPs for Tennessee.

EPA believes that this approach to the infrastructure SIP requirement is reasonable because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[16] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[17] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[18]

[13] *Id.,* at attachment A, page 1.

[14] *Id.,* at page 4. In retrospect, the concerns raised by the Commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[15] See ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[16] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21639 (April 18, 2011).

[17] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[18] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See* 75 FR 42342, 42344 (July

Continued

IV. What is EPA's analysis of how Tennessee addressed the elements of sections 110(a)(1) and (2) ''infrastructure'' provisions?

The Tennessee infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Several regulations within Tennessee's SIP provide Tennessee Air Pollution Control Regulations relevant to air quality control regulations. The regulations described below have been federally approved in the Tennessee SIP and include enforceable emission limitations and other control measures. Chapters 1200–3–1, *General Provisions;* 1200–3–3, *Air Quality Standards;* 1200–3–4, *Open Burning;* 1200–3–18, *Volatile Organic Compounds;* and 1200–3–27, *Nitrogen Oxides,* of the Tennessee SIP establish emission limits for ozone and address the required control measures, means, and techniques for compliance with the ozone NAAQS. EPA has made the preliminary determination that the provisions contained in these chapters and Tennessee's practices are adequate to protect the 1997 8-hour ozone NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Tennessee's Air Pollution Control Requirements, Chapter 1200–3–12, *Procedures for Ambient Sampling and Analysis,* of the Tennessee SIP, along with the Tennessee Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On July 1, 2011, Tennessee submitted its plan to EPA. On October 24, 2011, EPA approved Tennessee's monitoring network plan. Tennessee's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0353. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 1997 8-hour ozone NAAQS.

3. 110(a)(2)(D)(ii) *Interstate and International transport provisions:* Chapter 1200–9–.01(5) *Growth Policy,* of the Tennessee SIP outlines how the State will notify neighboring states of potential impacts from new or modified sources. Tennessee does not have any pending obligation under sections 115 and 126 of the CAA. Additionally, Tennessee has federally approved regulations in its SIP that satisfy the requirements for the NO_X SIP Call. *See* 70 FR 76408 (December 27, 2005). EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 1997 8-hour ozone NAAQS.

4. 110(a)(2)(E) *Adequate resources:* EPA is proposing two separate actions with respect to the sub-elements required pursuant to section 110(a)(2)(E). Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. As with the remainder of the infrastructure elements addressed by this notice, EPA is proposing to approve Tennessee's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to sub-element 110(a)(2)(E)(ii) (regarding state boards), EPA is proposing to approve in part, and conditionally approve in part, this sub-element. EPA's rationale for today's proposals respecting each sub-element is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), EPA notes that TDEC, through the Tennessee Air Pollution Control Board, is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of TDEC's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Tennessee on March 11, 2011, outlining 105 grant commitments and current status of these commitments for fiscal year 2010. The letter EPA submitted to Tennessee can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2011–0353. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues for fiscal year 2009, therefore, Tennessee's grants were finalized and closed out. EPA has made the preliminary determination that Tennessee has adequate resources for implementation of the 1997 8-hour ozone NAAQS.

With respect to sub-element 110(a)(2)(E)(ii), EPA is proposing to approve in part, and to conditionally approve in part, Tennessee's infrastructure SIP as to this requirement. Section 110(a)(2)(E)(ii) provides that infrastructure SIPs must require compliance with section 128 of CAA requirements respecting State boards. Section 128, in turn, provides at subsection (a)(1) that each SIP shall require that any board or body which approves permits or enforcement orders shall be subject to the described public interest and income restrictions therein. Subsection 128(a)(2) requires that any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements. In this action, EPA is proposing to conditionally approve Tennessee's infrastructure SIP for element 110(a)(2)(E)(ii) with respect to the applicable section 128(a)(1) requirements, and to approve Tennessee's infrastructure SIP for element 110(a)(2)(E)(ii) with respect the

21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

applicable section 128(a)(2) requirements.

EPA's proposed conditional approval of this sub-element 110(a)(2)(E)(ii) respecting the 128(a)(1) requirements is based upon a TDEC letter to EPA, dated March 28, 2012, which outlined TDEC's commitment to adopt specific enforceable measures into its SIP within one year to address the applicable portions of section 128(a)(1). The March 28, 2012, letter from TDEC to EPA can be accessed at *www.regulations.gov* using docket ID No. EPA–R04–OAR–2011–0353.

In Tennessee's March 28, 2012, commitment letter, TDEC committed to bring its SIP into conformity with section 128(a)(1) of the CAA by submitting SIP revisions that designate at least a majority of the positions on the State's Air Pollution Control Board [19] as being subject to the ''public interest'' requirement. In addition, TDEC has committed to submitting SIP revisions establishing requirements to ensure that at least a majority of the members on the State's Air Pollution Control Board do not derive any significant portion of their income from persons subject to permits or enforcement orders. In the March 28, 2012 commitment letter, TDEC describes that its planned restrictions related to the ''significant portion of income'' requirements of section 128 will include an exclusion for the official salaries of mayors of counties and municipalities, and for faculty members at institutions of higher learning.

In accordance with section 110(k)(4) of the CAA, the commitment from Tennessee must provide that the State will adopt the specified enforceable provisions and submit a revision to EPA for approval within one year from EPA's final conditional approval action. In its March 28, 2012, letter, TDEC committed to adopt the above-specified enforceable provisions and submit them to EPA for incorporation into the SIP by no later than one year from the effective date of EPA's final conditional approval action for this requirement. Failure by the State to adopt these provisions and submit them to EPA for incorporation into the SIP within one year from the effective date of EPA's final conditional approval action would result in this proposed conditional approval being treated as a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the **Federal Register**.[20]

As a result of Tennessee's formal commitment to correct deficiencies contained in the Tennessee SIP pertaining to section 128, EPA intends to move forward with finalizing the conditional approval of 110(a)(2)(E)(ii) with respect to the section 128(a)(1) requirements consistent with section 110(k)(4) of the Act. With respect to the remaining sub-elements of 110(a)(2)(E), EPA is proposing to approve these portions of Tennessee's infrastructure SIP. As such, EPA has made the preliminary determination that Tennessee has adequate resources for implementation of the 1997 8-hour ozone NAAQS.

5. 110(a)(2)(F) *Stationary source monitoring system:* Tennessee's infrastructure submission describes how to establish requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. TDEC uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in Chapter 1200–3–10, *Required Sampling, Recording and Reporting,* of the Tennessee SIP.

Additionally, Tennessee is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System (EIS). States report emissions data for the six criteria pollutants and their associated precursors—NO_X, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds (VOCs). Many states also voluntarily report emissions of hazardous air pollutants. Tennessee made its latest update to the NEI on December 31, 2011. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the stationary source monitoring systems related to the 1997 8-hour ozone NAAQS.

6. 110(a)(2)(G) *Emergency power:* Chapter 1200–3–15, *Emergency Episode Requirements,* of the Tennessee SIP identifies air pollution emergency episodes and preplanned abatement strategies. These criteria have previously been approved by EPA. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for emergency powers related to the 1997 8-hour ozone NAAQS.

7. 110(a)(2)(H) *Future SIP revisions:* As previously discussed, TDEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Tennessee has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Specific to the 1997 8-hour ozone NAAQS, Tennessee has provided the following submissions, including:

- August 10, 2005, SIP Revision—(EPA approval, 70 FR 55559, September 22, 2005) Redesignation of the Montgomery County portion of the Clarksville-Hopkinsville, TN-KY 8-hour Ozone Area;
- February 26, 2009, SIP Revision—(EPA approval, 75 FR 56, January 4, 2010) Redesignation of the Memphis, TN 8-hour Ozone Area;
- July 14, 2010, SIP Revision—(EPA approval, 76 FR 12587, March 8, 2011) Redesignation of the Knoxville, TN 8-hour Ozone Area; and,
- October 13, 2010, SIP Revision (EPA approval, 76 FR 5078, January 28, 2011) Nashville 110(a)(1) Maintenance Plan.

Tennessee has no areas designated as nonattainment for the 1997 8-hour ozone NAAQS. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 1997 8-hour ozone NAAQS when necessary.

8. 110(a)(2)(K) *Air quality and modeling/data:* Chapter 1200–3–9–.01(4)(k), *Air Quality Models,* of the Tennessee SIP specify that required air modeling be conducted in accordance

[19] The composition of Tennessee's Air Pollution Control Board is statutorily prescribed at Tennessee Code Annotated 68–201–104.

[20] EPA notes that pursuant to section 110(k)(4), a conditional approval is treated as a disapproval in the event that a State fails to comply with its commitment. Notification of this disapproval action in the **Federal Register** is not subject to public notice and comment.

with 40 CFR Part 51, Appendix W ''Guideline on Air Quality Models,'' as incorporated into the Tennessee SIP. These standards demonstrate that Tennessee has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. Additionally, Tennessee supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 1997 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, Tennessee's air quality regulations and practices demonstrate that TDEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 1997 8-hour ozone NAAQS when necessary.

9. 110(a)(2)(L) *Permitting fees:* As discussed above, Tennessee's SIP provides for the review of construction permits. Permitting fees in Tennessee are collected through the State's federally-approved title V fees program and consistent with Chapter 1200–03–26–.02, *Permit-Related Fees,* of the Tennessee Code. EPA has made the preliminary determination that Tennessee's SIP and practices adequately provide for permitting fees related to the 1997 8-hour ozone NAAQS when necessary.

10. 110(a)(2)(M) *Consultation/participation by affected local entities:* Chapter 1200–3–9–.01(4)(k), *Public Participation,* of the Tennessee SIP requires that TDEC notify the public of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. By way of example, TDEC has recently worked closely with local political subdivisions during the development of its Transportation Conformity SIP, Regional Haze Implementation Plan, and Early Action Compacts. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with affected local entities related to the 1997 8-hour ozone NAAQS when necessary.

V. Proposed Action

As described above, with the exception of sub-element 110(a)(2)(E)(ii), EPA is proposing to determine that Tennessee's infrastructure submission, provided to EPA on December 14, 2007, addressed the required infrastructure elements for the 1997 8-hour ozone NAAQS. EPA is proposing to approve in part and conditionally approve in part, Tennessee's SIP submission consistent with section 110(k)(3) of the CAA.

As described above, with the exception of sub-element 110(a)(2)(E)(ii), TDEC has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee. With respect to 110(a)(2)(E)(ii) (referencing section 128 of the CAA), EPA is proposing to conditionally approve Tennessee's infrastructure SIP. On March 28, 2012, Tennessee submitted a letter requesting conditional approval of 110(a)(2)(E)(ii). In this letter, TDEC committed to adopt specific enforceable measures into its SIP and submit these revisions to EPA within one year of EPA's final rulemaking to address the applicable portions of section 128. EPA is also proposing to approve Tennessee's infrastructure submission for the 1997 8-hour ozone NAAQS, with the exception of sub-element 110(a)(2)(E)(ii) because its December 14, 2007, submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 29, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–9073 Filed 4–13–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0300; FRL–9659–3]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve and conditionally approve the State Implementation Plan (SIP) submission from the State of North Dakota to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure elements'' of section 110(a)(2). The State of North Dakota submitted revisions to their Infrastructure SIP for the 1997 ozone NAAQS, dated April 6, 2009, as well as a certification of their infrastructure SIP for the 1997 ozone NAAQS dated November 23, 2009.

DATES: Written comments must be received on or before May 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2010–0300, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: ayala.kathy@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2010–0300. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 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 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Ayala, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *ayala.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials DAQ mean or refer to Division of Air Quality.

(iii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) The initials FIP mean or refer to a Federal Implementation Plan.

(v) The initials GHGs mean or refer to greenhouse gases.

(vi) The initials NAAQS mean or refer to national ambient air quality standards.

(vii) The initials NDAC mean or refer to North Dakota Administrative Code.

(viii) The initials NDCC mean or refer to North Dakota Century Code.

(ix) The initials NO_X mean or refer to nitrogen oxides.

(x) The initials NSR mean or refer to new source review.

(xi) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).

(xii) The initials ppm mean or refer to parts per million.

(xiii) The initials PSD mean or refer to Prevention of Significant Deterioration.

(xiv) The initials SIP mean or refer to State Implementation Plan.

(xv) The initials SSM mean or refer to start-up, shutdown, or malfunction.

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I. General Information

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

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to 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:

Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register**, date, and page number);

Follow directions and organize your comments;

Explain why you agree or disagree;

Suggest alternatives and substitute language for your requested changes;

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

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

Provide specific examples to illustrate your concerns, and suggest alternatives;

Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,

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

II. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several ''infrastructure elements,'' listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only certify that fact via a letter to EPA.[1]

On March 27, 2008, EPA published a final rule entitled, ''Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS'' (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In this rule, EPA found that North Dakota failed to submit the relevant SIP. The findings of failure to submit established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, North Dakota submitted, and EPA approved, the required SIP. However, the finding of failure to submit did not impose sanctions, set deadlines for imposing sanctions, or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements contained in the Title I part D plan for nonattainment areas as required under section 110(a)(2)(l). Additionally, the finding of failure to submit for the infrastructure submittals are not SIP calls under section 110(k)(5).

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D)(ii): Interstate and international pollution.
- 110(a)(2)(E): Adequate resources and authority.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and prevention of significant deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs (known as ''nonattainment new source review (NSR)'') required under part D, and (ii) section 110(a)(2)(I) pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

This action also does not address the ''interstate transport'' requirements of element 110(a)(2)(D)(i), or the visibility protection requirements of element 110(a)(2)(J). EPA approved portions of the state's 110(a)(2)(D)(i) interstate transport SIP for the 1997 ozone NAAQS in separate prior actions (75 FR 31290; 75 FR 71023).

III. Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and fine particulate matter ($PM_{2.5}$) NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[2] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction (SSM) at sources, that may

[1] Memorandum from William T. Harnett, Director, Air Quality Policy Division, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (Oct. 2, 2007).

[2] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

be contrary to the CAA and EPA's policies addressing such excess emissions; and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) Existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such state regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[3] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[4]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[5] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given

[3] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[4] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005)(defining, among other things, the phrase ''contribute significantly to nonattainment'').

[5] See, e.g., Id., 70 FR 25162, at 63–65 (May 12, 2005)(explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[6] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[7]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[8] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[9] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[10] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable states to meet these requirements with assistance from EPA Regions.''[11] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the

[6] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[7] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[8] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I-X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I-X, dated September 25, 2009 (the ''2009 Guidance'').

[9] Id., at page 2.

[10] Id., at attachment A, page 1.

[11] Id., at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[14]

IV. How did the State of North Dakota address the infrastructure elements of section 110(a)(1) and (2)?

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: North Dakota Century Code (NDCC) 23–25–03.5–.8; NDCC 23–25–03.12; NDCC 23–25–04.2; North Dakota Administrative Code (NDAC) 33–15–07, 17, 20 (Control measures for VOC); NDAC 33–15–23 (Fees).

b. *EPA analysis:* North Dakota's SIP meets the requirements of CAA section 110(a)(2)(A) for the 1997 ozone NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 1997 ozone NAAQS, and North Dakota has no areas designated as nonattainment for the 1997 ozone NAAQS. Nonetheless, the North Dakota SIP contains provisions for control of volatile organic compounds, an ozone precursor (NDAC 33–15–07). North Dakota also regulates emissions of ozone and its precursors through its SIP-approved major and minor source permitting programs (64 FR 32433, June 17, 1999; 71 FR 3764, January 24, 2006). This suffices, in the case of North Dakota, to meet the requirements of section 110(a)(2)(A) for the 1997 ozone NAAQS.

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: NDCC 23–25–03.2; NDCC 23–25–05; NDCC 23–15–14–02.9a; SIP Sections 6.7 & 6.8.

b. *EPA analysis:* North Dakota's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 ozone NAAQS. The North Dakota Division of Air Quality's (DAQ) 2011 Ambient Air Annual Monitoring Network Plan was approved by EPA Region 8 on January 12, 2011. In this action, EPA also proposes approval of North Dakota's revised SIP chapter 6.8, ''Annual Network Review,'' and revised SIP chapter 6.11.3, ''Air Quality Surveillance: Ozone,'' submitted April 6, 2009.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: Enforcement: NDCC 23–25–10; NDCC 23–25–05; NDCC 33–15–01–17; Permits: NDCC 23–25–03.6; NDCC 33–15–14; NDCC 33–15–15; SIP Chapters 7 and 8.

[12] EPA has issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[13] EPA has utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[14] EPA has disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42,342 at 42,344 (July 21,2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

b. *EPA analysis:* As explained above, in this action EPA is not evaluating non-attainment related provisions, such as the nonattainment NSR program required by part D of the Act. In addition, North Dakota has no nonattainment areas for the 1997 ozone NAAQS, and is therefore, not required at this point to have a corresponding nonattainment NSR program. In this action, EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

North Dakota's PSD Program

North Dakota's SIP-approved PSD program incorporates by reference (with certain exceptions) the federal PSD program at 52.21 as of August 1, 2007. As described in our notice of approval of the most recent revision of the program (75 FR 31290, June 3, 2010), North Dakota's PSD program met the general requirements of CAA section 110(a)(2)(C) as of that date, as well as the program requirement to treat nitrogen oxides (NO_X) as an ozone precursor in accordance with the phase 2 implementation rule for the 1997 ozone NAAQS (72 FR 71612, November 29, 2005). North Dakota's PSD program therefore meets the requirements of section 110(a)(2)(C) with regard to implementation of the 1997 ozone NAAQS.

We also consider the requirements for PSD programs with respect to greenhouse gases (GHGs). North Dakota's PSD program was not subject to EPA's rule, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans'' (''PSD SIP Narrowing Rule''), 75 FR 82536 (Dec. 30, 2010). As explained in a memorandum in the docket for that action, North Dakota stated that it could implement the current SIP-approved PSD program with the thresholds for GHGs set in EPA's June 3, 2010 ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (''Tailoring Rule''), 75 FR 31514. It was therefore not necessary in the PSD SIP Narrowing Rule to withdraw approval of North Dakota's PSD program to the extent that it applied PSD permitting to GHG emissions increases from GHG-emitting sources below Tailoring Rule thresholds. North Dakota also stated its intent to revise its PSD program to expressly adopt the Tailoring Rule thresholds. North Dakota revised its program correspondingly on April 1, 2011 and submitted the SIP revision to us on April 14, 2011. As a result, North Dakota's 2009 certification of adequacy of its PSD program remains valid.

North Dakota's April 14, 2011 SIP submittal includes various updates to the State's PSD program. We are reviewing this submittal and intend to propose action on it in the near future. We note that the submittal appears to satisfy the requirements, with respect to the State's PSD program, of the rule ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' promulgated May 16, 2008 (73 FR 28321). However, we will only reach a final conclusion on the adequacy of the revisions when we act on them through the separate rulemaking.

North Dakota's Minor NSR Program

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act, which regulates emissions of ozone and its precursors. The State and EPA have relied on the existing state minor NSR program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

In this action, EPA is proposing to approve North Dakota's infrastructure SIP for the 1997 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. *Interstate transport:* Section 110(a)(2)(D)(i) requires SIPs to contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state, with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality or to protect visibility.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: (i)(I): NDCC 23–25–03.6; NDCC 23–25–03.7; NDCC 33–25–03.12; SIP Section 7.7 (submitted 4/09); (i)(II): NDCC 23–25–03.4; NDCC 23–25–03.12; SIP Section 7.8 (submitted 4/09).

b. *EPA analysis:* North Dakota submitted SIP revisions to EPA April 6, 2009, which included revisions to the State's interstate transport SIP. EPA approved portions of the State's 110(a)(2)(D)(i) interstate transport SIP for the 1997 ozone NAAQS in separate actions (75 FR 31290; 75 FR 71023), and has not yet completed action on the remaining portion to meet the requirement of 110(a)(2)(D)(i)(II) regarding interference with measures to protect visibility. EPA is taking no action relevant to section 110(a)(2)(D)(i) in this proposal.

5. *Interstate and International transport provisions:* Section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: NDCC 23–25–03.12; SIP Section 7.8 (submitted 4/09).

b. *EPA Analysis:* Section 126(a) of the CAA requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator regarding sources violating the ''interstate transport'' provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

With regard to section 126(a), North Dakota's SIP-approved PSD program requires notice of proposed new sources or modifications to states whose lands may be significantly affected by emissions from the source or modification. This provision satisfies the notice requirement of section 126(a).

North Dakota has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. The SIP therefore meets the requirements of 110(a)(2)(D)(ii) for the 1997 ozone NAAQS.

6. *Adequate resources and authority:* Section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: (i): NDCC 23–25–04.2; NDAC 33–15–01–15; NDAC 33–15–23; SIP Chapter 9; (ii): NDCC 23–25–02.1; SIP Section 2.15 (submitted 4/09); (iii): NDCC 23–25–02.1; SIP Section 2.7.

b. *EPA analysis:* North Dakota's SIP meets the requirements of section 110(a)(2)(E)(i) for the 1997 ozone NAAQS. NDCC 23–25–03 provides adequate authority for the State of North Dakota to carry out its SIP obligations with respect to the 1997 ozone NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out North Dakota's SIP requirements. North Dakota submitted an updated version of SIP Chapter 9, ''Resources,'' to EPA on April 6, 2009. In this action, EPA proposes to approve the updated version of SIP Chapter 9, and therefore finds that North Dakota's resources meet the requirements of CAA section 110(a)(2)(E)(i).

With regard to section 110(a)(2)(E)(ii), in its submittal North Dakota stated that section 128 does not apply because the State does not have a board or body that approves permits or enforcement orders under the CAA. We also note that the North Dakota SIP currently does not contain provisions addressing the requirements of section 128 of the CAA.

Congress added section 128 in the 1977 amendments as the result of a conference agreement. Titled ''State boards,'' section 128 provides in relevant part:

(a) Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

(1) Any board or body which approves permits or enforcement orders under [this Act] shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under [this Act], and

(2) Any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

In 1978, we issued a guidance memorandum recommending ways states could meet the requirements of section 128, including suggested interpretations of certain terms in section 128.[15]

In order to determine what requirements the North Dakota SIP must satisfy, we discuss various aspects of section 128. We first note that, in the conference report, the committee stated: ''It is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128].'' [16] We think that this legislative history indicates that Congress intended states to have some latitude in the specifics of implementing section 128, so long as the implementation is consistent with the plain text of the section. We also note that Congress explicitly provided in section 128 that states could adopt more stringent requirements. As a result, we note three relevant considerations for implementing section 128.

First, section 128 must be implemented through SIP-approved, federally enforceable provisions. Section 128 explicitly mandates that each SIP ''shall contain requirements'' that satisfy subsections 128(a)(1) and 128(a)(2). A mere narrative description of state statutes or rules, or of a state's current or past practice in constituting a board or body and in disclosing potential conflicts of interest, is not a requirement contained in the SIP and therefore does not satisfy the plain text of section 128.

Second, subsection 128(a)(1) applies only to states that have a board or body that is composed of multiple individuals and that, among its duties, approves permits or enforcement orders under the CAA. It does not apply in states that have no such multi-member board or body, and where instead a single head of an agency approves permits or enforcement orders under the CAA. This flows from the text of section 128 itself, for two reasons. First, as subsection 128(a)(1) refers to a majority of members in the plural, we think it reasonable to read subsection 128(a)(1) as not creating any requirements for an individual with sole authority for approving a permit or enforcement order under the CAA. Second, subsection 128(a)(2) explicitly applies to the head of an executive agency with ''similar powers'' to a board or body that approves permits or enforcement orders under the CAA, while subsection 128(a)(1) omits any reference to heads of executive agencies. We infer that subsection 128(a)(1) should not apply to heads of executive agencies who approve permits or enforcement orders.

Third, subsection 128(a)(2) applies to all states, regardless of whether the state has a multi-member board or body that approves permits or enforcement orders under the CAA. Although the title of section 128 is ''State boards,'' the language of subsection 128(a)(2) explicitly applies where the head of an executive agency, rather than a board or body, approves permits or enforcement orders. In instances where the head of an executive agency delegates his or her power to approve permits or enforcement orders, or where statutory authority to approve permits or enforcement orders is nominally vested in another state official, the requirement to disclose adequately potential conflicts of interest still applies. In other words, EPA thinks that SIPs for all states, regardless of whether a state board or body approves permits or enforcement orders under the CAA, must contain adequate provisions for disclosure of potential conflicts of interest.

We propose to apply these considerations to the North Dakota SIP. North Dakota currently does not have a multi-member board or body that approves permits or enforcement orders under the CAA. Instead, permits are approved by the Director of DAQ, and enforcement orders are approved by the Section Chief of the Environmental Health Section. Thus, we propose that North Dakota currently is not subject to the requirements of subsection 128(a)(1).

However, North Dakota is subject to the requirements of section 128(a)(2), and we therefore cannot approve the certification, as originally submitted, with respect to section 110(a)(2)(E)(ii). North Dakota has informed us that the

[15] Memorandum from David O. Bickart, Deputy General Counsel, to Regional Air Directors, Guidance to States for Meeting Conflict of Interest Requirements of Section 128 (Mar. 2, 1978).

[16] H.R. Rep. 95–564 (1977), reprinted in 3 *Legislative History of the Clean Air Act Amendments of 1977,* 526–27 (1978).

North Dakota Department of Health has an ethics policy requiring (among other things) internal disclosure of potential conflicts of interest and recusal from the matter raising the conflict. North Dakota has committed to submit as a SIP revision provisions reflecting this policy, to the extent necessary to meet the requirements of section 128, by July 31, 2013.[17] Because recusal is more stringent than the minimum disclosure required by subsection 128(a)(2), we propose that the policy, if submitted as an enforceable SIP provision, will meet the requirements of section 128. We therefore propose to conditionally approve North Dakota's certification with respect to the requirements of section 128(a)(2).

Finally, with respect to section 110(a)(2)(E)(iii), North Dakota has not assigned responsibility for carrying out portions of the SIP to any local government, agency, or other instrumentality. North Dakota's SIP therefore meets the requirements for this element.

7. *Stationary source monitoring and reporting:* Section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: (i): NDCC 23–25–03.10; NDAC 33–15–01.12.1; NDAC 33–15–14–02.9; SIP Sections 8.2 and 8.3; (ii) NDAC 23–25–03.10; NDCC 23–25–04.2; 33–15–14–02.9.d; NDAC 33–15–01.12.1; (iii): NDCC 23–25–03.10; NDCC 23–25–06; NDCC 23–25–03.6; NDAC 33–15–01–16.1; NDCC 23–25–04.2; SIP Section 8.2.

b. *EPA analysis:* NDCC section 23–25–03.10 generally requires monitoring, recordkeeping, and reporting for owners and operators of regulated sources. North Dakota's SIP-approved minor source and PSD programs provide for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. North Dakota's SIP therefore meets the requirements of section 110(a)(2)(F) for the 1997 ozone NAAQS.

[17] North Dakota's commitment letter is available in the docket.

8. *Emergency powers:* Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: NDCC 23–25–03.5; NDCC 23–25–03.12; NDCC 23–25–09.5; NDAC 33–15–11; SIP Chapter 5.

b. *EPA analysis:* NDAC 33–15–11 and SIP Chapter 5 provide the State with general emergency authority comparable to that in section 303 of the Act. North Dakota has not monitored any values above the priority cut point for ozone. See 40 CFR 51.150(b)(5). The SIP therefore meets the requirements of 110(a)(2)(G) for the 1997 ozone NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this Act.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: (i): NDCC 23–25–03.7; NDCC 23–25–03.6; NDCC 23–25–03.8; SIP Section 1.14 (submitted 4/09); (ii): NDCC 23–25–03.6–.8; NDCC 23–25–03.12; SIP Section 1.14 (submitted 4/09).

b. *EPA analysis:* EPA is proposing to approve Section 1.14 of the SIP submitted to EPA April 6, 2009. Section 1.14 requires revision of the SIP in the circumstances enumerated in section 110(a)(2)(H) of the CAA. NDCC section 23–25–03 provides adequate authority for the Department of Health to carry out such revisions. EPA therefore finds that the State has sufficient authority to meet the requirements of 110(a)(2)(H).

10. *Nonattainment Area Plan or Plan Revision under Part D:* Section 110(a)(2)(I) requires that a SIP or SIP revision for an area designated as a nonattainment area must meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).

a. *EPA analysis for Section 110(a)(2)(I):* As noted above, the specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1). This element is therefore not applicable to this action. EPA will take action on part D attainment plans through a separate process.

11. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: (section 121): NDCC 23–25–08 (Orders); NDCC 23–25–03.4 and .6; NDAC 33–15–14 and 15; SIP Chapter 10; (section 127): SIP Section 6.9; NDCC 23–25–06.1; (PSD): NDCC 23–25–03.12; NDAC 33–15–15; NDAC 33–15–19; NDAC 33–15–25; NDAC 33–15–02–03.4.

b. *EPA analysis:* The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. EPA previously approved portions of the North Dakota SIP as meeting the requirements of CAA section 127. (45 FR 53475, Aug. 12, 1980).

As discussed above, the State has a SIP-approved PSD program that (for the most part) incorporates by reference the federal program at 40 CFR 52.21. EPA has further evaluated North Dakota's SIP-approved PSD program in this proposed action under IV.3, element 110(a)(2)(C).

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective. In conclusion, the North Dakota SIP meets the requirements of section 110(a)(2)(J) for the 1997 ozone NAAQS.

12. *Air quality and modeling/data:* Section 110(a)(2)(K) requires that each SIP provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: (i): NDCC 23–25–03.2 and .12; SIP Section 7.7 (Submitted 4/09); (ii): SIP Section 7.7 (Submitted 4/09); NDCC 23–23–06.1.

b. *EPA analysis:* North Dakota's SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 ozone NAAQS. In particular, North Dakota's PSD program requires estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and incorporates by reference the provision at 40 CFR 52.21(l)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator. EPA also proposes to approve the addition of SIP section 7.7, submitted April 6, 2009, as meeting the requirements of this section 110(a)(2)(K)(ii). As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

13. *Permitting fees:* Section 110(a)(2)(L) requires SIPs to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: (i): NDCC 23–25–04.2; NDAC 33–15–23; (ii): NDAC 23–25–04.2; NDAC 33–15–23.

b. *EPA analysis:* North Dakota's submittal meets the requirements of CAA section 110(a)(2)(L) for the 1997 ozone NAAQS. Final approval of the title V operating permit program became effective June 17, 1999(64 FR 32433). As discussed in that approval, the State demonstrated that the fees collected were sufficient to administer the program. In addition, the SIP contains fee provisions for construction permits (NDAC 33–15–23–02), including costs of processing not covered by the application fee. The SIP also contains fee provisions for minor source operating permits (NDAC 33–15–23–03).

14. *Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

a. *North Dakota's response to this requirement:* The State listed the following provisions to meet this element: NDCC 23–25–03.4; SIP Chapter 10.

b. *EPA analysis:* North Dakota's submittal meets the requirements of CAA section 110(a)(2)(M) for the 1997 ozone NAAQS.

V. What action is EPA taking?

In this action, EPA is proposing to approve in full the November 23, 2009 certification for the following section 110(a)(2) infrastructure elements for North Dakota for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). EPA is proposing to conditionally approve the November 23, 2009 certification for infrastructure element 110(a)(2)(E)(ii) for the 1997 ozone NAAQS. EPA is taking no action on infrastructure elements (D)(i), (I), and the visibility protection requirement of (J) for the 1997 ozone NAAQS. In this action, EPA also proposes to approve portions of North Dakota's April 6, 2009 SIP submission. Specifically, EPA proposes to approve North Dakota's revisions to SIP sections 6.8, 6.11.3, and chapter 9, and the additions of SIP sections 1.14 and 7.7.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 30, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–9075 Filed 4–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0599; A–1–FRL–9659–4]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Regional Haze; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the public comment period for a proposal published in the **Federal Register** on February 28, 2012. In that action EPA proposed to approve a revision to the New Hampshire State Implementation Plan (SIP) submitted by the New Hampshire Department of Environmental Services (NHDES) on January 29, 2010, with supplemental submittals on January 14, 2011, and August 26, 2011, that addresses regional haze for the first planning period from 2008 through 2018. Two commentors requested an extension of the comment period for this proposed rulemaking. EPA is now reopening the public comment period.

DATES: The comment period for the proposed rule published on February 28, 2012 (77 FR 11809) is reopened. Comments must be received on or before April 27, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2008–0599 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2008–0599 Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2008–0599. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov*, or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone number (617) 918–1697, fax number (617) 918–0697, email *mcwilliams.anne@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 28, 2012. In that action EPA proposed to approve a revision to the New Hampshire State Implementation Plan (SIP) submitted by the New Hampshire Department of Environmental Services (NHDES) on January 29, 2010, with supplemental submittals on January 14, 2011, and August 26, 2011, that addresses regional haze for the first planning period from 2008 through 2018. Written comments on the proposed rule were to be submitted to EPA on or before March 29, 2012. Two commentors requested an extension of the comment period for this proposed rulemaking. EPA is now reopening the public comment period for the February 28, 2012, New Hampshire Regional Haze proposed rulemaking until April 27, 2012.

Dated: April 5, 2012.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

[FR Doc. 2012–8922 Filed 4–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0073; FRL–9651–6]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Small Container Exemption From VOC Coating Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Illinois State Implementation plan (SIP) submitted by the Illinois Environmental Protection Agency on November 14, 2011. This SIP revision consists of amendments to the Illinois Administrative Code by adding

a ''small container exemption'' for pleasure craft surface coating operations in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas. These exemptions are approvable because they are consistent with EPA volatile organic compound reasonably available control technology policy.

DATES: Comments must be received on or before May 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0073 by one of the following methods:

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

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: March 12, 2012.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 2012–8951 Filed 4–13–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–7748]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On December 6, 2007, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This document provides corrections to that table, to be used in lieu of the information published December 6, 2007. The table provided in this document represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Pierce County, Washington, and Incorporated Areas. Specifically, it addresses the following flooding sources: Artondale Creek (main stem), Artondale Creek—East Branch, Artondale Creek—West Branch, Canyon Creek, Carbon River (left overbank areas, without consideration of left levees), Carbon River Overflow, Clarks Creek, Clear Creek, Clover Creek, Clover Creek (overflow at 134th Street South), Clover Creek (overflow at designated parkland), Clover Creek (overflow at golf course), Clover Creek (overflow near Lakewood Town Center), Crescent Creek, Crescent Lake, Diru Creek, Diru Creek (104th Street East overflow), Diru Creek (96th Street East overflow), East Fork Clear Creek, East Fork Clear Creek (west stem), Fennel Creek, Gig Harbor, Lacamas Creek, Mashel River, Meeker Ditch, Morey Creek, North Fork Clover Creek, North Fork Clover Creek Tributary #1, North Fork Clover Creek Tributary #2, North Fork Clover Creek Tributary #4, North Fork Clover Creek Tributary #5, Puyallup River (overflow through golf course between State Route 162 and Puyallup River), Puyallup River (overflow through golf course to Hylebos Waterway), Puyallup River (overflows to Blair Waterway via numerous flow paths), Puyallup River (with consideration of levees), Puyallup River (without consideration of left levee), Puyallup River (without consideration of right levee), Rody Creek, South Prairie Creek, Spanaway Creek, Swan Creek, Wapato Creek I, Wapato Creek II, West Fork Canyon Creek, White River, Woodland Creek, Woodland Creek (80th Street East overflow), and Woodland Creek (96th Street East overflow).

DATES: Comments are to be submitted on or before July 16, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–7748, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The

community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Corrections

In the proposed rule published at 72 FR 68784, in the December 6, 2007, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Pierce County, Washington, and Incorporated Areas,'' addressed the following flooding sources: Artondale Creek (main stem), Artondale Creek—East Branch, Artondale Creek—West Branch, Canyon Creek, Carbon River, Clarks Creek, Clarks Creek—Meeker Ditch, Clover Creek, Crescent Creek, Fennel Creek, Lacamas Creek, Mashel River, Morey Creek, Muck Creek, North Fork Clover Creek, North Fork Clover Creek Tributary #1, North Fork Clover Creek Tributary #2, North Fork Clover Creek Tributary #4, North Fork Clover Creek Tributary #5, Puyallup River, South Prairie Creek, Spanaway Creek, Swan Creek, Wapato Creek I, Wapato Creek II, and White River. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for the following flooding sources: Artondale Creek (main stem), Artondale Creek—East Branch, Artondale Creek—West Branch, Canyon Creek, Carbon River, Clarks Creek, Clarks Creek—Meeker Ditch, Clover Creek, Crescent Creek, Fennel Creek, Lacamas Creek, Mashel River, Morey Creek, North Fork Clover Creek, North Fork Clover Creek Tributary #1, North Fork Clover Creek Tributary #2, North Fork Clover Creek Tributary #4, North Fork Clover Creek Tributary #5, Puyallup River, South Prairie Creek, Spanaway Creek, Swan Creek, Wapato Creek I, Wapato Creek II, and White River. It also should not have included the flooding source Muck Creek. In addition, it did not include the following flooding sources: Carbon River (left overbank areas, without consideration of left levees), Carbon River Overflow, Clear Creek, Clover Creek (overflow at 134th Street South), Clover Creek (overflow at designated parkland), Clover Creek (overflow at golf course), Clover Creek (overflow near Lakewood Town Center), Crescent Lake, Diru Creek, Diru Creek (104th Street East overflow), Diru Creek (96th Street East overflow), East Fork Clear Creek, East Fork Clear Creek (west stem), Gig Harbor, Meeker Ditch, Puyallup River (overflow through golf course between State Route 162 and Puyallup River), Puyallup River (overflow through golf course to Hylebos Waterway), Puyallup River (overflows to Blair Waterway via numerous flow paths), Puyallup River (with consideration of levees), Puyallup River (without consideration of left levee), Puyallup River (without consideration of right levee), Rody Creek, West Fork Canyon Creek, Woodland Creek, Woodland Creek (80th Street East overflow), and Woodland Creek (96th Street East overflow). Specifically, the information published in the December 6, 2007, **Federal Register** proposed rule for the Carbon River has been refined and divided into individual descriptions for Carbon River (left overbank areas, without consideration of left levees) and Carbon River Overflow; the information published in the December 6, 2007, **Federal Register** proposed rule for the Puyallup River has been refined and divided into individual descriptions for Puyallup River (overflow through golf course between State Route 162 and Puyallup River), Puyallup River (overflow through golf course to Hylebos Waterway), Puyallup River (overflows to Blair Waterway via numerous flow paths), Puyallup River (with consideration of levees), Puyallup River (without consideration of left levee), and Puyallup River (without consideration of right levee); and the information published in the December 6, 2007, **Federal Register** proposed rule for Clarks Creek and Clarks Creek—Meeker Ditch has been refined and divided into individual descriptions for Clarks Creek and Meeker Ditch. These individual descriptions provide a more detailed representation of changes than originally described for the flooding sources Carbon River, Clarks Creek, Meeker Ditch, and Puyallup River in the December 6, 2007, **Federal Register** proposed rule. In this document, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published for Pierce County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Pierce County, Washington, and Incorporated Areas				
Artondale Creek (main stem)	Approximately 100 feet upstream of the Wollochet Drive culvert.	None	+13	City of Fife, Unincorporated Areas of Pierce County.
	Approximately 200 feet downstream of the Artondale Creek—East Branch and Artondale Creek—West Branch confluences.	None	+39	
Artondale Creek—East Branch.	Approximately 320 feet upstream of the Artondale Creek (main stem) and Artondale Creek—West Branch confluences.	None	+40	Unincorporated Areas of Pierce County.
	Approximately 80 feet downstream of Hunt Street Northwest.	None	+152	
Artondale Creek—West Branch.	At the Artondale Creek—East Branch and Artondale Creek (main stem) confluences.	None	+39	Unincorporated Areas of Pierce County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately in line with 56th Street Northwest extended, between 78th Avenue Northwest and 72nd Avenue Northwest.	None	+49	
Canyon Creek	Approximately 130 feet upstream of 72nd Street	None	+279	Unincorporated Areas of Pierce County.
	Approximately 250 feet downstream of 128th Street East.	None	+475	
Carbon River (left overbank areas, without consideration of left levees).	At the Puyallup River confluence	+121	+122	City of Orting, Unincorporated Areas of Pierce County.
	Approximately 1,000 feet upstream of the 177th Street East turnaround.	None	+460	
Carbon River Overflow	Approximately 1.2 miles upstream of 226th Street East along 177th Street East and Alward Road.	None	#3	Unincorporated Areas of Pierce County.
Clarks Creek	At the Puyallup River confluence	None	+30	City of Puyallup, Unincorporated Areas of Pierce County.
	Approximately 195 feet west of the west end of 15th Avenue Southwest.	+31	+32	
Clear Creek	From the Puyallup River confluence to the water treatment plant near the intersection of Pioneer Way East and 44th Avenue East.	+17	+24	Unincorporated Areas of Pierce County.
Clover Creek	At the Steilacoom Lake confluence	+215	+214	City of Lakewood, Unincorporated Areas of Pierce County.
	At the downstream side of 71st Avenue East	None	+344	
Clover Creek (overflow at 134th Street South).	At the upstream side of A Street South	+308	+307	Unincorporated Areas of Pierce County.
	Approximately 116 feet downstream of the intersection of B Street East and 134th Street Court East.	+308	+309	
Clover Creek (overflow at designated parkland).	At the Clover Creek confluence	None	+297	Unincorporated Areas of Pierce County.
	At the downstream side of 4th Avenue East	+313	+312	
Clover Creek (overflow at golf course).	At the North Fork Clover Creek confluence (in Mayfair County Park).	None	+319	Unincorporated Areas of Pierce County.
	Approximately 740 feet downstream of the Clover Creek confluence.	None	+320	
Clover Creek (overflow near Lakewood Town Center).	At the upstream side of 111th Street Southwest	None	+261	City of Lakewood.
	At the divergence from Clover Creek (between Lindale Lane Southwest and Cochise Lane Southwest).	None	+268	
Crescent Creek	At the Gig Harbor confluence	None	+12	City of Gig Harbor, Unincorporated Areas of Pierce County.
	Approximately 1,050 feet downstream of Crescent Valley Drive Northwest.	None	+172	
Crescent Lake	Entire shoreline within community	None	+173	Unincorporated Areas of Pierce County.
Diru Creek	At the upstream side of 84th Street East	None	+335	Unincorporated Areas of Pierce County.
	At the downstream side of 128th Street East	None	+468	
Diru Creek (104th Street East overflow).	Approximately 530 feet upstream of 104th Street East	None	+414	Unincorporated Areas of Pierce County.
	Approximately 317 feet downstream of State Route 512.	None	+448	
Diru Creek (96th Street East overflow).	At the downstream side of 96th Street East	None	+398	Unincorporated Areas of Pierce County.
	Approximately 155 feet upstream of 96th Street East	None	+400	
East Fork Clear Creek	Approximately 200 feet south of 72nd Street East	None	+352	Unincorporated Areas of Pierce County.
	At the downstream side of 105th Street East	None	+453	
East Fork Clear Creek (west stem).	Approximately 500 feet downstream of 96th Street East.	None	+425	Unincorporated Areas of Pierce County.
	Approximately 75 feet downstream of State Route 512.	None	+453	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Fennel Creek	Approximately 100 feet downstream of McCutcheon Road.	None	+105	City of Bonney Lake, Unincorporated Areas of Pierce County.
	At the upstream side of Kelley Lake Road	None	+505	
Gig Harbor	Entire shoreline within community	None	+12	City of Gig Harbor, Unincorporated Areas of Pierce County.
Lacamas Creek	Approximately 1,300 feet downstream of State Route 507, near the southeast corner of Muck Lake.	+322	+324	City of Roy, Unincorporated Areas of Pierce County.
	Approximately 600 feet south of 304th Street South	+473	+474	
Mashel River	At the upstream side of Private Road, 1,600 feet upstream of the Little Mashel River confluence.	+739	+738	Town of Eatonville, Unincorporated Areas of Pierce County.
	Approximately 0.54 mile upstream of Alder Cutoff Road East.	+862	+866	
Meeker Ditch	At the upstream side of 17th Street Southwest	#1	+31	City of Puyallup.
	Approximately 266 feet downstream of Fairview Drive	None	+38	
Morey Creek	Approximately 180 feet upstream of the Clover Creek confluence.	None	+293	Unincorporated Areas of Pierce County.
	Approximately 140 feet upstream of Spanaway Loop Road.	None	+300	
North Fork Clover Creek	Approximately 115 feet downstream of B Street East	+307	+309	City of Lakewood, City of Tacoma, Unincorporated Areas of Pierce County.
	At the upstream side of 96th Street East	None	+391	
North Fork Clover Creek Tributary #1.	Approximately 270 feet upstream of the intersection of 14th Avenue East and North Fork Clover Creek.	+323	+321	Unincorporated Areas of Pierce County.
	Approximately 600 feet downstream of Bingham Avenue East.	None	+457	
North Fork Clover Creek Tributary #2.	At the upstream side of the North Fork Clover Creek confluence.	None	+327	Unincorporated Areas of Pierce County.
	At the upstream side of the Tacoma Rail Mountain Division railroad, approximately 450 feet north of the Waller Road railroad crossing.	None	+397	
North Fork Clover Creek Tributary #4.	Approximately 0.5 mile downstream of 22nd Avenue Court East.	None	+363	Unincorporated Areas of Pierce County.
	Approximately 1,050 feet upstream of 22nd Avenue Court East.	None	+402	
North Fork Clover Creek Tributary #5.	At the upstream side of Aqueduct Drive East	None	+368	Unincorporated Areas of Pierce County.
	Approximately 1,320 feet upstream of Aqueduct Drive East.	None	+368	
Puyallup River (overflow through golf course between State Route 162 and Puyallup River).	Approximately 90 feet upstream of 140th Street East	+128	+127	City of Orting, Unincorporated Areas of Pierce County.
	At the downstream side of Lane Boulevard Northwest	None	+164	
Puyallup River (overflow through golf course to Hylebos Waterway).	At the Hylebos Creek confluence	None	+14	City of Fife, City of Tacoma, Unincorporated Areas of Pierce County.
	At the upstream side of 12th Street East	None	+16	
Puyallup River (overflows to Blair Waterway via numerous flow paths).	At the Blair Waterway confluence	None	+12	City of Fife, City of Tacoma.
	At the upstream side of the I–5 ramp to Port of Tacoma Road.	None	+18	
Puyallup River (with consideration of levees).	At the Commencement Bay confluence	+13	+12	City of Fife, City of Orting, City of Puyallup, City of Sumner, Unincorporated Areas of Pierce County.
	Approximately 1.0 mile upstream of the Burlington Northern Railroad/Champion Bridge.	+633	+634	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Puyallup River (without consideration of left levee).	At the Tacoma City Waterway confluence	None	+12	City of Orting, City of Puyallup, City of Tacoma, Unincorporated Areas of Pierce County.
	At the southern end of 169th Avenue East	+501	+498	
Puyallup River (without consideration of right levee).	At the upstream side of I–5	None	+17	City of Edgewood, City of Fife, City of Puyallup, City of Sumner, City of Tacoma, Unincorporated Areas of Pierce County.
	Approximately 700 feet south of the southern end of Neadham Road East.	None	+446	
Rody Creek	At the Clarks Creek confluence (at 66th Avenue East)	None	+30	Unincorporated Areas of Pierce County.
	Approximately 70 feet downstream of 128th Street East.	None	+452	
South Prairie Creek	At the Carbon River confluence	+301	+302	Town of South Prairie, Unincorporated Areas of Pierce County.
	Approximately 2,000 feet upstream of State Route 162.	+452	+449	
Spanaway Creek	Approximately 55 feet upstream of Spanaway Loop Road South.	+287	+286	Unincorporated Areas of Pierce County.
	Approximately 355 feet upstream of Military Road South.	+323	+325	
Swan Creek	At the upstream side of Pioneer Way East	None	+22	City of Tacoma, Unincorporated Areas of Pierce County.
	At the upstream side of 112th Street East	None	+419	
Wapato Creek I	Approximately 125 feet upstream of Marshall Avenue	None	+12	City of Edgewood, City of Fife, City of Puyallup, City of Tacoma, Unincorporated Areas of Pierce County.
	Approximately 120 feet upstream of 7th Street Northwest.	None	+40	
Wapato Creek II	Approximately 500 feet north of Valley Avenue Northeast and approximately 670 feet east of North Meridian Avenue.	None	+49	City of Edgewood, City of Puyallup, Unincorporated Areas of Pierce County.
	Approximately 1,825 feet upstream of 114th Avenue Court East.	+53	+56	
West Fork Canyon Creek	At the Canyon Creek confluence	None	+387	Unincorporated Areas of Pierce County.
	Approximately 400 feet upstream of 116th Street East	None	+464	
White River	Approximately 380 feet downstream of State Route 410.	+47	+51	City of Puyallup, City of Sumner, Unincorporated Areas of Pierce County.
	Approximately 0.4 mile upstream of 8th Street East	None	+74	
Woodland Creek	At the Clarks Creek confluence	None	+30	Unincorporated Areas of Pierce County.
	At the downstream side of 106th Street East	None	+411	
Woodland Creek (80th Street East overflow).	At the Woodland Creek confluence	None	+35	Unincorporated Areas of Pierce County.
	At the upstream side of 80th Street East	None	+96	
Woodland Creek (96th Street East overflow).	At the Woodland Creek divergence	None	+305	Unincorporated Areas of Pierce County.
	At the downstream side of the Woodland Creek confluence.	None	+346	

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

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

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Bonney Lake
Maps are available for inspection at the City Hall Annex, 8720 Main Street East, Bonney Lake, WA 98391.

City of Edgewood
Maps are available for inspection at City Hall, 2224 104th Avenue East, Edgewood, WA 98372.

City of Fife
Maps are available for inspection at City Hall, 5411 23rd Street East, Fife, WA 98424.

City of Gig Harbor
Maps are available for inspection at City Hall, Building Department, 3510 Grandview Street, Gig Harbor, WA 98335.

City of Lakewood
Maps are available for inspection at City Hall, Public Works Department, 6000 Main Street Southwest, Lakewood, WA 98499.

City of Orting
Maps are available for inspection at City Hall, 110 Train Street Southeast, Orting, WA 98360.

City of Puyallup
Maps are available for inspection at City Hall, Development Services Department, 333 South Meridian, Puyallup, WA 98371.

City of Roy
Maps are available for inspection at City Hall, 216 McNaught Street South, Roy, WA 98580.

City of Sumner
Maps are available for inspection at City Hall, Community Development Department, 1104 Maple Street, Sumner, WA 98390.

City of Tacoma
Maps are available for inspection at City Hall, Building and Land Use Department, 747 Market Street, Tacoma, WA 98402.

Town of Eatonville
Maps are available for inspection at the Town Hall, 201 Center Street West, Eatonville, WA 98328.

Town of South Prairie
Maps are available for inspection at City Hall, 121 Northwest Washington Street, South Prairie, WA 98385.

Unincorporated Areas of Pierce County

Maps are available for inspection at the Pierce County Surface Water Management Division, Tacoma Mall Plaza, 2702 South 42nd Street, Suite 201, Tacoma, WA 98409.

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

Dated: April 2, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–8870 Filed 4–13–12; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register
Vol. 77, No. 73
Monday, April 16, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0009]

Notice of Availability of a Pest Risk Analysis for the Importation of Strawberry Fruit From Egypt Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of fresh strawberry fruit from Egypt. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh strawberry fruit from Egypt. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 15, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2012–0009–0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0009, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2012–0009* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Charisse Cleare, Project Coordinator, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1231; (301) 851–2037.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the Government of Egypt to allow the importation of fresh strawberry (*Fragaria* spp.) fruit with calyx and short stalk from Egypt into the continental United States. Currently, fresh strawberry fruit is not authorized for entry from Egypt. We have completed a pest risk analysis for the purpose of evaluating the pest risks associated with the importation of fresh strawberry fruit into the continental United States. The analysis consists of a pest list identifying pests of quarantine significance that are present in Egypt and could follow the pathway of importation into the United States and a risk management document identifying phytosanitary measures that could be applied to the commodities to mitigate the pest risk.

We have concluded that fresh strawberry fruit can be safely imported into the continental United States from Egypt using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). The requirements for shipments of fresh strawberry fruit from Egypt would be as follows:

- The fresh strawberry fruit may be imported into the continental United States in commercial consignments only;
- Each consignment of fresh strawberry fruit must be inspected by the national plant protection organization of Egypt and accompanied by a phytosanitary certificate that includes an additional declaration stating that the consignment was inspected and found free of *Chrysodeixis chalcites, Eutetranychus orientalis,* and *Spodoptera littoralis;* and
- The fresh strawberry fruit is subject to inspection upon arrival at the U.S. port of entry.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh strawberry fruit from Egypt in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh strawberry fruit from Egypt into the continental United States subject to the requirements specified in the risk management document.

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

Done in Washington, DC, this 9th day of April 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–9062 Filed 4–13–12; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Arkansas Advisory Committee to the Commission will convene on Wednesday, May 30, 2012 at 2 p.m. and adjourn at approximately 5 p.m. (CST). The meeting will convene at Mitchell & Williams Law Firm, 425 West Capitol Avenue, Suite 1800, Little Rock, Arkansas 72201. The purpose of this meeting is to collect preliminary background information and continue planning civil rights project.

This meeting is available to the public or through the following toll-free call-in number: (866) 364–7584, conference call access code number 70873279. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on May 24, 2012.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by July 01, 2012. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be emailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Central Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, April 11, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–9024 Filed 4–13–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2012]

Foreign-Trade Zone 155—Calhoun and Victoria Counties, TX; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Calhoun-Victoria Foreign Trade Zone, Inc., grantee of FTZ 155, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 01/12/09 (correction 74 FR 3987, 01/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to 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 April 9, 2012.

FTZ 155 was approved by the Board on October 24, 1988 (Board Order 398, 55 FR 44510, 11/3/88), and expanded on June 18, 2008 (Board Order 1565, 73 FR 36038–36039, 6/25/08). The current zone project includes the following sites: *Site 1* (97 acres)—Calhoun County Navigation District's marine terminal, 2313 FM 1593 South, Point Comfort; *Site 2* (494.3 acres)—Alcoa World Alumina, Highway 35, Point Comfort; *Site 3* (120 acres)—West Calhoun Navigation District, Highway 185, Long Mott; *Site 4* (135 acres)—Victoria Regional Airport, Business Highway 59, Victoria; *Site 5* (29 acres)—CMC Safety Steel Service, 255 Skytop Road, Victoria; *Site 6* (359 acres)—Victoria Navigation District, 1934 FM 1432, Victoria; and, *Site 7* (11.46 acres)—Tres Palacios, Farm Road 1468, Markham.

The grantee's proposed service area under the ASF would be Calhoun, Victoria and Matagorda Counties, Texas. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within the Port Lavaca-Point Comfort Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its zone project to include existing Sites 1, 3, 4, 5 and 6 as ''magnet'' sites and Sites 2 and 7 as ''usage-driven'' sites. No new magnet or usage-driven sites are being requested at this time. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 155's authorized subzone.

In accordance with the Board's regulations, Camille Evans 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 15, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 2, 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 Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: April 9, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–9057 Filed 4–13–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Chemical Weapons Convention Provisions of the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 15, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC prohibits the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons. This collection implements the following provision of the treaty:

Schedule 1 notification and report: Under Part VI of the CWC Verification Annex, the United States is required to notify the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to implement the CWC, at least 30 days before any transfer (export/import) of Schedule 1 chemicals to another State Party. The United States is also required to submit annual reports to the OPCW on all transfers of Schedule 1 Chemicals.

End-Use Certificates: Under Part VIII of the CWC Verification Annex, the United States is required to obtain End-Use Certificates for transfers of Schedule 3 chemicals to Non-States Parties to ensure the transferred chemicals are only used for the purposes not prohibited under the Convention.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0117.

Form Number(s): Not applicable.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 33.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 17.

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 become a matter of public record.

Dated: April 11, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–9044 Filed 4–13–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–941]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Extension of Time Limit for the Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, 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) 482–7906.

Background

On October 30, 2011, the Department of Commerce (''Department'') published the notice of initiation of an administrative review of the antidumping duty order on certain kitchen appliance shelving and racks from the People's Republic of China (''PRC''), covering the period September 1, 2010, through August 31, 2011.[1] On November 17, 2011, after receiving U.S. Customs and Border Protection (''CBP'') data, the Department selected a mandatory respondent and issued its antidumping questionnaire. Additionally, on December 21, 2011, after receiving comments and rebuttal comments from Petitioners,[2] New King Shan (Zhu Hai) Co., Ltd. and Guangdong Wireking Housewares and Hardware Co., Ltd., the Department selected an additional mandatory respondent.[3] The preliminary results of this administrative review are currently due on June 1, 2012.

Extension of Time Limits for the Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and to issue final results 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 results to a maximum of 365 days after the last day of the anniversary month.

The Department determines that completion of the preliminary results of this review within the statutory time

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 67133 (October 31, 2011).

[2] Nashville Wire Products Inc. and SSW Holding Company, Inc. (collectively, ''Petitioners'').

[3] *See* Memorandum to The File, from Katie Marksberry, International Trade Analyst, through James C. Doyle, Director, Office 9, Re: Antidumping Duty Review of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Selection of an Additional Mandatory Respondent (December 21, 2011).

period is not practicable. The Department requires more time to gather and analyze surrogate country and value information, review questionnaire responses, and issue supplemental questionnaires. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days until September 29, 2012.[4] The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i) of the Act and 19 CFR 351.213(h)(2).

Dated: April 9, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–9080 Filed 4–13–12; 8:45 am]

BILLING CODE 3510–DS–P

[4] September 29, 2012, is a Saturday. Department practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005). Accordingly, the Department will issue the preliminary results on October 1, 2012.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–937]

Citric Acid and Certain Citrate Salts From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Maisha Cryor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2011, the Department of Commerce (''the Department'') published the initiation of the administrative review of the antidumping duty order on citric acid and certain citrate salts (''citric acid'') from the People's Republic of China (''PRC'').[1] On January 10, 2012, the Department published the extension of time limit for the preliminary results of the administrative review.[2] This review covers the period May 1, 2010, through April 30, 2011. The preliminary results of review are currently due no later than April 30, 2012.

Extension of Time Limit for Preliminary Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of citric acid from the PRC within this time limit. Specifically, additional time is needed to evaluate relevant evidence and parties' comments regarding the selection of appropriate surrogate values with which to value the factors of production. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time period for completion of the preliminary results of this review by an additional 30 days. The preliminary results will now be due no later than May 30, 2012.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 9, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–9054 Filed 4–13–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781, 37785 (June 28, 2011).

[2] *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 77 FR 1455 (January 10, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Lightweight Thermal Paper From Germany: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2011, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on lightweight thermal paper (thermal paper) from Germany for the period of review (POR) November 1, 2010, through October 31, 2011.[1]

On November 30, 2011, the Department received a timely request filed on behalf of Appleton Papers Inc. (petitioner) to conduct an administrative review of Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH, and Mitsubishi International Corp. (collectively, Mitsubishi), and Papierfabrik August Koehler AG and Koehler America, Inc. (Koehler). On November 30, 2011, the Department also received a request filed on behalf of Mitsubishi HiTec Paper Europe GmbH to conduct an administrative review of Mitsubishi HiTec Paper Europe GmbH[2] and a request filed on behalf of Koehler to conduct an administrative review of Koehler.

Pursuant to the aforementioned requests, the Department published in the **Federal Register** a notice of

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 67413 (November 1, 2011).

[2] Mitsubishi stated in its review request letter, dated November 30, 2011, ''{a}s of October 15, 2010, and for purposes of streamlining in-house processes and organizational structure, Mitsubishi HiTec Paper Flensburg GmbH, and Mitsubishi HiTec Paper Bielefeld GmbH have merged and now operate as Mitsubishi HiTec Paper Europe GmbH.''

initiation of an administrative review of the antidumping duty order on thermal paper from Germany, covering two respondents, Mitsubishi and Koehler.[3]

Partial Rescission of the 2010–2011 Administrative Review

On March 29, 2011, petitioner and Mitsubishi withdrew their respective requests for review of Mitsubishi. Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The instant review was initiated on December 30, 2011. *See Notice of Initiation.* The petitioner and Mitsubishi's withdrawals of their respective requests for a review of Mitsubishi fall within the 90-day deadline for rescission by the Department, and no other party requested an administrative review of this particular respondent. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this review with respect to Mitsubishi.[4] The instant review will continue with respect to Koehler.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). 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 sanctionable violation.

We have been enjoined from liquidating entries of the subject merchandise produced and/or exported by Mitsubishi. Therefore, we do not intend to issue liquidation instructions to U.S. Customs and Border Protection (CBP) for such entries entered on or after November 1, 2009, until such time as the preliminary injunction issued on March 17, 2009, is lifted.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 5, 2012.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–9059 Filed 4–13–12; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 82268 (December 30, 2011) (*Notice of Initiation*).

[4] *See, e.g., Certain Lined Paper Products From India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 21781 (May 11, 2009).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Correction to Notice of Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Shane Subler and Hermes Pinilla, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0189 and (202) 482–3477, respectively.

SUMMARY: On March 27, 2012, the Department of Commerce (''Department'') published the notice *Drawn Stainless Steel Sinks from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 77 FR 18211 (March 27, 2012) (''*Initiation Notice''*). In the ''Scope of Investigation'' section of the *Initiation Notice,* the Department omitted a word and used an incomplete Harmonized Tariff Schedule of the United States (''HTSUS'') number.

SUPPLEMENTARY INFORMATION: On March 1, 2012, the Department of Commerce (''Department'') received a countervailing duty (''CVD'') petition concerning imports of drawn stainless steel sinks from the People's Republic of China (''PRC'') filed in proper form by Elkay Manufacturing Company. *See* Petition for the Imposition of Antidumping and Countervailing Duties Against Drawn Stainless Steel Sinks from the People's Republic of China, dated March 1, 2012. On March 27, 2012, the Department published the *Initiation Notice* for the investigation.

The first paragraph of the ''Scope of Investigation'' section of the *Initiation Notice* stated the following: ''Stainless steel sinks with multiple bowls that are joined through a welding operation to form one unit are covered by the scope of the investigation.'' *See Initiation Notice,* 77 FR at 18212. The Department inadvertently omitted the word ''drawn'' from this sentence, as follows: ''Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the investigation.''

Furthermore, the last sentence of the ''Scope of Investigation'' section stated the following: ''The products covered by the investigation are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.000.'' The Department inadvertently omitted a zero from the end of this HTSUS number. The correct HTSUS number is 7324.10.0000.

Correction

The ''Scope of Investigation'' section below incorporates these two corrections and represents the correct scope of the investigation.[1]

Scope of Investigation

The products covered by the scope of this investigation are stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel (''Drawn Stainless Steel Sinks''). Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this investigation if they are included within the sales price of the Drawn Stainless Steel Sinks.[2] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth,

[1] The Department's initiation checklist for the investigation contained the correct scope. *See* Countervailing Duty Investigation Initiation Checklist, Drawn Stainless Steel Sinks from the People's Republic of China (March 21, 2012), at Attachment I.

[2] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this investigation if they are not included within the sales price of the Drawn Stainless Steel Sinks, regardless of whether they are shipped with or entered with Drawn Stainless Steel Sinks.

and rounded corners. Drawn Stainless Steel Sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the investigation. Drawn Stainless Steel Sinks are covered by the scope of the investigation whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the investigation are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as ''zero radius'' or ''near zero radius'' sinks.

The products covered by this investigation are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the products under investigation is dispositive of its inclusion as subject merchandise.

This notice is issued and published pursuant to section 777(i) of the Tariff Act of 1930, as amended.

Dated: April 6, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–9049 Filed 4–13–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–875]

Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 16, 2012.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), Ford Motor Company (Ford) filed a request for a changed circumstances review of the antidumping duty (AD) order on non-malleable cast iron pipe fittings from the People's Republic of China (PRC) so that the order can be revoked with respect to a particular brake fluid tube connector (connector). The domestic industry has affirmatively expressed a lack of interest in the continuation of the order with respect to this product. In response to the request, the Department is initiating a changed circumstances review and issuing a notice of preliminary intent to revoke, in part, this order. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–4114 and (202) 482–3434, respectively.

Background

On April 7, 2003, the Department published an AD order on non-malleable cast iron pipe fittings from the PRC.[1] On March 6, 2012, Ford requested revocation in part of the AD order pursuant to sections 751(b)(1) and 782(h) of the Act, with respect to Ford's connector. The connector is a ''joint block'' for brake fluid tubes and is made of non-malleable cast iron to Society of Automotive Engineers (SEA) automotive standard J431. The tubes have an inside diameter of 3.44 millimeters (0.1355 inches) and the inside diameters of the fluid flow channels of the connector are 3.2 millimeters (0.1260 inches) and 3.8 millimeters (0.1496 inches). The end of the tube is forced by pressure over the end of a flared opening in the connector also known as ''flared joint.'' The flared joint, once made fast, permits brake fluid to flow through channels that never exceed 3.8 millimeters (0.1496 inches) in diameter.

Scope of the Order

The products covered by the order are finished and unfinished non-malleable cast iron pipe fittings with an inside diameter ranging from ¼ inch to 6 inches, whether threaded or unthreaded, regardless of industry or proprietary specifications. The subject fittings include elbows, ells, tees, crosses, and reducers as well as flanged fittings. These pipe fittings are also known as ''cast iron pipe fittings'' or ''gray iron pipe fittings.'' These cast iron pipe fittings are normally produced to ASTM A–126 and ASME B.16.4 specifications and are threaded to ASME B1.20.1 specifications. Most building codes require that these products are Underwriters Laboratories (UL) certified. The scope does not include cast iron soil pipe fittings or grooved fittings or grooved couplings.

Fittings that are made out of ductile iron that have the same physical characteristics as the gray or cast iron fittings subject to the scope above or which have the same physical characteristics and are produced to ASME B.16.3, ASME B.16.4, or ASTM A–395 specifications, threaded to ASME B1.20.1 specifications and UL certified, regardless of metallurgical differences between gray and ductile iron, are also included in the scope of the order. These ductile fittings do not include grooved fittings or grooved couplings. Ductile cast iron fittings with mechanical joint ends (MJ), or push on ends (PO), or flanged ends and produced to the American Water Works Association (AWWA) specifications AWWA C110 or AWWA C153 are not included.

Imports of subject merchandise are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7307.11.00.30, 7307.11.00.60, 7307.19.30.60, 7307.19.30.85. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.[2]

Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

At the request of Ford, and in accordance with sections 751(d)(1) and 751(b)(1) of the Act and 19 CFR 351.216, the Department is initiating a changed circumstances review of non-malleable cast iron pipe fittings from the PRC to determine whether partial revocation of

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[1] *See Notice of Antidumping Duty Order: Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China,* 68 FR 16765 (April 7, 2003).

[2] On April 21, 2009, in consultation with the U.S. Customs and Border Protection (CBP), the Department added the following HTSUS classification to the AD/CVD module for pipe fittings: 7326.90.8588. *See* Memorandum from Abdelali Elouaradia, Office Director, Import Administration, Office 4 to Stephen Claeys, Deputy Assistant Secretary, Import Administration regarding the Final Scope Ruling on Black Cast Iron Cast, Green Ductile Flange and Twin Tee, antidumping duty order on non-malleable iron cast pipe fittings from the PRC, dated September 19, 2008. *See also* Memorandum to the file from Karine Gziryan, Financial Analyst, Office 4, regarding Module Update adding HTSUS number for twin tin fitting included in the scope of antidumping order on non-malleable iron cast pipe fittings from the PRC, dated April 22, 2009.

the AD order is warranted with respect to the connector, as described above. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

On February 28, 2012, Anvil International and Ward Manufacturing, petitioners in the original investigation, submitted a statement indicating that they account for approximately 95 percent of the domestic production of the like product. Further, Petitioners stated that they have no interest in producing the auto part described in the Ford's changed circumstances request and agree to the exclusion of the above-described connector from the scope of the AD duty order.[3]

In accordance with section 751(b) of the Act, and 19 CFR 351.222(g)(l)(i) and 351.221(c)(3), we are initiating this changed circumstances review and have determined that expedited action is warranted. In accordance with 19 CFR 351.222(g), we find that Petitioners' affirmative statement of no interest constitutes good cause for the conduct of this review. Additionally, our decision to expedite this review stems from the domestic industry's lack of interest in applying the AD order to the connector, described above, and covered by this request.

Based on the expression of no interest by Petitioners and absent any objection by other domestic interested parties, we preliminarily determine that substantially all of the domestic producers of the like product have no interest in the continued application of the AD order on non-malleable cast iron pipe fittings from the PRC to the merchandise that is subject to this request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of the connector, as described above, from the PRC. We intend to modify the scope of the AD order to read as follows:

Specifically excluded from the scope of the order is a certain brake fluid tube connector. The brake fluid tube connector is a ''joint block'' for brake fluid tubes and is made of non-malleable cast iron to SEA automotive standard J431. The inside diameters of the fluid flow channels of the connector are 3.2 millimeters (0.1260 inches) and 3.8 millimeters (0.1496 inches).

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results.[4]

If final revocation occurs, we will instruct CBP to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond.[5] The current requirement for a cash deposit of estimated AD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation and preliminary results of review and notice are in accordance with section 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: April 10, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–9079 Filed 4–13–12; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Petitioners' submission dated February 28, 2012.

[4] *See* 19 CFR 351.216(e).

[5] *See* 19 CFR 351.222(g)(4).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB159

Marine Mammals; File No. 17217

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Saint Louis Zoo, 1 Government Drive, St. Louis, MO 63110, has applied in due form for a permit to import four harbor seals (*Phoca vitulina*) for the purposes of public display.

DATES: Written, telefaxed, or email comments must be received on or before May 16, 2012.

ADDRESSES: The application and related documents are available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. 17217 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests authorization to import four female harbor seals from the Storybrook Gardens, 1958 Storybrook Lane, London, Ontario, N6K 4Y6, Canada for purposes of public display at the St. Louis Zoo. The receiving facility: (1) Is open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee; (2) offers an educational program based on professionally recognized standards; and (3) holds an Exhibitor's License, number 43–C–0032, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. 2131—59). The import would occur upon receipt of the permit and the permit would expire one year after the date of issuance.

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine

whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 11, 2012.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–9088 Filed 4–13–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

The following notice of a scheduled meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIMES AND DATES: The Commission has scheduled a meeting for the following date: April 18, 2012 at 9:30 a.m.

PLACE: Three Lafayette Center, 1155 21st St. NW., Washington, DC, Lobby Level Hearing Room (Room 1300).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled this meeting to consider various rulemaking matters, including the issuance of proposed rules and the approval of final rules. The Commission may also consider and vote on dates and times for future meetings. The agenda for this meeting will be made available to the public and posted on the Commission's Web site at *http://www.cftc.gov* at least seven (7) days prior to the meeting. In the event that the time or date of the meeting changes, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, Secretary of the Commission, 202–418–5071.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–9166 Filed 4–12–12; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0019]

Proposed Collection; Comment Request; Safety Standards for Full-Size Baby Cribs and Non-Full-Size Baby Cribs; Compliance Form

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (''CPSC'' or ''Commission'') requests comments on a proposed collection of information regarding a form that will be used to measure child care centers' compliance with the recent CPSC safety standards for full-size and non-full-size cribs. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 15, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012-0019, by any of the following methods:

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.*

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, 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 docket number for this notice. 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.* A copy of the draft compliance form is available at *http://regulations.gov* under Docket No. CPSC–2012–0019, Supporting and Related Materials.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Patrick Weddle, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7654 or by email to *pweddle@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'') requires the CPSC to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be substantially the same as applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

On December 28, 2010, we issued a final rule establishing safety standards for full-size and non-full-size baby cribs in response to the direction under section 104(b) of the CPSIA (75 FR 81766). Section 104(c) of the CPSIA specifies that the crib standards will cover used, as well as new cribs. The crib standards apply to anyone who manufactures, distributes, or contracts to sell a crib; to child care facilities, and others holding themselves out to be knowledgeable about cribs; to anyone who leases, sublets, or otherwise places a crib in the stream of commerce; and to owners and operators of places of public accommodation affecting commerce. The standards require manufacturers and importers of these products to maintain sales records for a period of six years after the manufacture or importation of the cribs and also

contain requirements for marking and instructional literature.

CPSC staff intends to visit child care centers to measure compliance with the crib safety standards. Information from those visits would be recorded on a ''Verification of Compliance Form.'' CPSC investigators or designated state or local government officials will use the form, which will be filled out entirely at the site during the normal course of the visit. The Commission intends to use the information to measure compliance with the crib safety standards and to develop an enforcement strategy.

We intend to begin with a pilot program in 2012, that would involve conducting visits to approximately 70 child care centers in seven states. Depending on the results of the pilot program, we would expand the program in 2013, although expansion of the program's size would depend upon the availability of CPSC resources.

B. Estimated Burden

CPSC staff estimates that there may be approximately 70 inspections during the pilot program in 2012. Because the investigators will be talking to the child care facility staff at the time of the inspection and asking questions to help complete the form, CPSC staff estimates that the burden hours for child care facility staff to respond to the questions will be approximately a quarter of an hour per inspection. Thus, the estimated total annual burden hours for respondents are approximately 17.5 hours (70 inspections × a quarter of an hour per inspection). CPSC staff estimates that the annualized cost to all respondents is approximately $383.43 based on an hourly wage of $21.91 per hour ($21.91 × 17.5). (Bureau of Labor Statistics (''BLS''), total compensation for all workers, sales and office for service-producing industries, Employer Costs for Employee Compensation Table 9, September 2011).

CPSC staff estimates that it will take an average of a quarter of an hour to review the information collected. The annual cost to the federal government of the collection of information in these regulations is estimated to be $704.26. This is based on an average wage rate of $28.13 (the equivalent of a GS–9 Step 5 employee). This represents 69.9 percent of total compensation (Bureau of Labor Statistics, September 2011, percentage wages and salaries for all civilian management, professional, and related employees, Table 1). Adding an additional 30.1 percent for benefits brings the average hourly compensation for a GS–9 Step 5 employee to $40.24. Thus, 35 hours for conducting and reviewing (17.5 hours plus 17.5 hours) the information multiplied against an hourly compensation figure of $40.24 results in an estimated cost to the government of $1,408.40.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Dated: April 10, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–9039 Filed 4–13–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Council on Dependents' Education; Open Meeting Notice; Correction

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Open meeting notice; correction.

SUMMARY: On February 28, 2012 (77 FR 12039), the Advisory Council on Dependents' Education gave notice of a meeting to be held Friday, April 20, 2012, in Vicenza, Italy, from 12 p.m. to 4 p.m., Central European Summer Time (CEST); and in Arlington, Virginia (via Video Teleconference), from 6 a.m. to 10 a.m., Eastern Daylight Time (EDT). Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the meeting times have been changed. All other information in the notice remains the same.

DATES: The new meeting times are: Friday, April 20, 2012, Vicenza, Italy, from 2 p.m. to 6 p.m., Central European Summer Time (CEST); Arlington, Virginia (via Video Teleconference), from 8 a.m. to 12 p.m., Eastern Daylight Time (EDT).

ADDRESSES: Caserma Ederle, Vicenza, Italy 36100; 4040 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Joel K. Hansen at (703) 588–3166 or *Joel.Hansen@hq.dodea.edu.*

Dated: April 11, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–9068 Filed 4–13–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of Postsecondary Education; Application for the Fulbright-Hays Seminars Abroad Program

SUMMARY: This application package will be used by applicants to the Fulbright-Hays Seminars Abroad Program, which provides opportunities for U.S. educators to participate in short-term study seminars abroad in the social sciences, social studies and humanities.

DATES: Interested persons are invited to submit comments on or before May 16, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04821. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for the Fulbright-Hays Seminars Abroad Program.

OMB Control Number: 1840–0501.

Type of Review: Extension .

Total Estimated Number of Annual Responses: 400.

Total Estimated Number of Annual Burden Hours: 7,200.

Abstract: The purpose of the program is for educators to obtain knowledge and disseminate that knowledge through a curriculum development project. The application is necessary in order for the Department to award funds under this program. Information submitted by applicants is used to evaluate potential program participants. Applicants are individual educators at the elementary, secondary and postsecondary levels.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: April 10, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–9002 Filed 4–13–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. 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: Thursday, May 3, 2012, 6 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.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.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of April Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinators' Comments
- Liaisons' Comments
- Presentations:
  - o Information Portfolio, Karen Price, Fluor-B&W
  - o Fluor-B&W Community Commitment Plan Update, Jerry Schneider, Fluor-B&W
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments From the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne 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 Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on April 11, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–9037 Filed 4–13–12; 8:45 am]

BILLING CODE 6450–01–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: ER10–2994–005.

Applicants: Iberdrola Renewables, Inc.

Description: Iberdrola Renewables, Inc. submits tariff filing per 35: Notice of Succession to be effective 4/6/2012.

Filed Date: 4/5/12.

Accession Number: 20120405–5173.

Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER10–3300–001 ; ER10–3099–002; ER12–1436–001; ER12–1260–001.

Applicants: Stephentown Spindle, LLC, RC Cape May Holdings, LLC, Eagle Point Power Generation, La Paloma Generating Company, LLC.

Description: Market-Based Rate Notice of Change in Status of La Paloma Generating Company, LLC, et al.

Filed Date: 4/5/12.

Accession Number: 20120405–5190.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER11–3949–004.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35: NYISO Compliance filing—Verification of MP Risk Mgmt Policies and Procedures to be effective 6/30/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5146.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–30–000.
Applicants: BlueStar Energy Services Inc.
Description: BlueStar Energy Services Inc. submits tariff filing per: Change in Status to be effective N/A.
Filed Date: 4/5/12.
Accession Number: 20120405–5176.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–1223–001.
Applicants: Wildcat Wind, LLC.
Description: Supplement to Application for Market-Based Rate Authorization to be effective 5/1/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5136.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–1450–000.
Applicants: Union Electric Company.
Description: Union Electric Company submits Notice of Cancellation of Wholesale Distribution Agreement with Owensville, Missouri.
Filed Date: 4/5/12.
Accession Number: 20120405–5131.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–1451–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii: Brazos NITSA NOA Filing to be effective 6/1/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5144.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–1452–000.
Applicants: Bangor Hydro Electric Company.
Description: Bangor Hydro Electric Company submits tariff filing per 35.13(a)(2)(iii: Filing of an Amended Interconnection Agreement to be effective 4/4/2012.
Filed Date: 4/5/12.
Accession Number: 20120405–5145.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ER12–1453–000.
Applicants: ISO New England Inc., Fitchburg Gas and Electric Light Company.
Description: FG&E Request for Updated Depreciation Rates to be effective 6/1/2012.
Filed Date: 4/6/12.
Accession Number: 20120406–5055.
Comments Due: 5 p.m. ET 4/27/12.

Docket Numbers: ER12–1454–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3265; Queue No. X1–042 to be effective 3/2/2012.
Filed Date: 4/6/12.
Accession Number: 20120406–5071.
Comments Due: 5 p.m. ET 4/27/12.

Docket Numbers: ER12–1455–000.
Applicants: ISO New England Inc.
Description: Revisions to FCM Rules Related to Inf. Publication to be effective 6/5/2012.
Filed Date: 4/6/12.
Accession Number: 20120406–5072.
Comments Due: 5 p.m. ET 4/27/12.

Docket Numbers: ER12–1456–000.
Applicants: Black Hills Power, Inc.
Description: BH Power, Inc., JOATT Replacement Sections to be effective 8/1/2011.
Filed Date: 4/6/12.
Accession Number: 20120406–5089.
Comments Due: 5 p.m. ET 4/27/12.

Docket Numbers: ER12–1457–000.
Applicants: Southern California Edison Company.
Description: Unexecuted GIA and Service Agreement with San Gorgonio Farms, Inc. to be effective 3/23/2012.
Filed Date: 4/6/12.
Accession Number: 20120406–5097.
Comments Due: 5 p.m. ET 4/27/12.

Docket Numbers: ER12–1458–000.
Applicants: Southern California Edison Company.
Description: Amended SGIA WDAT SCE–CSDLAC for Puente Hills Project to be effective 4/7/2012.
Filed Date: 4/6/12.
Accession Number: 20120406–5107.
Comments Due: 5 p.m. ET 4/27/12.

Docket Numbers: ER12–1459–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 04–06–2012 Attachment L Revisions to be effective 5/7/2012.
Filed Date: 4/6/12.
Accession Number: 20120406–5124.
Comments Due: 5 p.m. ET 4/27/12.

Docket Numbers: ER12–1460–000.
Applicants: Southwest Power Pool, Inc.
Description: 2404 Oklahoma Gas and Electric Company Interconnection Agreement to be effective 6/1/2012.
Filed Date: 4/6/12.
Accession Number: 20120406–5129.
Comments Due: 5 p.m. ET 4/27/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–30–000.
Applicants: Citizens Sunrise Transmission LLC.
Description: Application for Authorization of Issuance of Long-Term Debt Securities under FPA Section 204 and Request for Expedited Consideration of Citizens Sunrise Transmission LLC.
Filed Date: 4/5/12.
Accession Number: 20120405–5188.
Comments Due: 5 p.m. ET 4/26/12.

Docket Numbers: ES12–31–000.
Applicants: American Transmission Company LLC, ATC Management Inc.
Description: Application under Section 204 of The Federal Power Act for Authorization to Issue Securities of American Transmission Company LLC.
Filed Date: 4/6/12.
Accession Number: 20120406–5082.
Comments Due: 5 p.m. ET 4/27/12.

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: April 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9023 Filed 4–13–12; 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 electric rate filings:

Docket Numbers: ER12–677–001.
Applicants: ITC Midwest LLC.
Description: Compliance Filing—ITC Midwest, Storm Lake, and IPL Joint Use Agreement to be effective 2/21/2012.
Filed Date: 4/9/12.
Accession Number: 20120409–5070.
Comments Due: 5 p.m. ET 4/30/12.

Docket Numbers: ER12–1417–001.

Applicants: San Diego Gas & Electric Company.

Description: Errata to SDGE Formula Appendix X to be effective 6/1/2012.

Filed Date: 4/9/12.

Accession Number: 20120409–5092.

Comments Due: 5 p.m. ET 4/30/12.

Docket Numbers: ER12–1461–000.

Applicants: Florida Power Corporation.

Description: Rate Schedule No. 200 of Florida Power Corporation to be effective 4/9/2012.

Filed Date: 4/9/12.

Accession Number: 20120409–5066.

Comments Due: 5 p.m. ET 4/30/12.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–53–008.

Applicants: Carolina Power & Light Company, Florida Power Corporation.

Description: Annual Penalty Revenues Refund Report of Florida Power Corporation et al.

Filed Date: 4/9/12.

Accession Number: 20120409–5051.

Comments Due: 5 p.m. ET 4/30/12.

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: April 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9022 Filed 4–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2558–000]

Central Vermont Public Service Corporation; Notice of Authorization for Continued Project Operation

On August 1, 2011, the Central Vermont Public Service Corporation, licensee for the Otter Creek Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Otter Creek Hydroelectric Project is located on Otter Creek in Addison and Rutland counties, Vermont.

The license for Project No. 2558 was issued for a period ending March 31, 2012. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2558 is issued to the Central Vermont Public Service Corporation for a period effective April 1, 2012 through March 31, 2013, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 2013, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that the Central Vermont Public Service Corporation is authorized to continue operation of the Otter Creek Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: April 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9016 Filed 4–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2615–000]

Madison Paper Industries, FPL Energy Maine Hydro, LLC, Merimil Limited Partnership; Notice of Authorization for Continued Project Operation

On March 29, 2007, the Madison Paper Industries, FPL Energy Maine Hydro, LLC, and Merimil Limited Partnership, licensees for the Brassua Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Brassua Hydroelectric Project is located on the Moose River in Somerset County, Maine.

The license for Project No. 2615 was issued for a period ending March 31, 2012. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2615 is issued to the Madison Paper Industries, FPL Energy Maine Hydro, LLC, and Merimil Limited Partnership for a period effective April 1, 2012 through March 31, 2013, or until the

issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 2013, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that the Madison Paper Industries, FPL Energy Maine Hydro, LLC, and Merimil Limited Partnership are authorized to continue operation of the Brassua Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: April 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9015 Filed 4–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–20–000]

NorthWestern Corporation; Notice of Petition for Rate Approval

Take notice that on April 2, 2012, NorthWestern Corporation (NorthWestern) filed a Rate Election pursuant to 284.123(b)(1) of the Commissions regulations and to revise its Statement of Operating Conditions. NorthWestern proposes to utilize rates that are the same as those contained in NorthWestern's transportation rate schedules for comparable intrastate service on file with the South Dakota Public Utilities Commission as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, April 16, 2012.

Dated: April 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9014 Filed 4–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Interconnection of the Grande Prairie Wind Farm, Holt County, NE

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement and conduct scoping meetings; Notice of potential floodplain and wetlands involvement.

SUMMARY: The Western Area Power Administration (Western), an agency of the Department of Energy (DOE), intends to prepare an environmental impact statement (EIS) on the proposed interconnection of the Grande Prairie Wind Farm (Project) in Holt County, near the city of O'Neill, Nebraska. Grande Prairie Wind, LLC (Grande Prairie Wind), a majority-owned subsidiary of Midwest Wind Energy, LLC, has applied to Western to interconnect their proposed wind energy generation project to Western's power transmission system. Western's Federal action would be to execute an interconnection agreement with Grande Prairie Wind and make any necessary modifications to the transmission system to accommodate the interconnection at Grande Prairie Wind's expense. Western is issuing this notice to inform the public and interested parties about Western's intent to prepare an EIS, conduct a public scoping process, and invite the public to comment on the scope, proposed action, alternatives, and other issues to be addressed in the EIS.

Construction activities proposed by Grande Prairie Wind may affect floodplains and wetlands, so this Notice of Intent (NOI) also serves as a notice of proposed floodplain or wetland action in accordance with DOE floodplain and wetland environmental review requirements.

DATES: The public scoping period begins with the publication of this notice and closes on May 16, 2012. To provide the public an opportunity to review the proposal and project information, Western will hold one public meeting in O'Neill, Nebraska. Western will announce the date and location of the public scoping meeting through local news media, and posting on the Western Web site at *http://www.wapa.gov/ugp/Environment/default.htm* at least 15 days prior to the meeting. While comments will be accepted at any time during the EIS process, submission of comments by the end of the scoping comment period will ensure full consideration in the Draft EIS.

ADDRESSES: Written comments on the scope of the EIS should be addressed to Mr. Matt Marsh, Western Area Power Administration, P.O. Box 35800, 2900 4th Avenue, North, Billings, MT 59107, fax (406) 255–2900 or email at *grandeprairie@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Matt Marsh, Western Area Power Administration, P.O. Box 35800, 2900 4th Avenue, North, Billings, MT 59107, telephone (406) 255–2811, or email *grandeprairie@wapa.gov.* For general information on DOE's National Environmental Policy Act (NEPA) review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756, fax (202) 586–7031.

SUPPLEMENTARY INFORMATION: Western, an agency within DOE, markets Federal hydroelectric power to preference customers, as specified by law. These customers include municipalities, cooperatives, irrigation districts, Federal and State agencies, and Native

American tribes. Western's service territory covers 15 western states, including Nebraska. Western owns and operates more than 17,000 miles of high-voltage transmission lines. Western offers capacity to deliver electricity on its transmission system, when such capacity is available, under Western's Open Access Transmission Service Tariff.

Grande Prairie Wind has applied to Western to interconnect their proposed wind energy generation Project to Western's Fort Thompson–Grand Island transmission line. The proposed Project is subject to county and local approvals prior to Project construction.

Grand Prairie Project Description

Grande Prairie Wind proposes to construct and operate a 400-megawatt (MW) wind energy generation facility in Holt County in northern Nebraska. The Project area would occupy approximately 45,000 acres in portions of Willowdale, Antelope, Grattan, Iowa, Scott, and Steel Creek Townships.

Grande Prairie Wind proposes to build up to 266 wind turbines. Permanent disturbance for each wind turbine generator location would be approximately 0.25 acres. Grande Prairie Wind is considering a variety of wind turbine generator types, with capacities ranging from 1.5 to 2.4 MW. Each wind turbine generator would be mounted on a single steel tower between 263 and 329 feet tall and have blade sweep diameter ranging from 271 to 385 feet, depending on the wind turbine generator model selected. Approximate total height at the rotor apex would be between 398 and 521 feet.

Approximately 60 to 80 miles of underground electrical collector cable would be required to carry generated power from each wind turbine generator to a single Project collection substation. The underground collector cables would be buried to a depth that would not interfere with farming operations. The collection substation would occupy about 7 to 15 acres of land. A 6-mile tie-line would be built from the collector substation to a point adjacent to Western's existing Fort Thompson–Grand Island transmission line.

Grande Prairie Wind proposes to build about 45 to 60 miles of new roads and upgrade 30 to 50 miles of existing roads for construction and maintenance access to all turbines and Project facilities. Other Project facilities may include two or more permanent meteorological towers, a SODAR unit, and an operations and maintenance building.

Grande Prairie Wind would site wind turbine generators and supporting infrastructure to optimize wind and land resources in the area while minimizing environmental impacts to the extent practicable. The proposed Project would be located on publicly and privately owned lands consisting of a mix of rural cropland and grazing land. The publicly owned land is owned by the State of Nebraska Board of Education Lands and Funds. Grande Prairie Wind would comply with local zoning requirements, including setbacks from residences, roads, and existing transmission and distribution lines. Grande Prairie Wind proposes to begin construction as early as spring 2014. The life of the Project is anticipated to be a minimum of 20 years.

Western's Federal involvement is related to consideration of the interconnection request, and any resultant impact to the transmission system. However, the EIS will also identify and review the environmental impacts of constructing, operating, maintaining, and decommissioning Grand Prairie Wind's proposed Project. Grand Prairie Wind would be responsible for completing necessary coordination with local agencies to permit its proposed Project.

Proposed Action and Alternatives

Western's proposed Federal action is to execute an interconnection agreement to interconnect the proposed Project to the Federal transmission system at a new substation adjacent to its Fort Thompson–Grand Island 345-kilovolt transmission line. Any modification necessary to accommodate the proposed interconnection with Western's transmission system will be made at Grand Prairie Wind's expense. Western will also consider the no-action alternative in the EIS. Under the no-action alternative, Western would not interconnect the proposed Project. If additional reasonable alternatives are identified during the scoping process, they will be analyzed in the EIS.

Agency Responsibilities

Because interconnection of the proposed Project would incorporate a major new generation resource into Western's power transmission system, Western has determined that an EIS is required under 10 CFR 1021.400(a)(3) and (c), and DOE NEPA implementing procedures (10 CFR part 1021), Appendix D to Subpart D of part 1021, provision D7. Accordingly, Western will prepare an EIS on the interconnection of the proposed Project.[1] Western is the lead Federal agency for preparing the EIS, as defined at 40 CFR 1501.5. Western invites other Federal, State, local, and tribal agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies on the EIS, as defined at 40 CFR 1501.6. Such agencies may also make a request to Western to be a cooperating agency by contacting Mr. Marsh at the address listed above in the **ADDRESSES** section.

Western will consult with affected tribes to jointly evaluate and address the potential effects on cultural resources, traditional cultural properties, or other resources important to the tribes. These consultations will be conducted in accordance with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249), the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments* (59 FR 22951), DOE-specific guidance on tribal interactions, and applicable natural and cultural resources laws and regulations.

Floodplain or Wetland Involvement

Western's proposed action may affect floodplains or wetlands. This notice also serves as notice of proposed floodplain or wetland action, in accordance with 10 CFR part 1022. The EIS will include an assessment of impacts to floodplains and wetlands, and if required, a statement of findings following DOE regulations for compliance with floodplain and wetlands environmental review (10 CFR part 1022).

Environmental Issues

This notice is to inform agencies and the public of Western's intent to prepare an EIS and solicit comments and suggestions for consideration in the EIS. To help the public frame its comments, the following list contains potential environmental issues preliminarily identified for analysis in the EIS:

- Impacts on protected, threatened, endangered, or sensitive species of animals or plants
- Impacts on migratory birds
- Impacts from noxious weeds, invasive, and non-native species
- Impacts on recreation and transportation
- Impacts on land use and farmland
- Impacts on cultural or historic resources and tribal values
- Impacts on human health and safety

[1] On November 16, 2011, DOE's Acting General Counsel delegated to Western's Administrator all EIS authorities.

• Impacts on air, soil, and water resources (including air quality and surface water impacts)
• Visual impacts
• Socio-economic impacts and disproportionately high and adverse impacts to minority and low-income populations

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Western invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

Public Participation

Interested parties are invited to participate in the scoping process to help define the scope of the EIS, significant resources, and issues to be analyzed in depth, and to eliminate from detailed study issues that are not pertinent. The EIS scoping process will involve all interested agencies (Federal, State, county, and local), Native American tribes, public interest groups, businesses, affected landowners, and individual members of the public.

Western will hold one public meeting in O'Neill, Nebraska, and will announce the EIS scoping meeting details through local news media, direct mailings, and by posting on the Western Web site at *http://www.wapa.gov/ugp/Environment/default.htm* at least 15 days prior to the meeting. Attendees will be able to speak directly with Western and Grand Prairie Wind representatives at the EIS scoping meetings about the proposed Project. Attendees are welcome to come and go at their convenience throughout the meeting. If inclement weather should prohibit hosting the scoping meeting, an alternate meeting date and location will be publicized locally. The meeting location is handicapped-accessible. Anyone needing special accommodations should contact Mr. Marsh to make arrangements.

The public is encouraged to provide information and comments on issues it believes Western should address in the EIS. Comments may be broad in nature or restricted to specific areas of concern. After gathering comments on the scope of the EIS, Western will address those issues raised during scoping in the EIS. While comments will be accepted at any time during the EIS process, submission of comments by the end of the scoping comment period will ensure full consideration in the Draft EIS. Comments may be submitted at the public scoping meeting or sent to Western as described under the **ADDRESSES** section above. Comments received outside of the designated comment periods may be addressed in the Draft EIS; otherwise they will be addressed later in the process, such as in the Final EIS, if practicable.

The EIS process will include this NOI, local EIS scoping meeting notifications, a public scoping meeting; consultation and coordination with appropriate Federal, State, county, and local agencies and tribal governments; involvement with affected landowners; distribution of and public review and comment on the Draft EIS; a formal public hearing or hearings on the Draft EIS; distribution of a published Final EIS; and publication of a Record of Decision in the **Federal Register**.

Dated: April 6, 2012.

Timothy J. Meeks,

Administrator.

[FR Doc. 2012–9038 Filed 4–13–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0890; FRL–9515–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; RCRA Expanded Public Participation (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 16, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2011–0890, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by email to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 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 (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Pease, (5303P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–0008; fax number: 703–308–8433; email address: *pease.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 6, 2011 (76 FR 76158), 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–RCRA–2011–0890, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket at 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 RCRA Docket is (202) 566–0270.

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: RCRA Expanded Public Participation (Renewal).

ICR Numbers: EPA ICR No. 1688.07, OMB Control No. 2050–0149.

ICR Status: This ICR is scheduled to expire on April 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: Section 7004(b) of the Resource Conservation and Recovery Act (RCRA) gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under RCRA. In addition, the statute specifies certain public notices (i.e., radio, newspaper, and a letter to relevant agencies) that EPA must provide before issuing any RCRA permit. The statute also establishes a process by which the public can dispute a permit and request a public hearing to discuss it. EPA carries out much of its RCRA public involvement at 40 CFR Parts 124 and 270.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 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: Businesses and other for-profit.

Estimated Number of Respondents: 33.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 3,005 hours.

Estimated Total Annual Cost: $195,914, includes $3,549 annualized capital and O&M costs.

Changes in the Estimates: There is no change in the total estimated burden hours and an increase of $52 in burden cost due to recalculations in capital costs for this renewal.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9071 Filed 4–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[V–W–12–C–994; FRL–9658–8]

Proposed Administrative Cashout Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Tecumseh Heus Superfund Site, Calumet County, WI

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given of a proposed administrative settlement under CERCLA concerning the Tecumseh Heus Superfund Site (''Site'') in Calumet County, Wisconsin. Subject to review and comment by the public pursuant to this notice. The settlement resolves a United States Environmental Protection Agency (EPA) claim under Sections 106, 107(a), and 122 of CERCLA, against two parties who have executed binding certifications of their consent to the settlement, as listed below in the **SUPPLEMENTARY INFORMATION** section. The settlement requires the settling parties to pay a total of $60,000 to the EPA Hazardous Substances Superfund. Each settling party is required to pay an amount specified for that party in the settlement. Payments received shall be applied, retained, or used to finance the response actions taken or to be taken at or in connection with the Site. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region 5, 7th Floor File Room, 77 West Jackson Boulevard, Chicago, Illinois.

DATES: Comments must be submitted on or before May 16, 2012.

ADDRESSES: The proposed settlement is available for public inspection at the EPA, Region 5, 7th Floor File Room, 77 West Jackson Boulevard, Chicago, Illinois. In addition, a copy of the proposed settlement also may be obtained from Nola M. Hicks, Associate Regional Counsel (C–14J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, or by calling (312) 886–7949. Comments should reference the Tecumseh Heus Superfund Site, Calumet County, Wisconsin and EPA Docket No. and should be addressed to Nola M. Hicks, Associate Regional Counsel (C–14J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The parties listed below have executed binding certifications of their consent to participate in the settlement.

Tecumseh Products Company; TecumsehPower Company.

FOR FURTHER INFORMATION CONTACT: Nola M. Hicks, Associate Regional Counsel (C–14J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or call (312) 886–7949.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9604, 9606(a), 9607, and 9622, as amended.

Dated: March 26, 2012.

Sharon Jaffess,

Acting Director, Superfund Division, Region 5.

[FR Doc. 2012–9076 Filed 4–13–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before May 16, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* <*mailto:PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0687.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,268 respondents; 22,500,000 responses.

Estimated Time per Response: 1 second (0.000278 hours) to 15 seconds (0.004167 hours).

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 710 of the Communications Act of 1934, as amended, 47 U.S.C. 610, and Public Law 100–394, the ''Hearing Aid Compatibility Act of 1988,'' 102 Stat. 976, Aug. 16, 1988.

Total Annual Burden: 6,693 hours.

Total Annual Cost: $266,280.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 68.224—Notice of non-hearing aid compatibility. Every non-hearing aid compatible telephone offered for sale to the public on or after August 17, 1989, whether previously registered, newly registered or refurbished shall (a) contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid compatible, or if offered for sale without a surrounding package, shall be affixed with a written statement that the telephone is not hearing aid compatible; and (b) be accompanied by instructions in accordance with 47 CFR 62.218(b)(2).

47 CFR 68.300—Labeling requirements. As of April 1, 1997, all registered telephones, including cordless telephones, manufactured in the United States (other than for export) or imported for use in the United States, that are hearing aid compatible shall have the letters ''HAC'' permanently affixed. The information collections for both rules contain third party disclosure and labeling requirements. The information is used primarily to inform consumers who purchase and/or use telephone equipment whether the telephone is hearing aid compatible.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–9051 Filed 4–13–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 15, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0346.

Title: Section 78.27, License Conditions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Frequency of Response: Annual reporting requirement; on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Number of Respondents and Responses: 16 respondents; 16 responses.

Estimated Time per Response: 10 mins. (0.166 hrs.).

Total Annual Burden: 3 hours.

Total Annual Costs: None.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: 47 CFR 78.27(b)(1) requires the licensee of a Cable Television Relay Service (CARS) station to notify the Commission in writing when the station commences operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited. 47 CFR 78.27(b)(2) requires CARS licensees needing additional time to complete construction of the station and commence operation shall request an extension of time 30 days before the expiration of the one year construction period. Exceptions to the 30-day advance filing requirement may be granted where unanticipated delays occur.

OMB Number: 3060–0414.

Title: Terrain Shielding Policy.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, State, Local or Tribal Government.

Number of Respondents and Responses: 25 respondents; 25 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 25.

Total Annual Cost: $56,250.

Privacy Impact Assessment(s): No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: The terrain shielding policy requires respondents to submit either a detailed terrain study, or to submit letters of assent from all potentially affected parties and graphic depiction of the terrain when intervening terrain prevents a low power television applicant from interfering with other low power television or full-power television stations. FCC staff uses the data to determine if terrain shielding can provide adequate interference protection and if a waiver of 47 CFR 74.705 and 74.707 of the rules is warranted.

OMB Control Number: 3060–0928.

Title: Application for Class A Television Broadcast Station Construction Permit or License, FCC Form 302–CA; 47 CFR 73.3572(h).

Form Number: FCC 302–CA.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 400 respondents; 400 responses.

Estimated Hours per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 800 hours.

Total Annual Cost: $108,000.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The FCC Form 302–CA is used by Low Power TV (LPTV) stations that seek to convert to Class A status and for existing Class A stations seeking a license to cover their authorized construction permit facilities. The FCC Form 302–CA requires a series of certifications by the Class A applicant as prescribed by the Community Broadcasters Protection Act of 1999 (CBPA). Licensees will be required to provide weekly announcements to their listeners: (1) Informing them that the applicant has applied for a Class A license and (2) announcing the public's opportunity to comment on the application prior to Commission action.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–9072 Filed 4–13–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2012–04]

Filing Dates for the Washington Special Election In the 1st Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Washington has scheduled elections on August 7, 2012, and November 6, 2012, to fill the U.S. House seat in the 1st Congressional District vacated by Representative Jay Inslee.

Committees required to file reports in connection with the Special Primary Election on August 7, 2012, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on November 6, 2012, shall file a 12-day Pre-Primary Report, a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Washington Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on July 26, 2012; a 12-day Pre-General Report on October 25, 2012; and a 30-day Post-General Report on December 6, 2012. (See chart below for the closing date for each report).

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on July 26, 2012. (See chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's quarterly filing in October. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2012 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Washington Special Primary or Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the Washington Special Primary or General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Washington Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,700 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

CALENDAR OF REPORTING DATES FOR WASHINGTON SPECIAL ELECTION

Report	Close of books [1]	Reg. cert. and overnight mailing deadline	Filing deadline
Committees Involved in Only the Special Primary (08/07/12) Must File:			
Pre-Primary	07/18/12	07/23/12	07/26/12
October Quarterly	09/30/12	10/15/12	10/15/12
Committees Involved in Both the Special Primary (08/07/12) and Special General (11/06/12) Must File:			
Pre-Primary	07/18/12	07/23/12	07/26/12
October Quarterly	09/30/12	10/15/12	10/15/12
Pre-General	10/17/12	10/22/12	10/25/12
Post-General	11/26/12	12/06/12	12/06/12
Year-End	12/31/12	01/31/13	01/31/13
Committees Involved in Only the Special General (11/06/12) Must File:			
Pre-General	10/17/12	10/22/12	10/25/12
Post-General	11/26/12	12/06/12	12/06/12
Year-End	12/31/12	01/31/13	01/31/13

[1] These dates indicate the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

On behalf of the Commission.

Caroline C. Hunter,

Chair, Federal Election Commission.

[FR Doc. 2012–9005 Filed 4–13–12; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 12–03]

The Auction Block Company, an Alaska Corporation v. the City of Homer, a Municipal Corporation and Its Port of Homer; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by The Auction Block Company, an Alaska Corporation, hereinafter ''Complainant,'' against the City of Homer, a municipal corporation, and its Port of Homer, hereinafter ''Respondents''. Complainant asserts that it is a seafood processing and logistics firm organized under the laws of the State of Alaska. Complainant alleges that Respondent the City of Homer is a municipal corporation organized under the laws of Alaska, is a marine terminal operator and owns and operates the Port of Homer.

Complainant alleges that it pays to Respondents the rates published in Respondents' tariff for use of the premises and a crane, but that ''its major competitor, Icicle Seafoods, Inc. d/b/a/ Seward Fisheries, is not assessed and does not pay the rates published in the Tariff.'' Therefore Complainant alleges that Respondent is in violation of 46 U.S.C. 41106(2) and (3) as it ''has given undue and/or unreasonable preference and/or advantage and/or imposed undue or unreasonable prejudice and/or disadvantage with respect to Complainant.

Complainant requests that the Commission order Respondent to ''cease and desist from the aforesaid violations of said acts; to establish and put in force such practices as the Commission determines to be lawful and reasonable; to pay to said Complainant by way of reparations and damages for the unlawful conduct * * * the sum of $682,114.83 with interest and attorney's fees or such other sum as the Commission may determine to be proper as an award of reparations and damages; and that such other and further order or orders be made as the Commission determines to be just and proper in the premises.'' The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov.*

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of

material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by April 10, 2013 and the final decision of the Commission shall be issued by August 8, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–8994 Filed 4–13–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 12–04]

Possible Revocation of Ocean Transportation Intermediary License No. 021899—Trans World Logistics Corporation; Order To Show Cause

Trans World Logistics Corporation (Trans World Logistics) is an Indiana corporation, incorporated in October 2006. Records maintained by the Commission's Bureau of Certification and Licensing (BCL) indicate that Trans World Logistics maintains its principal offices at 702 Penny Lane, Plainfield, Indiana. BCL records identify the principals of the firm as Malene Sorensen, Vice President and Satinder Kaur, President, Treasurer and CEO. Trans World Logistics has been licensed to operate as an ocean transportation intermediary (OTI) pursuant to FMC license No. 021899 since December 2008.

Trans World Logistics was licensed on the basis of the qualifications of Ms. Sorensen, an officer of the company and its approved Qualifying Individual (QI). Based on information obtained in the course of a routine OTI compliance audit conducted by the Commission's Bureau of Enforcement (BOE), it appears that the QI resigned her position as an officer on November 3, 2010. According to BCL's records, the licensee has not notified the Commission of the QI's resignation or sought approval of a replacement QI. The Commission's OTI regulations require that when, as here, a corporation has been licensed on the basis of the qualifications of an officer of the company and that individual no longer serves in a full-time and active capacity, the licensee must report such change to the Commission within 30 days and within that time period seek Commission approval of any other active officer who may qualify the licensee. 46 CFR 515.18(c). It appears that Trans World Logistics has violated and continues to be in violation of this requirement.

In addition, as part of its OTI compliance audit of Trans World Logistics, BOE sent repeated requests to the company between June and November, 2011, seeking current information about its OTI business. Such requests were sent to the addresses contained in BCL's records as well as additional addresses for the firm's principals located through research conducted by staff. Despite BOE's efforts to communicate with the licensee in order to obtain information about its OTI business, Trans World Logistics has repeatedly failed to reply to such requests. The Commission regulations require a licensee to promptly respond to lawful inquiries from any authorized representative of the Commission. 46 CFR 515.31(g). It appears that Trans World Logistics also continues to be in violation of this requirement.

Section 19(c) of the Shipping Act, 46 U.S.C. 40903 (a), provides that the Commission:

> * * * after notice and opportunity for hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary—(1) is not qualified to provide intermediary services; or (2) that it willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

As pertinent, the Commission's regulations at 46 CFR 515.16(a) provide that an OTI license be revoked or suspended for any of the following reasons:

(1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;

(2) Failure to respond to any lawful order or inquiry by the Commission;

(3) Making a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license;

(4) Where the Commission determines that the licensee is not qualified to render intermediary services;

(5) Failure to honor the licensee's financial obligations to the Commission.

It appears that Trans World Logistics has violated Commissions regulations by failing to notify the Commission of the resignation of its QI, failing to seek approval of a replacement, and repeatedly failing to respond to lawful inquiries by the Commission with respect to its OTI business. Accordingly, it appears that revocation of its license is warranted under the Shipping Act.

Now therefore, it is ordered That pursuant to Sections 11, 14 and 19 of the Shipping Act of 1984, 46 U.S.C. 41302, 41304, 40903(a)(2), Trans World Logistics Corporation is directed to show cause, within 30 days of publication of this Order in the **Federal Register**, why the Commission should not revoke its license for failure to report the resignation of its QI and seek approval of a replacement, as required by 46 CFR 515.18; and for failure to reply to lawful inquiries by the Commission with respect to its business as required by 46 CFR 515.31(g).

It is further ordered That this proceeding be limited to the submission of affidavits of fact and memoranda of law;

It is further ordered That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavit of fact, if any, and shall be filed no later than the date fixed below;

It is further ordered That Trans World Logistics Corporation be named as Respondent in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondent and any intervenors in support of Respondent no later than May 11, 2012;

It is further ordered That the Commission's Bureau of Enforcement be made a party to this proceeding;

It is further ordered That reply affidavits and memoranda of law shall be filed by BOE and intervenors in support no later than May 29, 2012;

It is further ordered That:

(a) Should any party believe that an evidentiary hearing is required, that party must submit a request for such hearing together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such evidence cannot be submitted by affidavit;

(b) Any request for evidentiary hearing shall be filed no later than May 29, 2012;

It is further ordered That notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondent at its last known address;

It is further ordered That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 2 of the

Commission's Rules of Practice and Procedure, 46 CFR 502.2, as well as being mailed directly to all parties of record;

Finally, it is ordered That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the final decision of the Commission in this proceeding shall be issued by August 9, 2012.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–9099 Filed 4–13–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 13, 2012

In accordance with Section 271.7(d) of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 13, 2012.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to continue the maturity extension program it began in September to purchase, by the end of June 2012, Treasury securities with remaining maturities of approximately 6 years to 30 years with a total face value of $400 billion, and to sell Treasury securities with remaining maturities of 3 years or less with a total face value of $400 billion. The Committee also directs the Desk to maintain its existing policies of rolling over maturing Treasury securities into new issues and of reinvesting principal payments on all agency debt and agency mortgage-backed securities in the System Open Market Account in agency mortgage-backed securities in order to maintain the total face value of domestic securities at approximately $2.6 trillion. The Committee directs the Desk to engage in dollar roll transactions as necessary to facilitate settlement of the Federal Reserve's agency MBS transactions. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, April 9, 2012.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2012–8918 Filed 4–13–12; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on March 13, 2012, which includes the domestic policy directive issued at the meeting, are available on the Board's Web site, *www.federalreserve.gov.* The minutes are also published in the Federal Reserve Bulletin and in the Board's Annual Report.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 11, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *FNB Bancshares, Inc.,* Independence, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, Independence, Kansas.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Carpenter Fund Manager GP, LLC, Carpenter Fund Management Company, LLC, Carpenter Community Bancfund, L.P., Carpenter Community BanFund—A, L.P., Carpenter Community BandFund—CA, L.P., CCFW, Inc., and Carpenter Bank Partners, Inc.,* all in Irvine, California; to acquire additional voting shares, for a total of approximately 78 percent of the voting shares, of Manhattan Bancorp, and thereby indirectly acquire additional voting shares of Bank of Manhattan, National Association, both in El Segundo, California.

Board of Governors of the Federal Reserve System, April 11, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–9032 Filed 4–13–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2012–08198) published on page 20635 of the issue for Thursday, April 5, 2012.

Under the Federal Reserve Bank of Kansas City heading, the entry for *Arthur L. Loomis, II, Patricia A. Loomis, Genevieve E. Loomis, and Julia P. Loomis, all of Niskayuna, New York; Frederick S. Loomis, Anne M. Loomis, and J. Porter Loomis, all of Pratt, Kansas; Howard K. Loomis, Jr., Karen P. Loomis, Katherine P. Loomis, Margaret P. Loomis, and Victoria K. Loomis, all of Los Gatos, California, as individuals and/or trustees of the 2011 Arthur L. Loomis, II Gift Trust, Julia P. Loomis Revocable Trust, Arthur L. Loomis, II Revocable Trust, Genevieve E. Loomis Revocable Trust, all of Niskayuna, New York; Howard K. Loomis Revocable Trust, 2010 Howard K. Loomis Irrevocable Family Trust, Porter Legacy Trust, Florence Porter Loomis Trust, 2010 Florence Porter Loomis Irrevocable Family Trust, 2011 Frederick S. Loomis Gift Trust, 2011 J. Porter Loomis Gift Trust, all of Pratt, Kansas; 2011 Howard K. Loomis Jr. Gift Trust, The Loomis 1993 Revocable Trust, both of Los Gatos, California; and Flopper, L.P., How-Kan, L.P., and Driftwood, LLC, all of Pratt, Kansas; and all as members of the Loomis Family Group,* is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Arthur L. Loomis, II, Patricia A. Loomis, Genevieve E. Loomis, and Julia P. Loomis, all of Niskayuna, New York; Florence Porter Loomis, Frederick S. Loomis, Anne M. Loomis, and J. Porter Loomis, all of Pratt, Kansas; Howard K. Loomis, Jr., Karen P. Loomis, Katherine P. Loomis, Margaret P. Loomis, and Victoria K. Loomis, all of Los Gatos; California, as individuals and/or trustees of the 2011 Arthur L. Loomis, II Gift Trust, the Julia P. Loomis Revocable Trust, the Arthur L. Loomis, II Revocable Trust, the Genevieve E. Loomis Revocable Trust, all of Niskayuna, New York; the Howard K. Loomis Revocable Trust, the 2010 Howard K. Loomis Irrevocable Family Trust, the Porter Legacy Trust, Florence Porter Loomis Trust, the 2010 Florence Porter Loomis Irrevocable Family Trust, the 2011 Frederick S. Loomis Gift Trust, the 2011 J. Porter Loomis Gift Trust, all of Pratt, Kansas; the 2011 Howard K. Loomis Jr. Gift Trust, The Loomis 1993 Revocable Trust, both of Los Gatos, California; and Flopper, L.P., How-Kan, L.P., and Driftwood, LLC, all of Pratt, Kansas; and all as members of the Loomis Family Group,* to retain control of Krey Co. Ltd., and thereby indirectly retain control of The Peoples Bank, both in Pratt, Kansas.

Comments on this application must be received by April 20, 2012.

Board of Governors of the Federal Reserve System, April 11, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–9033 Filed 4–13–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Information Program on Clinical Trials: Maintaining a Registry and Results Databank

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 9, 2012 (Vol. 77, No. 27, p. 6808) and allowed 60-days for public comment. A single public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Information Program on Clinical Trials: Maintaining a Registry and Results Databank; *Type of Information Collection Request:* Revision of currently approved collection [OMB No. 0925–0586, expiration date 04/30/2012], *Form Number:* NA; *Need and Use of Information Collection:* The National Institutes of Health operates ClinicalTrials.gov, which was established as a clinical trial registry under section 113 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) and was expanded to include a results data bank by Title VIII of the Food and Drug Administration Amendments Act of 2007 (FDAAA). ClinicalTrials.gov collects registration and results information for clinical trials and other types of clinical studies (e.g., observational studies and patient registries) with the objectives of enhancing patient enrollment and providing a mechanism for tracking subsequent progress of clinical studies, to the benefit of public health. It is widely used by patients, physicians, and medical researchers; in particular those involved in clinical research. While many clinical studies are registered voluntarily, FDAAA requires the registration of certain applicable clinical trials of drugs and devices and the submission of results information for completed applicable clinical trials of drugs and devices that are approved, licensed, or cleared by the Food and Drug Administration. Beginning in 2009, results information was required to include information about serious and frequent adverse events. As the existing PRA clearance for this information collection nears expiration, we are making a limited number of revisions to include additional data elements that may be voluntarily submitted to describe and aid in the interpretation of any submitted adverse event information, to facilitate the registration of patient registries, and to account for the burden of establishing an account with the ClinicalTrials.gov Protocol Registration System (PRS). *Frequency of Response:* For clinical trials that are subject to FDAAA, responsible parties must register once, not later than 21 days after enrolling the first subject. Updates to submitted information are required at least once a year, if there are changes to report, although changes in recruitment status and completion of a trial must be reported not later than 30 days after such events. Results information is to be submitted not later than 12 months after the completion date (as defined in the law), but can be delayed under certain circumstances. Other clinical studies also register once, at their inception, and are requested to update information annually, as necessary. An organization must establish a PRS account one time in order to register studies (and submit results) with ClinicalTrials.gov.

Description of Respondents: Respondents include sponsors or principal investigators of clinical studies. Those subject to FDAAA are referred to as ''responsible parties,'' which are defined as sponsors of the clinical trial (as defined in 21 CFR 50.3) or designated principal investigators who meet requirements specified in the law. *Estimate of Burden:* The burden associated with this information collection is calculated in three parts: the burden associated with the one-time process of applying for a PRS account at ClinicalTrials.gov; the burden associated with registration; and the burden associated with the submission of results information, including adverse events. These information collections will occur at different times, but the registration and results information will be integrated into a single record for each clinical trial, which is entered through the PRS account. Based on data from 2011, we estimate that 5,500 new PRS account applications will be submitted annually. The time necessary to collect the required information and enter it into a new application form is estimated at 15 minutes. Using these figures, we estimate the total annual burden of submitting an application for a new PRS account to be 1,375 hours (5,500 applications per year times 0.25 hours per application). To estimate the annual reporting burden for registration, we examined the number of clinical studies registered annually with ClinicalTrials.gov and found an average of 17,000 registrations per year since the enactment of FDAAA. From this total, we estimate that approximately 5,000 studies would be applicable clinical trials of drugs (including biological products) and 500 would be applicable trials of devices subject to FDAAA. The remaining 11,500 studies would be registered voluntarily. We estimate the time to complete an initial registration

to be 7 hours (including time to extract, reformat and submit information which has already been produced for other purposes). This estimate is consistent with that used on the previous PRA clearance and incorporates 4 hours for data extraction and 3 hours for reformatting. Based on previous experience, we estimate that each registration record will be updated an average of eight times and that each update takes approximately 2 hours. Applying these figures to the estimated number of trials to be registered per year produces an annual burden estimate of 391,000 hours. Of this total, 126,500 hours are associated with the mandatory registration of trials subject to FDAAA, and 264,500 hours are associated with voluntary registrations. The burden of results submission consists of the time and effort needed to summarize information from a clinical trial, format it, and enter it into the databank. We estimate that of the 5,500 applicable clinical trials that are registered each year, approximately 1,845 will be required to submit results each year (1,500 trials of drugs and biological products, and 345 trials of devices). We estimate that each results record will submitted once and updated twice to reflect changes in the data analysis, additional results of subsequent pre-specified outcome measures, or additional adverse event information. Based on information available from various organizations about results submission times, comments made at a public meeting held in April 2009, responses to estimates in previous OMB clearance documents (73 FR 58972, Oct. 8, 2008), and feedback from respondents who have submitted results to ClinicalTrials.gov, we have increased our estimate of the average response time to 25 hours from the 10 hour estimate included in the previous OMB clearance request. We estimate that updates take 8 hours, an increase over the 5 hour estimate included in the previous OMB clearance request for adverse event information. In addition, we estimate that 3,655 trials per year will submit certifications to ClinicalTrials.gov indicating that they qualify for delayed results submission, and another 200 trials will request extensions to the submission deadline for good cause, as permitted by FDAAA. We expect that it would take no more than 30 minutes for a responsible party to determine that a certification is required and to submit the necessary information through ClinicalTrials.gov. For extension requests, we estimate that the time to prepare a request and submit it to ClinicalTrials.gov would be no more than 2 hours. Using these figures, we estimate the annualized hourly burden for submitting results information, certifications, and extension requests to be 77,872.5 hours. There are no capital costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: David Sharlip, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number 301–402–9680 or email your request to *sharlipd@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: April 10, 2012.

David H. Sharlip,

NLM Project Clearance Liaison, National Library of Medicine, National Institutes of Health.

[FR Doc. 2012–9083 Filed 4–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel E-Technology Tools for Extending the Reach of Prevention Interventions in Rural and Remote Locations (5567)

Date: April 30, 2012.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Nadine Rogers, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4229, MSC 9550, Bethesda, MD 20892–9550, 301–402–2105, *rogersn2@nida.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Rapid Portable Devices to Measure Drug Use (1206).

Date: May 1, 2012.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9055 Filed 4–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Brain and Spinal Cord Injury.

Date: April 30, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 10, 2012.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9110 Filed 4–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: June 13, 2012.

Open: 8 a.m. to 12 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Stephen C. Mockrin, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9111 Filed 4–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Core Infrastructure and Methodological Research for Cancer Epidemiology Cohorts.

Date: May 15, 2012.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 406, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lalita D. Palekar, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7141, Bethesda, MD 20892, 301–496–7575, *palekarl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project Review Panel Meeting III.

Date: May 30–31, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville Executive Meeting, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8139, Bethesda, MD 20892–8328, (301) 594–0114, *ahmads@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional

information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9109 Filed 4–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Multi-site Trials.

Date: May 22, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Minna Liang, Ph.D., Scientific Review Officer, Grants Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4226, MSC 9550, Bethesda, MD 20892–9550, 301–435–1432, *liangm@nida.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9053 Filed 4–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 10, 2012.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Open: 10 a.m. to 3 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Contact Person: Teresa Levitin, Ph.D., Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4243, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–89550, (301) 443–2755, *tlevitin.nida.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed in this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9085 Filed 4–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Loan Repayment Program.

Date: April 26–27, 2012.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate loan repayment program applications.

Place: National Eye Institute, National Institutes of Health, 5635 Fishers Lane,

Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *hoshawb@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 10, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–9087 Filed 4–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0029]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for the following collection of information: 1625–NEW, Coast Guard Exchange System Scholarship Application. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before May 16, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0029] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov* .

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov*.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2ND ST SW., STOP 7101, Washington DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2012–0029], and must be received by May 16, 2012. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0029], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), 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 DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2012–0029'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by

11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0029'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–New.

Privacy Act

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

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (77 FR 6132, February 7, 2012) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

Title: Coast Guard Exchange System Scholarship Application.

OMB Control Number: 1625–New.

Type of Request: New Collection.

Respondents: Coast Guard dependents.

Abstract: This information collected on this form allows the Coast Guard Exchange System Scholarship Program Committee to evaluate and rank scholarship applications in order to award the annual scholarships.

Forms: CG–5687.

Burden Estimate: The estimated burden is 30 hours per year.

Dated: April 6, 2012.

R. E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–9008 Filed 4–13–12; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5628–N–01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant (CDBG) Disaster Recovery Grantees Under the Department of Housing and Urban Development Appropriations Act, 2012

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises the public of the allocation of CDBG disaster recovery funds for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster in 2011 under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements upon the request of a grantee. Therefore, this Notice describes applicable waivers and alternative requirements, as well as the application process, eligibility requirements, and relevant statutory provisions for grants provided under this Notice.

DATES: Effective Date: April 23, 2012.

FOR FURTHER INFORMATION CONTACT: Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Mr. Davis at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

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I. Allocations

Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011) (Appropriations Act) makes available up to $400 million, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) in 2011. The law provides that grants shall be awarded directly to a State or unit of general local government at the discretion of the Secretary.

To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD computes allocations based on data that are generally available and that cover all the eligible affected areas. Within states receiving an allocation in this Notice, the Department identified the ''most impacted and distressed areas'' as those counties that have more than $10 million in estimated unmet severe housing and business needs. If a CDBG entitlement jurisdiction accounts for $6 million or more of funds allocated within a state, it receives a direct award (due to its extraordinarily high level of localized unmet need, one non-entitlement jurisdiction (the city of Minot, ND) also receives a direct award under this Notice). Each local jurisdiction receiving a direct award lies within a county that meets the ''most impacted and distressed'' criterion.

To ensure that funds are dedicated to the most impacted and distressed areas, 80 percent of the combined total of all the funds awarded within a state (this includes funds awarded directly to a State as well as those funds awarded directly to local governments) must be spent in the ''most impacted and distressed'' counties (*i.e,.* those identified by HUD as having more than

$10 million in estimated unmet severe housing and business needs). Since a local government receiving a direct grant allocation must spend the entirety of its grant within its jurisdiction, HUD has identified the remaining amount of each grant awarded directly to a State that must be expended within its ''most impacted'' counties in order to reach the 80 percent threshold (see Table 1). A more detailed explanation of HUD's allocation methodology is provided as Appendix A within this Notice.

The principle behind the 80 percent rule is that each State received their allocation based on the estimated unmet needs in the most impacted counties (i.e., those counties with more than $10 million in severe unmet housing and business needs) and thus HUD is requiring that each State direct these limited resources toward those most impacted counties. Nonetheless, HUD recognizes that there may be circumstances where data regarding damage estimates are subsequently revised, highly localized damage may occur outside of the most impacted counties, or overall recovery would otherwise benefit from expenditures outside of those most impacted counties. As a result, HUD is permitting States to spend the portion of its award in excess of the 80 percent threshold to address recovery needs outside of its ''most impacted'' counties. However, these funds must still be spent within counties that received a Presidential disaster declaration in 2011.

Based on a review of the impacts from Presidentially-declared disasters occurring in 2011, and estimates of unmet need, HUD is making the following allocations:

TABLE 1—ALLOCATIONS UNDER PUB. L. 112–55

Disaster No.	State	Grantee	Allocation	Minimum amount that must be expended in the ''most impacted'' counties identified
4020, 4031	New York	State of New York	$71,654,116	($53,011,323) Schoharie, Tioga, Broome, Greene, and/or Orange.
4020, 4031	New York	Orange County, NY	11,422,029	All funds must be spent within jurisdiction.
4031	New York	Town of Union, NY	10,137,818	All funds must be spent within jurisdiction.
1981	North Dakota	State of North Dakota	11,782,684	($0) Ward.
1981	North Dakota	City of Minot, ND	67,575,964	All funds must be spent within jurisdiction.
1971	Alabama	State of Alabama	24,697,966	($13,584,750) Tuscaloosa, Marion, Jefferson and/or DeKalb.
1971	Alabama	City of Tuscaloosa	16,634,702	All funds must be spent within jurisdiction.
1971	Alabama	Jefferson County	7,847,084	All funds must be spent within jurisdiction.
1971	Alabama	City of Birmingham	6,386,326	All funds must be spent within jurisdiction.
1980, 4012	Missouri	State of Missouri	8,719,059	($0) Jasper.
1980	Missouri	City of Joplin, MO	45,266,709	All funds must be spent within jurisdiction.
4025, 4030	Pennsylvania	State of Pennsylvania	27,142,501	($17,283,073) Bradford, Dauphin, Columbia, Wyoming, and/or Luzerne.
4025, 4030	Pennsylvania	Luzerne County, PA	15,738,806	All funds must be spent within jurisdiction.
4030	Pennsylvania	Dauphin County, PA	6,415,833	All funds must be spent within jurisdiction.
4029	Texas	State of Texas	31,319,686	($25,055,749) Bastrop.
1995, 4001, 4022	Vermont	State of Vermont	21,660,211	($17,328,169) Washington and/or Windsor.
4021	New Jersey	State of New Jersey	15,598,506	($12,478,805) Passaic.
Total			$400,000,000	

As stated by the Appropriations Act, funds provided in today's Notice shall not adversely affect the amount of any non-disaster formula assistance received by a State or unit of general local government under the Community Development Fund. Unless noted otherwise, the term ''grantee'' refers to any grantee—whether State, city, or county—receiving a direct award under this Notice.

II. Use of Funds

The Appropriations Act requires funds to be used only for specific disaster-related purposes. The law also requires that prior to the obligation of funds a grantee shall submit a plan detailing the proposed use of all funds, including criteria for eligibility and how the use of these funds will address long-term recovery. Thus, in an Action Plan for Disaster Recovery, grantees must describe uses and activities that are: (1) Authorized under title I of the Housing and Community Development Act of 1974 (HCD Act) or allowed by this Notice, and (2) a response to a disaster-related impact. To help meet these requirements, the Department expects each grantee to conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities. Allocations of funding in each grantee's Action Plan should reflect the findings of that grantee's needs assessment. For more guidance on the needs assessment and the creation of the Action Plan, see paragraph 1 under section VI of this Notice: ''Applicable Rules, Statutes, Waivers, and Alternative Requirements.''

Additionally, as provided for in the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program. Funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency (FEMA), the U.S. Army Corps of Engineers (USACE), or the Small Business Administration (SBA).

III. Prevention of Fraud, Abuse, and Duplication of Benefits

To prevent fraud, abuse of funds, mismanagement, and duplication of benefits under the Appropriations Act, this Notice includes specific reporting, written procedures, monitoring, and internal audit requirements applicable to each grantee. Departmental guidance to assist in preventing a duplication of benefits is provided at 76 FR 71060 (published November 16, 2011) and in paragraph 26 in this Notice. Other reporting, procedural, and monitoring requirements are discussed in paragraphs 1 and 14, under section VI of this Notice: ''Applicable Rules, Statutes, Waivers, and Alternative Requirements.'' In addition, the Department will institute risk analysis and on-site monitoring of grantee management as well as collaborate with the HUD Office of Inspector General to

plan and implement oversight of these funds.

IV. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon: (1) A request by the grantee explaining why such a waiver is required to facilitate the use of such funds or guarantees, and (2) a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

V. Overview of Grant Process

To begin expenditure of CDBG disaster recovery funds, the following expedited steps are necessary:

- Grantee adopts citizen participation plan for disaster recovery in accordance with the requirements of this Notice;
- Grantee publishes its Action Plan for Disaster Recovery on the grantee's official web site for no less than 7 calendar days to solicit public comment;
- Grantee responds to public comment and submits its Action Plan (which includes Standard Form 424 (SF–424) and certifications) to HUD no later than 90 days after the date of this Notice;
- HUD expedites review (allotted 45 days from date of receipt; however, completion of review is anticipated much sooner);
- HUD accepts the Action Plan and sends a cover letter, grant conditions, and signed grant agreement to the grantee;
- Grantee signs and returns the fully executed grant agreement;
- Grantee ensures that the final HUD-accepted Action Plan posted on its official Web site;
- HUD establishes the grantee's line of credit;
- Grantee requests and receives Disaster Recovery Grant Reporting (DRGR) system access (if the grantee does not already have it);
- If it has not already done so, grantee enters the activities from its published Action Plan into DRGR and submits it to HUD. (Funds can be drawn from the line of credit only for activities that are established in DRGR.)
- After the Responsible entity completes applicable environmental review(s) pursuant to 24 CFR part 58 and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification, the grantee may draw down funds from the line of credit.
- The grantee must begin to draw down funds no later than 180 days after the date of this Notice.

VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The Secretary finds that the waivers and alternative requirements, as described in this Notice, are necessary to facilitate the use of these funds for the statutory purposes, and are not inconsistent with the overall purpose of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended. Under the requirements of the Appropriations Act and the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be justified and published in the **Federal Register**.

This section of the Notice describes applicable waivers and alternative requirements granted in response to requests from grantees. The following requirements provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation. As a result, they apply only to the CDBG disaster recovery funds appropriated in the Appropriations Act, and not to funds provided under the annual formula State or Entitlement CDBG programs, or those provided under any other component of the CDBG program, such as the Neighborhood Stabilization Program.

Grantees may request additional waivers from the Department as needed to address specific needs related to their recovery activities. The Department will respond to requests for waivers after working with the grantee to tailor its program(s) to best meet its needs. Except where noted, waivers and alternative requirements apply to all grantees under this Notice.

Except as described in this Notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State receiving an allocation under this Notice. Statutory and regulatory provisions governing the Entitlement CDBG program shall apply to any unit of general local government receiving a direct allocation in this Notice. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable State and entitlement regulations can be found at 24 CFR part 570.

1. *Action Plan for Disaster Recovery waiver and alternative requirement.* The traditional requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 91.220, and 24 CFR 91.320 are waived for these disaster recovery grants. Instead, grantee must submit to HUD an Action Plan for Disaster Recovery. This streamlined plan will allow grantees to more quickly and effectively implement disaster recovery programs while conforming with statutory requirements. During the course of the grant, HUD will monitor the grantee's actions and use of funds for consistency with the plan, as well as meeting the performance and timeliness objectives therein.

A. Action Plan. The Action Plan must identify the proposed use of all funds, including criteria for eligibility, and how the uses address long-term recovery needs. Due to the need to develop and submit an acceptable Action Plan in a timely manner, a grantee's Action Plan may program or budget a portion of funds toward a particular use with only a broad or general description of that use. However, HUD will not consider an Action Plan substantially complete unless at least 50 percent of grant funds are articulated at the level of detail described in paragraphs (B) or (C) of this subsection, as applicable. Funds dedicated for uses not described in accordance with paragraphs (B) or (C) of this subsection will be restricted on the grantee's line of credit until the grantee submits, and HUD accepts, an Action Plan amendment programming the use of those funds at the necessary level of detail as described in paragraphs (B) or (C) of this subsection. Once the Action Plan amendment is accepted, and the Responsible entity completes an environmental review and obtains HUD approval of a Request for Release of Funds, as applicable, HUD will unblock the restricted funds and the grantee may begin to draw them down immediately. The grantee must program 100 percent of its grant funds at the necessary level of detail within 9 months of the date of this Notice.

The Action Plan must contain:

(1) An impact and unmet needs assessment. Development of a needs assessment to understand the type and location of community needs will enable grantees to target limited resources to areas with the greatest need. Grantees receiving an award under today's Notice must conduct a needs assessment to inform the allocation of CDBG disaster recovery resources. CDBG–DR funds may be used

to conduct the needs assessment. At a minimum, the needs assessment must evaluate three core aspects of recovery—housing (interim and permanent, owner and rental, single family and multifamily, affordable and market rate), infrastructure, and the economy (*e.g.,* estimated job losses or tax revenue loss due to the disaster). The assessment must also take into account the various forms of assistance available to, or likely to be available to, affected communities (*e.g.,* projected FEMA funds) and individuals (*e.g.,* estimated insurance) to ensure CDBG disaster recovery funds meet needs that are not likely to be addressed by other sources of funds. The assessment must use the best available data and cite data sources.

Impacts should be described geographically by type at the lowest level practicable (*e.g.,* county level or lower if available). Grantees should use the most recent available data (*e.g.,* from FEMA and SBA) and estimate the portion of need likely to be addressed by insurance proceeds, other federal assistance, or any other funding source (thus producing an estimate of unmet need).

Disaster recovery needs evolve over time as the full impact of a disaster is realized and costs of damages transition from estimated to actual. Remaining recovery needs also evolve over time as they are met by dedicated resources. As a result, the needs assessment and Action Plan may be considered as a living document, which grantees may need to periodically update over time.

(2) A description of how the grantee will promote (a) sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management, and (b) how it will coordinate with other local and regional planning efforts;

(3) A description of how the grantee will leverage CDBG disaster recovery funds with funding provided by other federal, state, local, private, and non-profit sources to generate a more effective and comprehensive recovery. Examples of other federal sources are those provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, and Hazard Mitigation Grant Program), the Small Business Administration, Economic Development Administration, U.S. Army Corps of Engineers, and the U.S. Department of Agriculture. The grantee should seek to maximize the number of activities and the degree to which CDBG funds are leveraged. Leveraged funds shall be identified for each activity, as applicable, in the DRGR system;

(4) A description of how the grantee will encourage construction methods that emphasize high quality, durability, energy efficiency, sustainability, and mold resistance, including how it will support adoption and enforcement of modern building codes and mitigation of hazard risk, where appropriate;

(5) A description of how the grantee will encourage the provision of adequate, flood-resistant housing for all income groups, including a description of the activities it plans to undertake to address: (a) Transitional housing needs of homeless individuals and families (including subpopulations), (b) prevention of low-income individuals and families with children (especially those with incomes below 30 percent of the area median) from becoming homeless, and (c) the special needs of persons who are not homeless but require supportive housing (e.g., elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents, as identified in 24 CFR 91.315 (e) or 91.215(e) as applicable); grantees should consider how planning decisions may affect racial, ethnic, and low-income concentrations. They should also consider ways to promote the availability of affordable housing in low-poverty, non-minority areas where appropriate and in response to disaster related impacts;

(6) A description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced;

(7) A description of how the grantee will handle program income, and the purpose(s) for which it may be used;

(8) A description of monitoring standards and procedures that are sufficient to ensure program requirements, including nonduplication of benefits, are met and that provide for continual quality assurance and investigation. Grantees must also have an internal audit function with responsible audit staff reporting independently to the chief officer or board of the governing body of any designated administering entity;

(9) A description of the steps the grantee will take to prevent fraud, abuse, and mismanagement of funds (including potential conflicts of interest and duplication of benefits). All such steps taken shall be identified quarterly in its performance report to HUD;

(10) A description of how the grantee will provide for increasing the capacity of grant recipients, subrecipients, subgrantees, and any other entity responsible for administering activities under this grant;

(11) A description of the connection between identified unmet needs and the allocation of CDBG disaster recovery resources by the grantee; and

(12) A performance schedule. The Action Plan must include a performance schedule for carrying out programs and/or activities. The schedule should include projected performance (in terms of both expenditures and outcome measures) for the following activity types (at a minimum): (1) Housing, (2) infrastructure, (3) economic development, (4) planning and administration, and (5) other (if applicable). The Action Plan should also include a projected expenditure schedule for the entirety of the grant amount as a whole. Grantees may revise the performance schedule as needed via an Action Plan amendment to reflect any changes in programs or activities.

B. Funds awarded to a State. A State's Action Plan shall describe the method of distribution of funds to units of local government and/or descriptions of specific programs or activities the State will carry out directly. The description must include:

(1) How the needs assessment informed allocation determinations;

(2) The threshold factors and grant size limits that are to be applied;

(3) The projected uses for the CDBG disaster recovery funds, by responsible entity, activity, and geographic area, when the State carries out an activity directly;

(4) For each proposed program and/or activity carried out directly, its respective CDBG activity eligibility category (or categories) as well as national objective(s).

(5) How the method of distribution to local governments or programs/activities carried out directly will result in long-term recovery from specific impacts of the disaster.

(6) When funds are allocated to units of local government, all criteria used to distribute funds to local governments including the relative importance of each criterion; and

(7) When applications are solicited for programs carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion.

C. Funds awarded directly to a unit of general local government. The unit of local government shall describe specific programs and/or activities it will carry out. The Action Plan must describe:

(1) How the needs assessment informed allocation determinations;

(2) The threshold factors and grant size limits that are to be applied;

(3) The projected uses for the CDBG disaster recovery funds, by responsible entity, activity, and geographic area;

(4) How the projected uses of the funds will meet CDBG eligibility criteria and a national objective;

(5) How the projected uses of funds will result in long-term recovery from specific impacts of the disaster; and

(6) All criteria used to select applications, including the relative importance of each criterion.

D. Clarification of disaster-related activities. All CDBG disaster recovery activities must clearly address an impact of the disaster for which funding was appropriated. Given the standard CDBG requirements, this means each activity must: (1) Be CDBG eligible (or receive a waiver), (2) meet a national objective, and (3) address a direct or indirect impact from the disaster in a Presidentially-declared county. A disaster-related impact can be addressed through any eligible CDBG activity.

(1) *Housing.* Typical housing activities include new construction and rehabilitation of single family or multifamily units. Most often, grantees use CDBG disaster recovery funds to rehabilitate damaged homes and rental units. However, grantees may also fund new construction or rehabilitate units not damaged by the disaster if the activity clearly addresses a disaster-related impact. This impact can be demonstrated by the disaster's overall effect on the quality, quantity, and affordability of the housing stock and the resulting inability of that stock to meet post-disaster needs and population demands. The standard CDBG rehabilitation and reconstruction rules apply.

(2) *Infrastructure.* Typical infrastructure activities include the repair, replacement, or relocation of damaged public facilities.

(3) *Economic Revitalization.* Economic revitalization is not limited to activities that are ''special economic development'' activities under the HCD Act, or to activities that create or retain jobs. For CDBG disaster recovery purposes, economic revitalization can include any activity that demonstrably restores and improves some aspect of the local economy; the activity may address job losses, or negative impacts to tax revenues or businesses. Examples of eligible activities include providing loans and grants to businesses, funding job training, making improvements to commercial/retail districts, and financing other efforts that attract/retain workers in devastated communities. All economic revitalization activities must address an economic impact(s) caused by the disaster (*e.g.,* loss of jobs, loss of public revenue). Through its needs assessment and Action Plan, the grantee should clearly identify the economic loss or need resulting from the disaster, and how the proposed activities will address that loss/need.

(4) *Preparedness and Mitigation.* The Appropriations Act states that funds shall be used for recovering from a Presidentially-declared major disaster. As such, all activities must respond to the impacts of the declared disaster. HUD strongly encourages grantees to incorporate preparedness and mitigation measures into rebuilding activities, which helps to ensure that communities recover to be safer and stronger than prior to the disaster. Incorporation of these measures also reduces costs in recovering from future disasters. However, given the limited funding available and the language in the Appropriations Act, CDBG disaster recovery funds may not be used for activities that are solely designed to prepare for and/or mitigate the effects of a future disaster without any tie to rebuilding from the previous disaster.

(5) *Tie to the Disaster.* Grantees must document in each project file how that activity is tied to the disaster for which it is receiving CDBG assistance.

In regard to physical losses, damage or rebuilding estimates are often the most effective tool for demonstrating the connection to the disaster. For economic or other non-physical losses, post-disaster analyses or assessments may best document the relationship between the loss and the disaster.

Note that grantees are not limited in their recovery to returning to pre-disaster conditions. Rather, grantees are encouraged to undertake activities in such a way that not only addresses the disaster-related impacts, but leaves communities better positioned to meet the needs of their post-disaster populations and prospects for growth.

E. *Use of funds for other disasters not covered by the Appropriations Act.* CDBG disaster recovery funds awarded under this Notice may not be used to address an impact or need originating from a disaster not occurring in 2011. However, if a need that arose from a previous disaster was exacerbated by a 2011 disaster, funds under this Notice may be used. In addition, if an impact or need originating from a 2011 disaster is subsequently exacerbated by a future disaster, funds under this Notice may also be used.

F. *Use of the urgent need national objective.* The traditional certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), are waived for the grants under this Notice. In the context of disaster recovery, these standard requirements may prove burdensome and redundant. Since the Department only provides CDBG disaster recovery awards to grantees with documented disaster-related impacts (as supported by data provided by FEMA, SBA, and other sources), and each grantee is limited to spending funds only in counties with a Presidential disaster declaration of recent origin respective to each appropriation, the following streamlined alternative requirement recognizes the inherent urgency in addressing the serious threat to community welfare following a major disaster.

Grantees need not issue formal certification statements in order to qualify an activity as meeting the urgent need national objective. Instead, each grantee receiving a direct award under this Notice must document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee. This waiver and alternative requirement allows grantees to more effectively and quickly implement disaster recovery programs. Grantees may reference in their Action Plan the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing.

Grantees should identify these disaster-related impacts in their Action Plan needs assessment. The needs assessment should be updated as new or more detailed/accurate disaster-related impacts are known. Understanding that major disasters present unique challenges and that recovery can take years, it is not necessary for an activity to begin within 18 months of the disaster in order to use the urgent need national objective.

Grantees should still be mindful to use the ''low- and moderate income person benefit'' national objective for all activities that qualify under such criteria. At least 50 percent of the entire CDBG disaster recovery grant award must be used for activities that benefit low- and moderate-income persons.

G. *Clarity of Action Plan.* All grantees must include sufficient information so that citizens, units of general local government (where applicable), and other eligible subgrantees, subrecipients, or applicants will be able to understand and comment on the Action Plan and, if applicable, be able to prepare responsive applications to the grantee. The Action Plan must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (*e.g.,* by program, subgrantee, grantee-

administered activity, or other category). An amount generally not to exceed ten percent of the total grant amount may be budgeted as a separate activity for the contingency of cost overruns and unanticipated unmet needs. Once a grantee expends 80 percent of its grant amount, it should program any remaining funds budgeted for contingency into an eligible activity in order to fully expend all funds by addressing unmet needs and close out the grant.

In the case of Action Plan amendments, each amendment should constitute the entirety of the Action Plan, as amended. The beginning of every Action Plan amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving to. The Action Plan must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its entire Action Plan should be able to be accessed and viewed as a single document at any given point in time, rather than the public having to view and cross-reference changes among multiple amendments.

H. *Review of Action Plan; obligation and expenditure of funds.* The Action Plan must be submitted to HUD (including Standard Form 424 (SF–424) and certifications) within 90 days of the date of this Notice. HUD will expedite its review of each Action Plan—taking no more than 45 days from the date of receipt. Once HUD accepts the Action Plan, it will then issue a grant agreement obligating all funds to the grantee. In addition, HUD will establish the line of credit and the grantee will receive DRGR access (if it does not have access already). The grantee must also enter its Action Plan activities into the DRGR system in order to draw funds against them. It may enter these activities into DRGR before or after submission of the Action Plan to HUD.

All funds programmed or budgeted at a generalized level will be restricted from access on the grantee's line of credit. Once the generalized uses are described in an amended Action Plan at the necessary level of detail, they will be released by HUD and made available for use. After the Responsible Entity completes environmental review(s) pursuant to 24 CFR part 58 (as applicable) and receives from HUD or the State an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of grant funds must begin no later than 180 days after the date of this Notice.

I. *Amending the Action Plan.* Even after all funds have been programmed or budgeted in a grantee's Action Plan at the necessary level of detail, the grantee may continue to subsequently amend its plan as needed. As needs often change throughout the long-term recovery process, grantees may find it necessary to amend its Action Plan to update its needs assessment, modify activities, create new ones, or to re-program funds.

2. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 91.105(b) and (c), and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at a state, entitlement, or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant administered under this Notice are:

A. Before the grantee adopts the Action Plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication must include prominent posting on the grantee's official Web site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster recovery should be navigable by citizens from the grantee (or administering agency) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

Despite the expedited process, grantees are still responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency. Each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. This issue may be particularly applicable to States receiving an award under this Notice. Unlike grantees in the regular State CDBG program, State grantees under today's Notice may make grants throughout the state, including to entitlement communities. For assistance in ensuring that this information is available to LEP populations, recipients should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* published on January 22, 2007, in the **Federal Register** (72 FR 2732).

Subsequent to publication of the Action Plan, the grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its Action Plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: A change in program benefit or eligibility criteria; the allocation or re-allocation of more than $1 million; or the addition or deletion of an activity. The grantee may substantially amend the Action Plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. Prior to submission of a substantial amendment, the grantee is encouraged to work with its HUD representative to ensure the proposed change is consistent with this Notice, and all applicable regulations and Federal law.

B. The grantee must notify HUD, but is not required to undertake public comment, when it makes any plan amendment that is not substantial. However, every amendment to the Action Plan (substantial and non-substantial) must be numbered sequentially and posted on the grantee's Web site. The Department will acknowledge receipt of the notification of non-substantial amendments via email within 5 business days.

C. The grantee must consider all comments, received orally or in writing, on the Action Plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the Action Plan or substantial amendment.

D. The grantee must make the Action Plan, any substantial amendments, and all performance reports available to the public on its Web site and on request. In addition, the grantee must make these

documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the Action Plan and to the grantee's use of grant funds.

E. The grantee will provide a timely written response to every citizen complaint. The response will be provided within 15 working days of the receipt of the complaint, if practicable.

3. *Direct grant administration and means of carrying out eligible activities—applicable to State grantees only.* Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow a State to use its disaster recovery grant allocation directly to carry out State-administered activities eligible under this Notice, rather than distribute all funds to units of local government. In using statutory language similar to that used for prior CDBG supplemental appropriations, the Department believes Congress is signaling its intent that the States under this appropriation also be able to carry out activities directly. Pursuant to this waiver, the standard at section 570.480(c) will also include activities that the State carries out directly. Note that any city or county receiving a direct award under this Notice will be subject to the standard CDBG entitlement program regulations. Thus, the waiver and alternative requirement described here is inapplicable to local jurisdictions.

Activities eligible under this Notice may be undertaken, subject to State law, by the grantee through its employees, through procurement contracts, or through loans or grants under agreements with subrecipients. Activities made eligible under section 105(a)(15) of the HCD Act, as amended, may only be undertaken by entities specified in that section, whether the assistance is provided to such an entity from the State or from a unit of general local government.

4. *Consolidated Plan waiver.* HUD is waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 24 CFR 91.225(a)(5), 24 CFR 91.325(b)(2), and 24 CFR 91.225(b)(3)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee first updates its full consolidated plan more than 30 months following the disaster. While grantees are encouraged to incorporate disaster-recovery needs into their consolidated plan updates as soon as practicable, any unmet disaster-related needs and associated priorities should be incorporated into the grantee's next consolidated plan update following the expiration of the 30-month waiver period. If not completed already, the grantee should update its Analysis of Impediments in coordination with its post-waiver consolidated plan update, so that it more accurately reflects housing conditions following the disaster.

This waiver also allows the disaster recovery action plan for non-entitlement communities to also serve as an abbreviated Consolidated Plan under the authority at 42 U.S.C. 12705(b) because the Secretary has determined that this is appropriate given the types and amounts of assistance the non-entitlement will receive for disaster purposes. For non-entitlement communities, HUD is also waiving 24 CFR part 91, subpart C to the extent that these provisions require elements that are not specifically required by this Notice.

The waiver is granted consistent with the non-entitlement's existing submission of needs data for addressing housing and community development needs in the State's Consolidated Plan. Note that the 30 month requirement does not apply to any non-entitlement community receiving funds under this Notice, however, it must update and amend its Action Plan within 18 months of the date of this Notice to include actions it plans to take to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing. Such policies, procedures and processes include, but are not limited to, land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. Consistent with 91.220(j), proposed plans or actions should be reviewed periodically to ensure they best respond to the barriers to affordable housing, as they exist at that time.

5. *Requirement for consultation during plan preparation.* Currently, the statute and regulations require States to consult with affected units of local government in non-entitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that any State receiving an allocation under this Notice consult with all disaster-affected units of general local government, including any CDBG-entitlement communities, in determining the use of funds. This ensures State grantees sufficiently assess the recovery needs of all areas affected by the disaster. For local governments receiving a direct award under this Notice, HUD is waiving 24 CFR 91.100 with the alternative requirement that the jurisdiction should consult with adjacent units of general local government, including local government agencies with metropolitan-wide planning responsibilities, particularly for problems and solutions that go beyond a single jurisdiction.

6. *Overall benefit waiver and alternative requirement.* The primary objective of the HCD Act is the ''development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.'' 42 U.S.C. 5301(c). To carry out this objective, the statute requires that 70 percent of the aggregate of a regular CDBG program's funds be used to support activities benefitting low- and moderate-income persons. This target could be difficult to reach, and perhaps even impossible, for many communities affected by the 2011 disasters. Grantees under this Notice experienced disaster impacts that affected entire communities—regardless of income, and the existing requirement may prevent grantees from providing assistance to damaged areas of need.

Therefore, this Notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 24 CFR 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of funds must benefit low- and moderate-income persons. This provides grantees with greater flexibility to carry out recovery activities by allowing up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums or blight national objectives.

7. *Use of the ''upper quartile'' or ''exception criteria'' for low- and moderate-income area benefit activities—not applicable to all grantees.* Section 105(c)(2)(A) of the HCD Act provides that ''In any case in which an assisted activity described in subsection (a) is designed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such

activity shall be considered to principally benefit persons of low and moderate income if * * * (ii) in any metropolitan city or urban county, the area served by such jurisdiction is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income * * *'' HUD permits an exception to the low- and moderate-income area benefit requirement that an area contain at least 51 percent low- and moderate-income residents. This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. These communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the ''exception criteria'' or the ''upper quartile''. A grantee qualifies for this exception when less than one quarter of the populated block groups in its jurisdictions contain 51 percent or more low- and moderate-income persons. In such communities, activities must serve an area which contains a percentage of low- and moderate-income residents that is within the upper quartile of all Census block groups within its jurisdiction in terms of the degree of concentration of low- and moderate-income residents. HUD assesses each grantee's census block groups to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee may use instead of 51 percent for the purpose of qualifying activities under the low- and moderate-income area benefit. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee accordingly.

The Department has considered and granted the requests of Orange County, New York to apply the exception criteria to these disaster recovery grants. The Department also grants the request of the State of New Jersey to allow the following entitlement communities that have disaster declarations and total damage that exceeds $3,000,000 to apply the exception criteria for these disaster recovery grants: Passaic County, Bergen County, Morris County, Somerset County, Essex County, Middlesex County, and Monmouth County. HUD also waives section 105(c)(2)(ii) of the HCD Act and the regulations at 570.208(a)(1)(ii) to the extent that they limit the exception criteria to any metropolitan city or urban county to allow the city of Minot, a non-entitlement community, to utilize the exception criteria for the purpose of classifying activities under the low- and moderate-income area benefit national objective. HUD will provide data to the city of Minot on how this exception shall be applied.

It must be noted that HUD annually updates the low- and moderate-income summary data used to identify the exception criteria; disaster recovery grantees are required to use the most recent data available in implementing the exception criteria.

8. *Note on change to administration limitation.* For all grantees under today's Notice, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant to be used for administrative costs, whether by the grantee, by entities designated by the grantee, by units of general local government, or by subrecipients. Thus, the total of all costs classified as administrative must be less than or equal to the 5 percent cap.

A. For State grantees under this Notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding $100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent. States remain limited to spending a maximum of 20 percent of their total grant amount on a combination of planning and program administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12).

B. Any city or county receiving a direct award under this Notice is also subject to the 5 percent administrative cap. This 5 percent applies to all administrative costs—whether incurred by the grantee or its subrecipients. However, cities or counties receiving a direct allocation under this Notice also remain limited to spending 20 percent of their total allocation on a combination of planning and program administration costs.

9. *Planning-only activities—applicable to State grantees only.* The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the entitlement program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4).

The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, for State grantees receiving an award under this Notice, the Department is removing the eligibility requirements at 24 CFR 570.483(b)(5) or (c)(3). Instead, States must comply with 24 CFR 570.208(d)(4) when funding disaster recovery-assisted planning-only grants, or directly administering planning activities that guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or undertake are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205.

10. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties—applicable to State grantees only.* Section 5302(a)(7) of title 42, U.S.C. (definition of ''nonentitlement area'') and provisions of 24 CFR part 570 that would prohibit a State from distributing CDBG funds to entitlement communities and Indian tribes under the CDBG program, are waived, including 24 CFR 570.480(a). Instead, the State may distribute funds to units of local government and Indian tribes.

11. *Use of subrecipients—applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls ''subrecipients.'' The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the

requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply, except that specific references to 24 CFR parts 84 and 85 must be included in subrecipient agreements. OMB Circular A–87 shall apply to States and any subrecipients of a State, whether carrying out activities directly or through the use of a subrecipient.

12. *Recordkeeping—applicable to State grantees only.* When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG disaster recovery funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the State shall be sufficient to: Enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the State; and show how activities funded are consistent with the descriptions of activities proposed for funding in the Action Plan and/or DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

13. *Change of use of real property—applicable to State grantees only.* This waiver conforms to the change of use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to ''unit of general local government'' in 24 CFR 570.489(j), shall be read as ''unit of general local government or State.''

14. *Responsibility for review and handling of noncompliance —applicable to State grantees only.* This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct award under this Notice: the State shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and units of general local government, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, as amended, as modified by this Notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or units of general local government.

15. *Housing-related eligibility waivers.* The broadening of Section 105(a)(24) of the HCD Act is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case of the disasters eligible under this Notice. Thus, in accordance with the grantees' requests, 42 U.S.C. 5305(a) is waived to the extent necessary to allow: (1) Homeownership assistance for households with up to 120 percent of the area median income, (2) down payment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)), and (3) new housing construction. While homeownership assistance may be provided to households with up to 120 percent of the area median income, only those funds used to serve households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

16. *Housing incentives to resettle in disaster-affected communities—not applicable to all grantees.* Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of floodplain or to a lower-risk area.

Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. These grantees must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable, and the incentives must be in accordance with the grantee's approved Action Plan and published program design(s). This waiver does not permit a compensation program. Additionally, if the grantee requires the incentives to be used for a particular purpose by the household receiving the assistance, then the eligible use for that activity will be that required use, not an incentive. This waiver does not apply to the following grantees: The city of Birmingham, Jefferson County, and the State of Texas.

17. *Limitation on emergency grant payments—not applicable to all grantees.* 42 U.S.C. 5305(a)(8) is waived to extend interim mortgage assistance to qualified individuals from three months to up to 20 months. The time required for a household to complete the rebuilding process may often extend beyond three months, during which mortgage payments may be due but the home is inhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. This waiver and alternative requirement do not apply to the following grantees: Jefferson County, city of Tuscaloosa, State of Missouri, and the State of Texas.

18. *Buildings for the general conduct of government—not applicable to all grantees.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow grantees to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible. HUD believes this waiver is consistent with the overall purposes of the HCD Act, and is necessary for many grantees to adequately address critical infrastructure needs created by the disaster. This waiver does not apply to the following grantees: City of Birmingham, Jefferson County, and the State of Missouri.

Regardless of this waiver, CDBG disaster recovery funds allocated under this Notice may not be used for activities reimbursable by, or for which funds are made available by, FEMA or the Army Corps of Engineers.

19. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* Traditional CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another—if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482 are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a labor market area within the same State to continue business.

20. *One-for-one replacement housing, relocation, and real property acquisition requirements.* CDBG-assisted activities, programs and projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of

1970, as amended, (42 U.S.C. 4601 *et seq.*) (''URA'') and section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (''Section 104(d)''). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C.

For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and Section 104(d) requirements for grantees under this Notice:

A. One-for-one replacement requirements at 42 U.S.C. 5304(d)(2)(A)(i)–(ii) and (d)(3) and 24 CFR 42.375 are waived for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. HUD is waiving this requirement because the requirement does not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Furthermore, the requirement may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures, unsuitable for rehabilitation, can pose a threat to public health and safety and to economic revitalization. Grantees should re-assess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note, however, that the demolition and/or disposition of Public Housing Authority-owned public housing units is covered by Section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

B. The Section 104(d) relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24 for activities related to disaster recovery.

This waiver is necessary to eliminate disparities in rental assistance payments associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). FEMA funds are subject to the requirements of the URA and, consequently, FEMA requires rental assistance payments for displaced persons to be calculated on the basis of an amount necessary to enable the displaced person to rent comparable replacement housing for a period of 42 months. CDBG funds are also subject to the URA requirements; however, unlike FEMA funds, they are also subject to the provisions of Section 104(d). Section 104(d) requires that the calculation of rental assistance payments for displaced persons be made on the basis of 60 months. When a project is subject to both the URA and Section 104(d), the displaced person may choose to receive assistance under either authority. This waiver of the Section 104(d) requirements assures uniform and equitable treatment in getting the URA and its implementing regulations as the sole standard for relocation assistance under this Notice.

C. The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster.

D. The requirements at sections 204(a) and 206 of the URA, 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the grantee to provide relocation assistance sufficient to reduce a low-income person's rent/utility costs to 30 percent of household income post-displacement when the person had been paying rent in excess of 30 percent of household income without ''demonstrable hardship'' before the project. Thus, to the extent that a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, a reduction in rental assistance payments to 30 percent of household income would not be required. Before using this waiver, the grantee must establish a definition of ''demonstrable hardship.''

E. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(ix) and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. This waiver gives grantees an additional relocation resource option.

F. The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a grantee offer a displaced person the option to receive a ''moving expense and dislocation allowance'' based on a schedule of allowances prepared by the Federal Highway Administration as an alternative to receiving payment for actual moving and related expenses, are waived. As an alternative, the grantee must establish and offer the person a ''moving expense and dislocation allowance'' under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Without this waiver and alternative requirement, disaster recovery may be impeded by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established ''moving expense and dislocation allowance.''

G. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee or state recipient level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients. The regulation at 24 CFR 570.606(d) governing optional relocation policies does not account for this distinction. This waiver makes clear that local governments, including subrecipients, receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States and local governments with maximum flexibility in developing optional relocation policies with CDBG disaster recovery funds.

21. *Program income alternative requirement.* The Department is waiving applicable program income rules at 570.500(a) and (b), 570.504, 42 USC 5304(j), and 570.489(e) to the extent necessary to provide additional flexibility as described under today's Notice. The alternative requirements provide guidance regarding the use of program income received before and after grant closeout and address revolving loan funds.

A. Definition of program income.

(1) For the purposes of this subpart, ''program income'' is defined as gross income generated from the use of CDBG funds, except as provided in

subparagraph D of this paragraph, and received by: (1) A State, unit of local government, or tribe, or (2) a subrecipient of a State, unit of general local government, or tribe. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(b) Proceeds from the disposition of equipment purchased with CDBG funds;

(c) Gross income from the use or rental of real or personal property acquired by a State, unit of general local government, or tribe or subrecipient of a State, unit of general local government, or tribe with CDBG funds, less costs incidental to generation of the income (i.e., net income);

(d) Net income from the use or rental of real property owned by a State, unit of general local government, or tribe or subrecipient of a State, unit of general local government, or tribe, that was constructed or improved with CDBG funds;

(e) Payments of principal and interest on loans made using CDBG funds;

(f) Proceeds from the sale of loans made with CDBG funds;

(g) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(h) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(i) Funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(j) Gross income paid to a State, unit of local government, tribe, or paid to a subrecipient thereof from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG assistance.

(2) ''Program income'' does not include the following:

(a) The total amount of funds which is less than $25,000 received in a single year and retained by a State, unit of local government, tribe, or retained by a subrecipient thereof;

(b) Amounts generated by activities eligible under section 105(a)(15) of the HCD Act and carried out by an entity under the authority of section 105(a)(15) of the HCD Act;

B. Retention of program income. Per 24 CFR 570.504(c), a unit of government receiving a direct award under this Notice may permit a subrecipient to retain program income. State grantees may permit a unit of local government or tribe which receives or will receive program income to retain the program income, but are not required to do so.

C. Program income—use, closeout, and transfer.

(1) Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional disaster recovery CDBG funds subject to the requirements of this Notice and must be used in accordance with the grantee's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in subparagraph D of this paragraph.

(2) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: Grantees may transfer program income before closeout of the grant that generated the program income to its annual CDBG program. In addition, State grantees may transfer program income before closeout to any annual CDBG-funded activities administered by a unit of general local government or Indian tribe within the State. Program income received by a grantee, or received and retained by a subgrantee, after closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income that is not used to continue the disaster recovery activity that generated the program income ceases to be subject to the waivers and alternative requirements of this Notice.

For nonentitlement communities without another ongoing CDBG grant received directly from HUD, program income on hand when the CDBG disaster recovery grant is closed by HUD, shall continue to be subject to the eligibility requirements and all other applicable provisions under this Notice until expended. Program income received after closeout by HUD of the CDBG disaster recovery grant shall not be governed by the provisions of this Notice, except that such income shall be used for activities that meet a CDBG national objective and the eligibility requirements described in section 105 of the HCD Act.

D. Revolving loan funds. Units of general local government receiving a direct award under this Notice, State grantees, and units of local government or tribes (permitted by a State grantee) may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments, which will be used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments which could be funded from the revolving fund. Such program income is not required to be disbursed for non-revolving fund activities.

State grantees may also establish a revolving fund to distribute funds to units of local government or tribes to carry out specific, identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Last, note that no revolving fund, established per this Notice, shall be directly funded or capitalized with CDBG disaster recovery grant funds.

22. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) are waived to allow the grantees under this Notice to identify low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (i.e. number of persons). Thus, it streamlines the documentation process because it allows the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

This alternative requirement has been granted on several prior occasions to CDBG disaster recovery grantees, and to date, those grants have not exhibited any issues of concern in calculating the benefit to low- and moderate-income persons. The Department believes this waiver is consistent with the HCD Act.

23. *Public benefit for certain economic development activities.* The

public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds were set more than a decade ago and, under disaster recovery conditions (which often require a larger investment to achieve a given result), can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

This Notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 24 CFR 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Paragraph (g) of 24 CFR 570.482, and 24 CFR 570.209(c), and (d) are also waived to the extent these provisions are related to public benefit.

24. *Allow reimbursement for pre-agreement costs.* The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable costs incurred by itself or its subgrantees on or after the incident date of the covered disaster. Any unit of general local government receiving a direct allocation under this Notice is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. 24 CFR 570.200(h)(1)(i) will not apply to the extent that it requires pre-agreement activities to be included in a consolidated plan.

The Department expects both State grantees and units of general local government receiving a direct award under this Notice to include all pre-agreement activities in their Action Plans.

25. *Clarifying note on the process for environmental release of funds when a State carries out activities directly.* Usually, a State distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a State grantee to also carry out activities directly instead of distributing all program funds to subrecipients and/or subgrantees. According to the environmental regulations at 24 CFR 58.4, when a State carries out activities directly, the State must submit the certification and request for release of funds to HUD for approval.

26. *Duplication of benefits.* In general, section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5155), as amended, prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. In order to comply with this law, grantees must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met.

Given the often complex nature of this issue, the Department has published a separate Notice explaining the duplication of benefit requirements applicable to CDBG disaster recovery grantees; it can be found at 76 FR 71060 (published November 16, 2011). Grantees under today's Notice are hereby subject to 76 FR 71060 in full.

27. *Flood buyouts—not applicable to all grantees.* Grantees under this notice are able to undertake property acquisition for a variety of purposes. However, the term ''buyouts'' as referenced in this Notice refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding. HUD is providing alternative requirements for consistency with the application of other federal resources commonly used for this type of activity. The following alternative requirements do not apply to the city of Birmingham, and Jefferson County.

A. For buyout activities, the following requirements apply:

(1) Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(2) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than (a) a public facility that is open on all sides and functionally related to a designated open space; (b) a rest room; or (c) a structure that the local floodplain manager approves in writing before the commencement of the construction of the structure; and

(3) after receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity.

B. Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value, post-flood value, or cost of reconstruction as a basis for property value). However, in using CDBG disaster recovery funds for buyouts, the grantee must uniformly apply whichever valuation method it chooses.

C. All buyouts must still meet activity eligibility and national objective requirements.

D. Grantees should identify all acquisition activities that are buyouts in the DRGR system.

28. *Flood insurance.*

A. Flood insurance purchase requirements. HUD does not prohibit the use of CDBG Disaster Assistance for existing residential buildings in the Special Flood Hazard Area (SFHA) (or ''100-year'' floodplain). However, Federal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner for a property located in the SFHA must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 mandates the purchase of flood insurance protection for any HUD-assisted property within the SFHA.

B. Future federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received federal flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required

under applicable federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the abovementioned repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph (5), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the federal disaster relief assistance provided with respect to the property.

(5) The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.

(6) The term ''Federal disaster relief assistance'' applies to HUD or other federal assistance for disaster relief in ''flood disaster areas.'' The term ''flood disaster area'' is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

29. *Procurement.*

A. Grants to States. Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Furthermore, per 24 CFR 570.489(g), a State shall establish requirements for procurement policies and procedures for units of general local government based on full and open competition. All subgrantees of a State (including units of general local government) are subject to the procurement policies and procedures required by the State.

A State may meet the above requirements by adopting 24 CFR part 85. If a State has adopted part 85 in full, it must follow the same policies and procedures it uses when procuring property and services with its non-Federal funds. However, the State must ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations per 24 CFR 85.36(a).

If a State has not adopted 24 CFR 85.36(a), but has adopted 24 CFR 85.36(b) through (i), the State and its subgrantees must follow State and local law (as applicable), so long as the procurements conform to applicable Federal law and the standards identified in 24 CFR 85.36(b) through (i).

B. Direct grants to units of general local government. Any unit of general local government receiving a direct appropriation under today's Notice will be subject to 24 CFR 85.36(b) through (i).

30. *Timely distribution of funds.* 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with alternative requirements under this Notice. HUD expects each grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner. HUD will evaluate timeliness in relation to each grantee's established performance schedule as identified in its Action Plan.

The Department will, absent substantial evidence to the contrary, deem a grantee to be carrying out its programs and activities in a timely manner if the schedule for carrying out its activities is substantially met.

In determining the appropriate corrective action to take with respect to a HUD determination that a grantee is not carrying out its activities in a timely manner pursuant to this section, HUD will take into account the extent to which unexpended funds have been obligated by the grantee and its sub-recipients for specific activities at the time the finding is made and other relevant information.

If a grantee is determined to be untimely pursuant to this section, and the grantee is again determined to be untimely 12 months following the initial determination, HUD may elect to recapture any unobligated funds and reallocate to another entity with the authority and capacity to carry out the remaining recovery activities, unless HUD determines that the untimeliness resulted from factors beyond the grantee's reasonable control.

31. *Performance review authorities.* Section 104(e)(1) of the HCD Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities in a timely manner, whether the recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.

The requirements for submission of a Performance Evaluation Report (PER) pursuant to 42 U.S.C. 12708 and 24 CFR 91.520 are waived. In the alternative, and to ensure consistency between grants allocated under this Notice and grants allocated previously under the CDBG disaster recovery program, HUD is requiring that:

A. Each grantee must enter its Action Plan for Disaster Recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, the grantee must enter such detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

B. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following the end of each calendar quarter, beginning after the first full

calendar quarter after grant award and continuing until all funds have been expended and all expenditures have been reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but not limited to) the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG disaster recovery funds to be expended on each activity; beginning and completion dates of activities; achieved performance outcomes such as number of housing units complete or number of low- and moderate-income persons benefiting; and the race and ethnic status of persons assisted under direct-benefit activities. Within the section titled ''Overall Progress Narrative'' in DRGR, grantees must include a description of the actions taken to affirmatively further fair housing.

Quarterly reports to HUD must be submitted using HUD's DRGR system and, within 3 days of submission, be posted on the grantee's official Web site.

C. Reporting requirements. Once each grantee enters its action Plan into the DRGR system, it must submit to HUD a projection of expenditures and outcomes (projected on a quarterly basis) for each major activity type in DRGR. This will enable HUD to track proposed versus actual performance in coordination with each grantee's submission of DRGR quarterly performance reports.

D. In addition to providing these reports to Congress and the public, HUD will use them—in addition to transactional data from DRGR and other information provided by the grantee—to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate applicable administrative and public service limitations and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for monitoring.

32. *Review of continuing capacity to carry out CDBG funded activities in a timely manner.* If HUD determines that the grantee has not carried out its CDBG activities and certifications in accordance with the requirements and criteria described in this section, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken, and the success or likely success of such actions.

33. *Corrective and remedial actions.* HUD will undertake corrective and remedial actions in accordance with 24 CFR 570.910 and 24 CFR 570.913.

34. *Reduction, withdrawal, or adjustment of a grant or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action, taken pursuant to this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation.

Consistent with the procedures described in this Notice, the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured.

35. *Certifications waiver and alternative requirement.* Sections 91.325 and 91.225 of title 24 of the Code of Federal Regulations are waived. Each State or unit of general local government receiving a direct allocation under this Notice must make the following certifications with its Action Plan:

A. The grantee certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within its jurisdiction take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2) and 570.601(a)(2).)

B. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

C. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

D. The grantee certifies that the Action Plan for Disaster Recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

E. The grantee certifies that activities to be undertaken with funds under this Notice are consistent with its Action Plan.

F. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for in this Notice.

G. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

H. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each unit of local government receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

I. Each State receiving a direct award under this Notice certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the method of distribution of funding.

J. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas for which the President declared a major disaster in 2011, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

(2) With respect to activities expected to be assisted with CDBG disaster recovery funds, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG disaster recovery funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery grant funds, by assessing any amount against properties

owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (A) Disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

K. The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

L. The grantee certifies that it has adopted and is enforcing the following policies. In addition, States receiving a direct award must certify that they will require units of general local government that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

M. Each State or unit of local government receiving a direct award under this Notice certifies that it (and any subrecipient or administering entity) has the capacity to carry out disaster recovery activities in a timely manner; or the State or unit of local government will develop a plan to increase capacity where such capacity is lacking.

N. The grantee certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55.

O. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

P. The grantee certifies that it will comply with applicable laws.

36. *Information collection approval note.* HUD has submitted documentation to OMB seeking emergency approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The submission is under review by OMB and approval pending. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

VII. Duration of Funding

The Appropriations Act directs that these funds be available until expended. However, in accordance with 31 U.S.C. 1555, HUD shall close the appropriation account and cancel any remaining obligated or unobligated balance if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for 2 consecutive fiscal years. In such a case, the funds shall not be available for obligation or expenditure for any purpose after the account is closed.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218; 14.228.

IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: April 9, 2012.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

Appendix A—Allocation Methodology

This section describes the methods behind HUD's allocation of $400 million in the 2011 CDBG Disaster Recovery Funds. Section 239 of Public Law 112–55, enacted on November 18, 2011, appropriates $400 million through the Community Development Block Grant (CDBG) program for:

* * * necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (Pub. L. 93–383) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in 2011; Provided, That funds shall be awarded directly to the State or unit of general local government at the discretion of the Secretary; * * *

HUD allocates funds based on its estimate of the total unmet needs for infrastructure and the unmet needs for severe damage to businesses and housing that remain to be addressed in the most impacted counties after taking into account December 2011 data on insurance, FEMA assistance, and SBA disaster loans. To meet the statutory requirement that the funds be targeted to ''the most impacted or distressed areas,'' this allocation:

(1) Limits funding to the states and counties with the highest level of severe unmet needs. Specifically, the calculation of unmet housing and business needs is limited only to those homes and businesses that experienced severe damage (see definitions below). That is, it excludes homes and businesses with minor or moderate damage that may have some unmet needs remaining. Further, to target funds to the most impacted or distressed areas, only counties with $10 million [1] or more in severe unmet housing and business needs are used to determine a state's allocation. Thus, funding is provided based on the severe needs of

[1] For the cut off thresholds used in this formula, minimum county need of $10 million in severe unmet housing and business needs, the $10 million minimum grant for a state (point 4), and the $6 million minimum grant for an entitlement jurisdiction (point 5a), these represent ''natural breaks'' in the distribution. That is, the next county, state or grantee on the list has a significant separation in need or estimated grant from the last county, state, or grantee included in the list.

the most impacted counties in each state.

(2) Factors in disaster related infrastructure repair costs statewide that are not reimbursed by FEMA Public Assistance. For all of these disasters, this is calculated as the 25 percent state match requirement.

(3) Funds are allocated based on each state's share of total unmet needs. This is calculated as each state's proportional share of the sum of infrastructure and severe unmet housing and business needs from the most impacted counties.[2]

(4) Restricts funding only to states that receive a minimum grant of $10 million or more. These funds are limited to only the states with the highest levels of unmet need. As such, funding is limited to states that would receive aggregate funding of $10 million or more based on their total unmet needs. The calculated grant amounts for states that would have received less than $10 million are provided to the states above $10 million through a pro-rata increase.

(5) Specifies the counties and jurisdictions that are most impacted or distressed by:

a. Providing direct funding to CDBG entitlement jurisdictions (and one nonentitlement city) with significant remaining severe unmet needs. Within a State, if an entitlement jurisdiction accounts for $6 million or more of the funding allocated to a State, it is allocated a direct grant (the $6 million threshold represents a ''natural break'' in funding among entitlement jurisdictions). Otherwise the funding is provided directly to the State. Due to its extraordinarily high level of localized need, one non-entitlement jurisdiction (Minot, ND) also receives a direct allocation.

b. Directing that a minimum of 80% of the total funds allocated within a state, including those allocated directly to the State and to local governments, must be spent on the disaster recovery needs of the communities and individuals in the most impacted and distressed counties (*i.e.,* those counties identified by HUD). The principle behind the 80 percent rule is that each state received its allocation based on the unmet needs in the most impacted counties (those counties with more than $10 million in severe unmet housing and business needs) and thus HUD will require that all grantees within a State direct these limited resources toward those most impacted counties.[3] Nonetheless, HUD recognizes that there are likely circumstances where its data is incomplete, damage is highly localized outside of one of the heavily impacted counties, or recovery would otherwise benefit from expenditures outside of those most impacted counties and thus provides some flexibility to address those needs for State grantees. While local governments receiving direct grant allocations from HUD must spend their total grant within their own jurisdictions, HUD will allow a portion of the State non-entitlement grant to be spent outside of the most impacted counties, in an amount not to exceed that which yields 80 percent of all funding within a state to be spent in the most impacted counties.

HUD will provide States with county level data on unmet needs to assist with their planning.

Methods for estimating unmet needs for business, infrastructure, and housing: The data HUD staff have identified as being available to calculate unmet needs for the targeted disasters (major disasters with Presidential declaration issued in 2011 and for which FEMA individual assistance was available) come from the following data sources:

- FEMA Individual Assistance program data on housing unit damage, as of 12/20/2011;
- SBA for management of its disaster assistance loan program for housing repair and replacement, as of 12/21/2011;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement as well as content loss, as of 12/22/2011; and
- FEMA estimated and obligated amounts under its Public Assistance program for permanent work, federal and state cost share, as of 12/20/2011.

Calculating Severe Unmet Housing Needs

The core data on housing damage for both the unmet housing needs are based on home inspection data for FEMA's Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by Small Business Administration data from its Disaster Loan Program. HUD calculates ''unmet housing needs'' as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA and SBA, where:

- The owner-occupied units included in the unmet needs analysis are those determined by FEMA to be eligible for a repair or replacement grant.
- Each of the FEMA inspected owner-occupied units are classified by HUD into one of five categories:
  - Minor-Low: Less than $3,000 of FEMA inspected damage
  - Minor-High: $3,000 to $7,999 of FEMA inspected damage
  - Major-Low: $8,000 to $14,999 of FEMA inspected damage
  - Major-High: $15,000 to $28,800 of FEMA inspected damage
  - Severe: Greater than $28,800 of FEMA inspected damage or determined destroyed.

Only units in the Major-High and Severe categories are counted toward the severe unmet housing needs calculation.

- The rental units included in the unmet needs analysis are those assessed for personal property loss, near owner-occupied dwellings with major-high and severe damage, and where the tenant has an income of less than $20,000. The use of the $20,000 income cut-off for calculating rental unmet needs is intended to capture the loss of affordable rental housing.
- The average cost to fully repair a home for a specific disaster within each of the damage categories noted above is calculated using the median ratio between real property damage repair costs determined by the Small Business Administration for its disaster loan program and the FEMA assessment of real estate damage, for the subset of homes inspected by both SBA and FEMA. Because SBA inspects for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally greater than FEMA estimations of the cost to make the home habitable. If fewer than 25 SBA inspections are made for homes within a FEMA damage category, the median ratio between SBA and FEMA assessment of damage in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and a floor applied at the 25th percentile. If there are no SBA inspections within a FEMA damage category, the national median ratio between SBA and FEMA assessment of damage within a FEMA damage category is used.
- To obtain estimates for unmet needs, only properties receiving a

[2] When calculating the grants, the internal weight between factors is maintained at the ratio of all severe unmet housing and business needs in all counties to unmet infrastructure needs in all counties.

[3] Each state receives funding based on all of infrastructure needs within a state, minus the infrastructure needs estimated to lie within entitlement jurisdictions receiving direct grants. In addition, each state also receives funding from all severe housing and business needs in the most impacted counties minus the estimated severe housing and business needs within entitlement jurisdictions receiving direct grants.

FEMA grant are included in the calculation (since these are the cases assumed to have insufficient insurance coverage). Furthermore, the FEMA grant amount and all SBA loans are subtracted out of the total estimated damage to obtain a final unmet needs estimate.

Calculating Infrastructure Needs

To best proxy unmet infrastructure needs, HUD uses data from FEMA's Public Assistance program on the state match requirement (usually 25 percent of the estimated public assistance needs). This allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and state match requirement. Those activities are categories: C–Roads and Bridges; D–Water Control Facilities; E–Public Buildings; F–Public Utilities; and G–Recreational-Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures rather than the long-term recovery measures for which CDBG funds are generally used. Because Public Assistance damage estimates are available only statewide (and not county), CDBG funding allocated by the estimate of unmet infrastructure needs are sub-allocated to counties and local jurisdictions based on each jurisdiction's proportion of unmet housing needs (categories minor-high to severe).

Calculating Economic Revitalization Needs

Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This is adjusted upward by the proportion of applications that were received for a disaster that content and real property loss were not calculated because the applicant had inadequate credit or income. For example, if a state had 160 applications for assistance, 150 had calculated needs and 10 were denied in the pre-processing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as (1 + 10/160) * calculated unmet real content loss.

Because applications denied for poor credit or income are the most likely measure of requiring the type of assistance available with CDBG recovery funds, the calculated unmet business needs for each state are adjusted upwards by the proportion of total applications that were denied at the pre-process stage because of poor credit or inability to show repayment ability. Similar to housing, estimated damage is used to determine what unmet needs will be counted as severe unmet needs. Only properties with total real estate and content loss in excess of $65,000 are considered severe damage for purposes of identifying the most impacted areas.

Category 1: real estate + content loss = below 12,000
Category 2: real estate + content loss = 12,000–30,000
Category 3: real estate + content loss = 30,000–65,000
Category 4: real estate + content loss = 65,000–150,000
Category 5: real estate + content loss = above 150,000

To obtain unmet business needs, the amount for approved SBA loans is subtracted out of the total estimated damage. Since SBA business needs are best measured at the county level, HUD estimates the distribution of needs to local entitlement jurisdictions based on the distribution of all unmet housing needs.

[FR Doc. 2012–9094 Filed 4–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5580–N–03]

Department of Housing and Urban Development Summary of Public Comments, Response to Public Comments, and Final 2012–2015 Environmental Justice Strategy

AGENCY: Office of Sustainable Housing and Communities, HUD.

ACTION: Notice.

SUMMARY: On September 30, 2011, HUD posted its draft environmental justice strategy and requested public comment. This notice summarizes public comments submitted in response to HUD's draft environmental justice strategy, offers response to comments, and announces the release of HUD's final Environmental Justice Strategy. The changes in the final strategy reflect HUD's consideration of the public comments received and HUD's effort to improve and expand its commitment to avoiding disproportionately high and adverse human health or environmental effects on minority and low-income populations, as well as creating geographies of opportunity. The final strategy is posted at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities.*

FOR FURTHER INFORMATION CONTACT: Sunaree Marshall, Office of Sustainable Housing and Communities, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10180, Washington, DC 20410, telephone number 202–402–6011 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 30, 2011, HUD published for public comment a draft Environmental Justice Strategy for 2012 through 2015. HUD is committed to meeting the goals of Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' which states that each federal agency, with the law as its guide, should make environmental justice part of its mission. In this regard, HUD has developed its Environmental Justice Strategy (EJ Strategy). HUD's EJ Strategy is a four-year plan to address environmental justice concerns and increase access to environmental benefits through HUD policies, programs, and activities.

The release of HUD's EJ Strategy is part of the latest step in a larger Administration-wide effort to ensure strong protection from environmental and health hazards for all. In August 2011, federal agencies signed the ''Memorandum of Understanding on Environmental Justice and Executive Order 12898'' (EJ MOU), which committed each agency to, among other things, finalizing an EJ strategy and releasing annual implementation reports. Links to the other federal EJ Strategies are available on the Environmental Justice Interagency Workgroup (IWG) Web page at *http://www.epa.gov/environmentaljustice/interagency/index.html.*

Now that its strategy is final, HUD will continue to work with the IWG and other federal partners to engage stakeholders through outreach, education, and stakeholder events and respond to public comments through its annual implementation reports.

II. Final Strategy: Changes to the September 30, 2011 Draft EJ Strategy

This final strategy follows publication of the September 30, 2011 draft strategy and takes into consideration the public comments received. The public comment period on the draft strategy closed on November 23, 2011, after HUD extended the deadline from the

original November 14, 2011 date. HUD received relevant input from a total of 36 commenters representing a wide variety of stakeholders, some of whom submitted multiple comments, in response to the draft strategy. Comments were submitted by private citizens, local, regional, and state agencies, and advocacy groups. The comments were on a wide variety of issues from many different sections of the draft strategy.

III. Discussion of Public Comments Received on the September 30, 2011 Draft Strategy

This section presents a summary of the significant issues raised by the public comments in response to the September 30, 2011 Draft EJ Strategy and HUD's responses to these issues.

Comment: HUD should expand the definition of ''Colonias'' to include rural communities with similar characteristics but not located on the southern border of the U.S. to increase assistance to farmworker and rural communities.

Response: For the purposes of the colonia set-aside in the CDBG program, HUD must follow the requirements of § 916(e)(1) of the 1990 Cranston-Gonzalez National Affordable Housing Act, which defines colonia as: ''Any identifiable community * * * in the State of Arizona, California, New Mexico, or Texas * * * in the United States-Mexico border region * * * [and] is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe and sanitary housing.'' Because the geography of the colonia is defined in statute, expanding the definition would require a statutory change by Congress.

Comment: HUD should include clear and specific requirements and incentives for energy and water efficiency in all HUD housing rehabilitation and construction programs.

Response: HUD values energy efficiency and is committed to efficient, green, and healthy homes. Subgoal 4B of HUD's Strategic Plan for FY 2010–2015 calls on HUD to ''support and promote an energy-efficient, green, and healthy housing market by retrofitting existing housing, supporting energy-efficient new construction, improving home energy labeling, and promoting financing products that reduce the carbon footprint of non-HUD-supported residential buildings.'' Furthermore, for the past several Fiscal Years, HUD has offered policy priority points to applicants that plan to use HUD discretionary grant program funding to build or rehabilitate to a recognized green building rating standard (see section I.B.2. of HUD's Fiscal Year (FY) 2012 Notice of Funding Availability (NOFA) Policy Requirements and General Section to HUD's FY2012 NOFAs for Discretionary Programs).

Comment: HUD should add to selection criteria of all NOFAs a discussion of the impact a project would have on homeless populations and planned mitigation strategies, where appropriate.

Response: One of the goals outlined in HUD's Strategic Plan for FY 2010–2015 is ending homelessness by reducing the number of homeless families, chronically homeless individuals, and homeless veterans. To achieve this goal, HUD has partnered with local, state, and Federal organizations, including the U.S. Interagency Council on Homelessness, to deploy evidence-based interventions, such as supportive housing, housing first, homelessness prevention, and rapid rehousing, to more effectively and efficiently use the Nation's limited resources to bring an end to homelessness. While a criterion described in the comment is not included in all of the NOFAs for HUD's discretionary programs, HUD is working proactively to end homelessness through strategies such as: providing additional individuals and families with rental housing subsidies; increasing service-enriched housing; working with state and local governments to expand rental assistance and prevent homelessness; and improving access to HUD-funded housing assistance by eliminating administrative barriers and encouraging prioritization of households most at risk for homelessness.

Comment: Two commenters noted that the strategy was broad in scope and lacked benchmarks and goals that would quantify performance and aid in implementation.

Response: HUD is eager to make headway on the myriad department-wide and program office-specific policy priorities outlined in the EJ Strategy in the pursuit of environmental justice—defined by HUD as equal access to safe and healthy housing for all Americans, mitigating risks to communities in disaster-prone areas, access to affordable, quality housing free of hazards to residents' health, and working to achieve inclusive, sustainable communities free from discrimination. The next step in the process is finalizing the EJ Strategy to comply with Executive Order 12898. This strategy lays out the general principles of HUD's approach to Environmental Justice but is not intended to be HUD's last word on the subject. Beginning in 2012, HUD will provide an annual report on progress in carrying out this strategy and Executive Order 12898, with meaningful opportunities for public comment and recommendations.

Comment: Multiple commenters wanted to know more about the EJ training, progress reports, potential new reporting requirements, and policies that were mentioned in the draft EJ Strategy. One commenter further noted that HUD should expand the training materials it is planning to provide to include seminars, webinars, handouts, and in-person training.

Response: Finalizing and releasing the 2012–2015 EJ Strategy is the first step toward working toward the priorities outlined in the Strategy, including offering EJ training and reporting HUD's annual progress. Now that HUD has finalized its Strategy, HUD's EJ Working Group and other staff will continue to work to develop training materials, as well as a timeline for progress reports, and will make details available to the public. HUD's Web site will continue to be the best place to find information on training, progress reports, and any relevant guidance.

Comment: HUD should issue the National Environmental Policy Act (NEPA)-related guidance on how it will consider environmental justice impacts of major federal actions affecting the environment.

Response: In Section A.3 of the Strategy, HUD commits to reviewing and evaluating environmental review requirements and delivering special training materials to HUD and grantee staff on environmental justice.

Comment: HUD needs to change the definition of what constitutes affordable housing to include energy and water efficiency standards.

Response: HUD understands that both transportation and utility costs have a significant impact on the overall affordability of housing for individuals. Several initiatives are underway to improve our understanding of the combined cost of housing, energy, and transportation for American households. HUD took unprecedented actions in FY2010 and FY2011 to increase energy efficiency in affordable housing. Through an interagency Rental Policy Working Group, HUD, the United States Department of Agriculture (USDA), and other federal agencies adopted a framework for common energy efficiency standards in federally-assisted affordable rental housing, as published on December 31, 2011 in the Federal Alignment Report (*http://www.huduser.org/portal/aff_rental_hsg/*

RPWG_Conceptual_Proposals_Fall_2011.pdf).

In addition, as part of a joint effort with the Department of Energy (DOE), HUD established and exceeded a two-year goal for energy efficient, healthy retrofits and new construction of affordable units. Through HUD's core programs, HUD has expanded financing, increased technical assistance, and strengthened basic energy requirements to advance greater energy efficiency. Many of HUD's competitive grant programs provide bonus points for projects that comply with standards including EnergyStar, WaterSense, and Leadership in Energy and Environmental Design (LEED). The competitive nature of these programs often ensures that only proposals that achieve these points are funded. HUD also acknowledges successful sustainable projects of various types through national award programs as an additional incentive to achieve these and other goals. Through a partnership with DOE to break down interagency barriers, more than 1.5 million units of HUD-assisted housing have increased access to funding under DOE's Weatherization Assistance Program.

In FY2011, HUD continued existing innovative energy-efficiency financing programs such as the Mark-to-Market green initiative, and launched new financing programs such as the PowerSaver pilot program to provide FHA-insured loans for homeowners to invest in home energy improvements and the Fannie Mae-FHA Green Refinance Plus that allows for refinancing of existing affordable multifamily rental properties into new mortgages that include funds for energy saving improvements. HUD is also working to improve its data collection and reporting systems on energy efficiency. For example, HUD strengthened the Integrated Disbursement & Information System (IDIS) reporting for Recovery Act reporting through HOME, the Community Development Block Grant Program (CDBG), and the Neighborhood Stabilization Program (NSP), as well as energy improvements funded through the American Recovery and Reinvestment Act (Pub. L. 111–5) (Recovery Act) Capital Fund in public housing. The Administration's FY2013 Budget proposal for the Office of Sustainable Housing and Communities builds on this progress and requests funding to support energy efficiency and green building initiatives which will allow HUD to further develop uniform energy efficiency guidelines for HUD-assisted properties.

Comment: HUD should set standards for making spatially referenced housing information available to local agencies. (Example: Assigning multi-family units to their actual location versus the address of a management office.) Also, HUD could provide funding and/or leadership in creating agreements with private vendors (like RealtyTrac) to make standardized, geo-coded foreclosure information accessible to local jurisdictions and to the public.

Response: HUD is currently investing in a project called Enterprise Geospatial Services that includes establishing geocoding standards for the agency and conducting an agency-wide geospatial needs assessment. The geospatial needs assessment will include a summation of the agency's geospatial environment as is and recommendations for an enterprise geospatial architecture for HUD. In recent years, HUD has made great strides toward expanding our geospatial mapping capacity and tools for the public. Thirteen mapping tools for various HUD programs are available at: *http://egis.hud.gov.* This page will soon be rebuilt using portal technology that will allow users to search or browse for data, services, and applications. In addition to supporting these specific applications, HUD is also designing a public map services program that will make core data sets available to Federal and local partners and the general public. HUD projects that these map services will be available in starting in 2012 in a variety of standard formats, such as WMS, REST, and KML. At this point, HUD is unable to reach a licensing agreement that would allow the agency to make foreclosure data publicly available that would not be prohibitively expensive.

Comment: With close to half of the Tribes recognized by the United States of America located in Alaska, and the known communication issues between many of these Villages and Federal Agencies, HUD is not doing enough to make it possible for the Alaska Tribes to participate in a meaningful way. In addition, HUD is not doing enough to stop pollution from entering Alaska's natural environment, which has adverse effects for many indigenous peoples. Finally, with almost half the federally recognized tribes located in Alaska, HUD should pursue budget equity with the funds designated as tribal funds. The majority of funds should be directed to Alaska's Tribes.

Response: HUD and its Office of Native American Programs recognize and support the sovereignty of federally recognized Tribes through the unique government-to-government relationship formally established between the Tribes and the United States government. This relationship is reflected in HUD's Government-to-Government Tribal Consultation Policy which was established pursuant to Executive Order 13175 which required federal agencies to: (1) Establish regular and meaningful consultation and collaboration with Indian Tribal officials in the development of federal policies that have tribal implications; (2) strengthen the United States government-to-government relationships with Indian Tribes; and (3) reduce the imposition of unfunded mandates upon Indian Tribes. HUD's Government-to-Government Tribal Consultation Policy applies to all HUD programs that have substantial direct effects on federally recognized Indian Tribal governments.

Regarding environmental impacts, recipients of HUD grant funds, including the Office of Native American Programs' NAHASDA Indian Housing Block Grant and Indian Community Development Block Grant programs, must meet the statutory and regulatory provisions of NEPA and other environmental laws and authorities. HUD environmental regulations establish a policy that properties proposed for use in HUD programs be free of hazardous materials and contamination that could affect the health and safety of occupants or conflict with the intended use of the property.

Finally, regarding the allocation of funds to federally recognized Tribes, HUD's Government-to-Government Tribal Consultation Policy clearly establishes the methodologies HUD will follow to affect meaningful Tribal Consultation and Collaboration at the local, regional, and national levels. Consistent with HUD's Tribal Consultation Policy and in accordance with the Native American Housing Assistance and Self-Determination Act of 1996, HUD has established a number of negotiated rulemaking committees in the past to develop and regularly review program regulations governing the allocation of Indian Housing Block Grant (IHBG) to Indian tribes. In doing so, HUD ensured that each committee, as a whole, reflected a geographically diverse cross-section of small, medium, and large Indian tribes, including representatives of Alaska tribes. All decisions made by these committees have historically been made on a consensus basis. HUD intends to establish negotiated rulemaking committees in the future to review the method by which IHBG funds are allocated to Indian tribes and remains committed to ensuring continued tribal participation. This process has been

effective in the past in ensuring the fair and equitable distribution of IHBG grant funds among all program recipients.

Comment: HUD should apply a public health framework to all offices and programs.

Response: HUD knows that stable, healthy housing is inextricably tied to individual health and has made improving health outcomes a priority in its Strategic Plan. Improving health outcomes starts by increasing health knowledge and access to health services. Strategies HUD is committed to pursuing in 2010–2015 include: Increasing information about and access to health services, including veterans' health benefits, through partnerships with health organizations and healthcare delivery systems; increasing coordination of HUD programs with healthcare resources administered by other federal, state, and local programs; providing physical space to co-locate healthcare and wellness services with housing (for example, onsite health clinics); and promoting housing management practices that protect the health of residents (for example, smoking cessation, pest management, and green cleaning).

HUD's Office of Healthy Homes and Lead Hazard Control administers lead hazard and healthy homes programs, enforces lead paint regulations, and sets policies to reduce health and safety hazards in housing. Its comprehensive approach to healthy homes takes into account a variety of hazards in the home that can affect health, especially the presence of lead; these hazards often disproportionately impact EJ communities.

Health is embedded in many other HUD programs as well. For instance, a goal of the Choice Neighborhoods program is to convert some of the worst of the nation's public housing into higher-quality, mixed-income, mixed-tenure developments. The vision is to help communities transform into walkable neighborhoods with amenities and health services that allow residents to lead healthier lives. The Housing Choice Voucher program allows recipients of HUD assistance the mobility and freedom to choose the neighborhood they live in, allowing some people to leave neighborhoods that were less healthy, from a stress, safety, or walkability standpoint, to one that is more healthy.

Comment: HUD should make public safety a priority in all its programs, as it does in the Choice Neighborhoods program.

Response: Public safety is a key priority for HUD and a component of its Strategic Plan (Subgoal 3E). HUD knows that safety and the perception of safety are necessary factors for quality of life and that enhancing physical safety and reducing crime are essential to improving health, education, and economic outcomes. HUD's Strategic Plan describes HUD's strategies for improving actual safety and perceptions of safety, including: encouraging housing managers to use incentives to promote safety awareness and crime prevention programs; maintaining or improving the physical environment and design of HUD-assisted residences, giving attention to physical safety and crime prevention; and promoting a high level of coordination with law enforcement agencies to prevent and reduce crime. The new Choice Neighborhoods program is one example of how HUD is beginning to realize this strategic goal.

Comment: The Fair Housing Equity Assessment component of the Sustainable Communities grant programs should require mapping health variables to evaluate the impact of healthy and unhealthy community assets.

Response: The Fair Housing Equity Assessment requirement for HUD Sustainable Communities Regional Planning Grant Program grantees includes an identification and assessment of segregated areas and areas of increasing diversity and/or racial/ethnic integration, racially/ethnically concentrated areas of poverty, access to existing areas of high opportunity, major public investments, and fair housing issues, services, and activities. During the course of their work, Regional Planning grantees are required to engage stakeholders and create planning priorities around positive community health outcomes.

Comment: HUD should prioritize housing mobility programs to work toward the goal of environmental justice.

Response: HUD is committed to providing choices and mobility to residents of public and assisted housing. Through HUD's Transforming Rental Assistance Initiative, HUD will work with partners at the state and local levels to regionalize rental assistance administration and to offer residents the option to receive tenant-based Section 8 vouchers, giving families access to a wider range of choices and opportunities when it comes to choosing a place to live.

Comment: HUD should use its Federal Advisory Committee Act (FACA) authority to create a National Equitable Development Advisory Council.

Response: HUD is exploring the most effective ways to bring Federal, state, and local partners and stakeholder expertise to bear on its Environmental Justice work. Establishing an Advisory Council is an option that HUD will look into going forward.

Dated: April 10, 2012.

Shelley Poticha,

Director, Office of Sustainable Housing and Communities.

[FR Doc. 2012–9092 Filed 4–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID No. BSEE–2012–0006; OMB Number 1014–0008]

Information Collection Activities: Well Control and Production Safety Training, Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 60-Day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), BSEE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns an extension to the paperwork requirements in the regulations under Subpart O, ''Well Control and Production Safety Training.''

DATES: You must submit comments by June 15, 2012.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov*. In the entry titled, ''Enter Keyword or ID,'' enter BSEE–2012–0006 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- *Email: nicole.mason@bsee.gov*. Mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Development Branch; Attention: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference ICR 1014–0008 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Development Branch, (703) 787–1605, to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart O, Well Control and Production Safety Training.

OMB Control Number: 1014–0008.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of the Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.'' This authority and responsibility are among those delegated to BSEE. To carry out these responsibilities, BSEE issues regulations governing oil and gas or sulphur operations in the OCS.

Regulations at 30 CFR part 250, Subpart O, implement these safe operation requirements. BSEE uses the information collected under subpart O to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner. In some instances, BSEE will conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. The information collected is necessary to verify personnel training compliance with the requirements.

BSEE will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or are required to obtain or retain a benefit.

Frequency: Primarily on occasion or annual.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur OCS lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 1,144 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart O	Reporting & recordkeeping requirement	Hour burden
1503(a)	Develop training plans. Note: Existing lessees/respondents already have training plans developed. This number reflects development of plans for any new lessees.	70.
1503(c)	Maintain copies of training plan and employee training documentation/record for 5 years.	1½ hr. (plan). 2 hrs. for records.
1503(d)	Upon request, provide BSEE copies of employee training documentation or provide copy of training plan.	5.
1507(b)	Employee oral interview conducted by BSEE	½ hr.
1507(c), (d); 1508; 1509	Written testing conducted by BSEE or authorized representative. Not considered information collection under 5 CFR 1320.3(h)(7).	0.
1510(b)	Revise training plan and submit to BSEE	12.
1500–1510	General departure or alternative compliance requests not specifically covered elsewhere in subpart O.	3.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

Acting BSEE Information Collection Clearance Officer: Cheryl Blundon, (703) 787–1607.

Dated: April 4, 2012.

Douglas W. Morris,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2012–9100 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2012–N079; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Application[s]

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing this permit.

DATES: To ensure consideration, please send your written comments by May 16, 2012.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–123456).

- *Email: permitsR6ES@fws.gov.* Please refer to the respective permit number (e.g., Permit No. TE–123456) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225.
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4256 to make an appointment during regular business hours at 134 Union Blvd. Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kris Olsen, Permit Coordinator Ecological Services, (303) 236–4256 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing this permit.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes you to conduct activities with United States endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) for the application when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number: TE–059369

Applicant: Robert Schoor, Colorado Natural Heritage Program

The applicant requests amendment of an existing permit to add removal and reduction to possession the following species, in conjunction with surveys and population monitoring for the purpose of enhancing each species' survival. Activities will occur on Federal lands in Colorado, throughout the range of each species.

Eriogonum pelinophilum (Clay-loving wild-buckwheat)

Pediocactus knowltonii (Knowlton cactus)

Astragalus humillimus (Mancos milk-vetch)

Phacelia formosula (North Park phacelia)

Astragalus osterhoutii (Osterhout milk-vetch)

Ipomopsis polyantha (Pagosa skyrocket)

Penstemon penlandii (Penland beardtongue)

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in this permit are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: April 2, 2012.

Michael G. Thabault,

Acting Regional Director, Mountain-Prairie Region.

[FR Doc. 2012–9048 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2012–N085; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibits activities with listed

species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before May 16, 2012. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by May 16, 2012.

ADDRESSES: Lisa Lierheimer, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Lierheimer, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Wild Acres Ranch, Sandusky, OH; PRT–64940A

The applicant requests a permit to import four captive-bred cheetahs (*Acinonyx jubatus*), one male and three females, from Bester Birds and Animals Zoo Park, Pretoria, South Africa, for the purpose of enhancement of the survival of the species through captive breeding and zoological exhibition.

Applicant: U.S. Fish and Wildlife Service, Corpus Christi, TX; PRT–71576A

The applicant requests a permit to import one Kemp's ridley sea turtle (*Lepidochelys kempii*) found stranded in the Netherlands for the purpose of enhancement of the survival of the species.

Applicant: The Dallas World Aquarium, Dallas, TX; PRT–71351A

The applicant requests a permit to import two captive-bred Harpy eagles (*Harpia harpyja*), one male and one female, from UMA Vida Silvestre Jesus Estudillo Lopez, Ixtapaluca, Mexico, for the purpose of enhancement of the survival of the species through captive breeding and zoological exhibition.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jon W. Holman, West Fargo, ND; PRT–47905A

Applicant: Billy R. Hablinski, Athens, TX; PRT–71492A

B. Endangered Marine Mammals

Applicant: Edmund Gerstein, Florida Atlantic University, Boca Raton, FL; PRT–063561

The applicant requests a renewal of the permit to take Florida manatees (*Trichechus manatus latirostris*) for the purpose of scientific research. The applicant is requesting no changes to his permit but an extension of time to allow him to complete a study to archive and evaluate manatee responses to controlled boat approaches; his research was hampered by weather and other circumstances beyond his control. This notification covers activities to be conducted by the applicant over a 2-year period.

Applicant: Dr. Milton Levin, University of Connecticut, Storrs, CT; PRT–48161A

The applicant requests a permit to acquire biological samples from polar bears (*Ursus maritimus*) and Florida manatees (*Trichechus manatus latirostris*) held in captivity and to import biological samples from polar bears in the wild for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: April 6, 2012.

Lisa J. Lierheimer,

Supervisory Policy Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–9035 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN03900 L17110000 AL0000]

Proposed Information Collection; Visitor Use Surveys for Headwaters Forest Reserve and King Range National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted a request to the Office of Management and Budget (OMB) to approve surveys of visitors to the Headwaters Forest Reserve (Reserve) and the King Range National Conservation Area (KRNCA) in California. In compliance with the Paperwork Reduction Act of 1995, the BLM invites the general public and other Federal agencies to comment on this proposed information collection.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before May 16, 2012.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–New), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: To Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov. Please indicate ''Attn: 1004–New'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Chris Heppe, Arcata Field Office, at (707) 825–2351 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, to contact Mr. Heppe. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.10(a)).

The BLM published a 60-day notice in the **Federal Register** on February 8, 2011 (76 FR 6815), and the comment period ended April 11, 2011. The BLM received no comments. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–NEW in your correspondence. 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 following information is provided for the information collection:

Title: Visitor Use Surveys for Headwaters Forest Reserve and King Range National Conservation Area.

Forms: None.

OMB Control Number: 1004–New.

Abstract: The proposed visitor use surveys would assist the BLM in meeting goals set forth in Resource Management Plans (RMPs) for the Reserve and the KRNCA that the BLM approved in 2004 and 2005, respectively. The BLM conducted baseline studies of visitor-use characteristics in the Reserve and the KRNCA in 1999 and 2003, respectively.

In light of the addition of new facilities, the implementation of new management actions, and increasing annual visitation, the BLM needs to conduct new visitor-use studies. The information will assist the BLM in determining changes in visitor characteristics, including demographics, usage, user conflicts, and perspectives on management programs and facilities. The methods will include conducting on-site interviews with visitors on a stratified random sampling basis and distributing mail-back questionnaires. The study will take place during the summer season when visitation rates are highest. Data will be analyzed and a final report developed for both the Reserve and the KRNCA. This collection of information will enable the BLM to respond to problems, protect natural and cultural resources, and develop appropriate interpretive programs.

Frequency: One-time.

Description of Respondents: Visitors and recreationists.

Respondents' Obligation: Voluntary.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated reporting burden for this collection is 1,700 responses and 467 hours. The following table details the individual components and estimated hour burdens of this collection.

ESTIMATED NUMBER OF RESPONDENTS, RESPONSES AND TIME

Activity	Estimated number of respondents	Estimated number of responses per respondent	Completion time per response (minutes)	Total burden hours
Headwaters Visitor Interview	600	1	7	70

ESTIMATED NUMBER OF RESPONDENTS, RESPONSES AND TIME—Continued

Activity	Estimated number of respondents	Estimated number of responses per respondent	Completion time per response (minutes)	Total burden hours
Headwaters Mail-back survey	420	1	30	210
KRNCA Visitor Interview	400	1	7	47
KRNCA Mail-back survey	280	1	30	140
Totals	1,700			467

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: None.

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2012–8969 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L57000000–BX0000; WYW176095]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain coal resources in the South Porcupine Coal Tract described below in Campbell County, Wyoming, will be reoffered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 10 a.m. on Thursday, May 17, 2012. Sealed bids must be submitted on or before 4 p.m. on Wednesday, May 16, 2012.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Kathy Muller Ogle, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by BTU Western Resources, Inc., Gillette, Wyoming. The South Porcupine Tract was previously offered for sale on February 29, 2012, and the one bid received at that sale was rejected because it did not meet the BLM's estimate of fair market value. The coal resource to be reoffered consists of all reserves recoverable by surface mining methods in the following-described lands located approximately 1 to 4 miles north of the Campbell/Converse county line, adjacent and up to 2 miles east of the main line railroad, and adjacent to the western and northern lease boundary of the North Antelope Rochelle Mine.

T. 41 N., R. 70 W., 6th Principal Meridian

Sec. 7, lots 7 through 10 inclusive and lots 15 through 18 inclusive;
Sec. 18, lots 6 through 11 inclusive and lots 14 through 19 inclusive;

T. 41 N., R. 71 W., 6th Principal Meridian

Sec. 1, lots 5 through 20 inclusive;
Sec. 12, lots 1 through 16 inclusive;
Sec. 13, lots 1 through 16 inclusive;
Sec. 14, lots 1, 2, 8, 9, 16, and 18;
Sec. 23, lots 1 and 17; and
Sec. 24, lots 2 through 4 inclusive and lots 17, 19, and 21.

Containing 3,243.03 acres, more or less, in Campbell County, Wyoming.

The LBA tract is adjacent to Federal leases to the east and south as well as a State of Wyoming lease to the north, all controlled by the North Antelope Rochelle Mine. It is also adjacent to Federal leases to the west across the mainline railroad, which is part of Cloud Peak Energy Resources, LLC's Antelope Mine. It is adjacent to additional unleased Federal coal to the west.

Most of the acreage offered has been determined to be suitable for mining except for the mainline railroad right-of-way along the western boundary of the LBA. Features such as roads, utilities, and pipelines can be moved to permit coal recovery. In addition, a producing gas well is located on the LBA as well as several coal bed natural gas wells.

The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of this future income stream will consider reasonable compensation to the gas lessee for lost production of the natural gas when the wells are bought out by the coal lessee. Approximately half of the surface estate of the tract is within the Thunder Basin National Grasslands and managed by the U.S. Forest Service. Most of the other half of the surface estate is owned by various private entities with a small amount owned by a Peabody Energy Corporation subsidiary.

The tract contains surface mineable coal reserves in the Wyodak-Anderson coal zone currently being recovered in the adjacent, existing mines. On the LBA tract, there are two mineable seams, the Wyodak-Anderson 1 (Anderson) and the Wyodak-Anderson 2 (Canyon), located in the southern portion of the LBA that merge into a single seam in the northern portion. The total coal thickness averages about 77 feet with the shallower Anderson seam slightly thicker than the deeper Canyon seam where two seams occur.

The two seams can be separated by as much as 80 feet of interburden. Overburden depths to the Anderson range from about 160 to 460 feet thick.

The tract contains an estimated 401,830,508 tons of mineable coal. This estimate of mineable reserves includes the two seams mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include the adjacent State of Wyoming coal although these reserves are expected to be recovered in conjunction with the LBA tract. It also excludes coal within and along the railroad right of way as required by typical mining practices. The total mineable stripping ratio of the coal in bank cubic yards per ton is approximately 4.8:1. Potential bidders for the LBA tract should consider the recovery rate expected from thick and multiple seam mining.

The South Porcupine LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8,905 British Thermal Units per pound containing about 0.20 percent sulfur. These quality averages place the coal reserves near the high end of the range of coal quality currently being

mined in the Wyoming portion of the Powder River Basin.

The tract in this lease offering contains split estate lands. There are qualified surface owners as defined in the regulations at 43 CFR 3400.0–5(gg). Consent granted by the qualified surface owners has been filed with and verified by the BLM. The LBA tract lands included in the consent are:

T. 41 N., R. 71 W., 6th Principal Meridian

Sec. 13, lots 12 through 14 inclusive;
Sec. 14, lots 1, 2, 8, and 18; and
Sec. 24, lots 3, 4, 17, 19, and 21.

Containing 396.79 acres, more or less, in Campbell County, Wyoming.

The purchase price of the consent as stated in the consent documents is ''* * * an overriding royalty of three percent (3%) of the gross realization of all coal mined and sold from the Subject Property.''

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value (FMV) of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The BLM Wyoming State Office Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m. local time on Wednesday, May 16, 2012, will not be considered. The minimum bid is not intended to represent FMV. The FMV of the tract will be determined by the Authorized Officer after the sale. The lease that may be issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by surface mining methods. The value of the coal will be determined in accordance with 30 CFR 1206.250.

Pursuant to the regulation at 43 CFR 3473.2(f), the applicant for the South Porcupine Tract, BTU Western Resources, Inc., has paid a total case-by-case cost recovery processing fee in the amount of $83,694. The successful bidder for the South Porcupine Tract, if someone other than the applicant, must pay to the BLM the $83,694 previously paid by BTU Western Resources, Inc., and, in that circumstance, the BLM would then refund that amount to BTU Western Resources, Inc. Additionally, the successful bidder must pay all processing costs the BLM will incur after the date this sale notice is published in the **Federal Register,** which are estimated to be $10,000.

Bidding instructions for the LBA tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the address above. Case file documents, WYW176095, are available for inspection at the BLM Wyoming State Office.

Donald A. Simpson,

State Director.

[FR Doc. 2012–8973 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL01000. L5110. GN0000. LVEMF1201180; N82888, N90443; MO# 4500031854; TAS: 14X5017]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Bald Mountain Mine North and South Operations Area Projects, White Pine County, NV

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, (NEPA) and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) Egan Field Office, Ely, Nevada intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The proposed project is located in White Pine County, about 70 miles northwest of Ely and 30 miles northeast of Eureka, Nevada.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until 30 days after the publication of this notice in the **Federal Register**. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM web site at: *http://www.blm.gov/nv/st/en/fo/ely_field_office.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Bald Mountain Mine North and South Operations Area Projects by any of the following methods:

- *Email: BLM_NV_EYDO_Barrick_Bald_EIS@blm.gov.*
- *Fax:* (775) 289–1910.
- *Mail:* BLM Ely District, Egan Field Office, HC 33 Box 33500, Ely, NV, 89301.

Documents pertinent to this proposal may be examined at the Egan Field Office, 702 N. Industrial Way, Ely, Nevada.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Miles Kreidler, project lead, telephone: (775) 289–1893; email: *mkreidler@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Bald Mountain Mine (BMM), owned by Barrick Gold US Inc., proposes to expand the existing approved mine facilities in the North Operations Project Area, and expand the existing Casino/Winrock Plan of Operations and incorporate it into the North Operations Project Area. This expansion would add four new heap leach pads and increase the total surface disturbance from 9,124 acres to 13,704 acres. Of the 13,704 total acres, 21.6 acres would be located on private land. In addition, BMM proposes an expansion of the South Operations Area Project which would encompass and expand the existing Yankee and Alligator Ridge mine sites, and would include an access road from the North Operations Area to the South Operations Area. The access road would provide a direct route for transportation of equipment and personnel between the two operational areas, and would also be used for a power line corridor. Establishing the South Operations Area Project would increase the total surface disturbance from 960 acres to 3,643 acres, all of which is on public land.

Mining has been ongoing in this area for over 20 years and a variety of different mining proposals have been analyzed under previous NEPA documents. Most recently, mine expansions were analyzed in the *Final Environmental Impact Statement for the Bald Mountain Mine North Operations Area Project* (August 2009) and the *Mooney Heap and Little Bald Mountain Mine Expansion Project Environmental Assessment* (July 2006).

A range of alternatives will be developed, including the no-action alternative, to address the issues identified during scoping. Mitigation measures will be considered to minimize environmental impacts and to assure the proposed action does not result in unnecessary or undue degradation of public lands.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues:

(a) Potential wildlife impacts could include loss of forage or impediments to mule deer migration, and loss of habitat for the greater sage-grouse and raptors, including golden eagles.

(b) Potential effects to viewshed posed by the proximity of the project to the Pony Express Trail, a Class II Visual Resource Management Area.

(c) Potential effects to wild horses could include loss of habitat and mortality from vehicles using the access road. The project area is within the boundaries of the Triple B Wild Horse Herd Management Area.

(d) Potential impacts to air quality could be created by an increase in the use of equipment at the North Operations Area Project and the initiation of mining at the South Operations Area Project.

The BLM will utilize 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. 470f) 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 impacts on Indian trust assets. Federal, state, and local agencies, along with 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.

Authority: 40 CFR part 1501 and 43 CFR part 3809.

Doris A. Metcalf,

Field Manager, Egan Field Office.

[FR Doc. 2012–9089 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL01000. L51100000.GN0000. LVEMF1201170; N90444; MO# 4500032267; TAS: 14X5017]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Pan Mine Project, White Pine County, NV

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, (NEPA) and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) Egan Field Office, Ely, Nevada intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The proposed project is located in White Pine County, about 50 miles west of Ely near Newark Valley.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until 30 days after the publication of this notice in the **Federal Register**. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/ely_field_office.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Pan Mine Project by any of the following methods:

- *Email: BLM_NV_EYDO_Midway_Pan_EIS@blm.gov.*
- *Fax:* (775) 289–1910.
- *Mail:* BLM Ely District, Egan Field Office, HC 33 Box 33500, Ely, NV, 89301.

Documents pertinent to this proposal may be examined at the Egan Field Office, 702 N. Industrial Way, Ely, Nevada.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Miles Kreidler, project lead, telephone: (775) 289–1893; email: *mkreidler@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Midway Gold US Inc. (Midway) proposes to construct and operate an open-pit gold mining operation, which would include open pits, a heap leach pad, waste rock dumps, and ancillary facilities. The mine would be located in the northern part of the Pancake Mountain Range, about 50 miles west of Ely and 10 miles south of U.S. Route 50. Currently, Midway is authorized to disturb up to 100 acres for exploration purposes. The proposed operations and associated disturbance would increase disturbance to 3,238 acres of public land managed by the BLM. The projected mining period of 13 years, associated construction, closure, and post-closure monitoring periods would extend the project life for an estimated 25 years. Midway is currently conducting exploration activities in this area which were analyzed in two environmental assessments (EA): the *Castleworth Ventures, Inc. Pan Exploration Project EA* (May 2004) and the *Midway Gold Pan Project Exploration Amendment EA* (July 2011).

A range of alternatives will be developed, including the no-action alternative, to address the issues identified during scoping. Mitigation measures will be considered to minimize environmental impacts and to assure the proposed action does not result in unnecessary or undue degradation of public lands.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues:

(a) Potential effects to archaeological resources in the area, such as Carbonari (historic charcoal production) sites and a 1913 alternative route of the Lincoln Highway.

(b) Potential effects to greater sage-grouse posed by the proximity to active sage-grouse leks.

(c) Potential effects to viewshed in and around areas of Visual Resources Management Classes III and IV.

(d) Potential effects to wild horses including loss of habitat and mortality from vehicles on newly created roads.

(e) Potential impacts to air quality created by the initiation of mining at the Pan Mine Project. This would increase air pollution in the area.

(f) Potential effects to recreational use including loss of access and hunting areas. Recreationists using the 1913 alternative route of the Lincoln Highway might lose use of this route.

The BLM will use the NEPA public comment process to help fulfill the public involvement requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns, including impacts on Indian trust assets, will be given due consideration. Federal, state, and local agencies, along with 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.

Authority: 40 CFR part 1501 and 43 CFR part 3809.

Doris A. Metcalf,

Field Manager, Egan Field Office.

[FR Doc. 2012–9091 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1G05120]

Notice of Filing of Plats of Survey; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on May 16, 2012.

DATES: Protests of the survey must be filed before May 16, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Great Plains Region, Bureau of Indian Affairs, Aberdeen, South Dakota, and was necessary to determine individual and tribal trust lands. The lands we surveyed are:

5th Principal Meridian, South Dakota

T. 124 N., R. 52 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the Seventh Guide Meridian, between Ranges 52 and 53 West (west boundary), a portion of the subdivisional lines, and a portion of the subdivision of section 31, and the subdivision of section 31, Township 124 North, Range 52 West, Fifth Principal Meridian, South Dakota, was accepted March 22, 2012.

We will place a copy of the plat, in two sheets, we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–9046 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1G04814]

Notice of Filing of Plats of Survey; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on May 16, 2012.

DATES: Protests of the survey must be filed before May 16, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Great Plains Region, Bureau of Indian Affairs, Aberdeen, South Dakota, and was necessary to determine individual and tribal trust lands. The lands we surveyed are:

5th Principal Meridian, South Dakota

T.123 N., R. 53 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 23, and the

subdivision of section 23, and the supplemental plat creating Parcel A from the remainder of former Lot 7 of section 23, Township 123 North, Range 53 West, Fifth Principal Meridian, South Dakota, was accepted April 4, 2012.

We will place a copy of the plat, in two sheets, we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–9028 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[1730–SZM]

Cape Cod National Seashore Advisory Commission; Cape Cod National Seashore, South Wellfleet, MA

AGENCY: National Park Service, Interior.

ACTION: Two Hundred Eighty-Fourth Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10) of a meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The meeting of the Cape Cod National Seashore Advisory Commission will be held on May 21, 2012, at 1 p.m.

ADDRESSES: The Commission members will meet in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The regular business meeting is being held to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (March 12, 2012)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   - Update on Dune Shacks
   - Improved Properties/Town Bylaws
   - Herring River Wetland Restoration
   - Wind Turbines/Cell Towers
   - Shorebird Management Planning
   - Highlands Center Update
   - Alternate Transportation funding
   - Ocean stewardship topics—shoreline change
   - Pilgrim Power Station and Disaster Response Planning
   - Herring Cove Beach/revetment
   - North Beach Cottages, Chatham
6. Old Business
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. 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.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: April 9, 2012.

George E. Price, Jr.,

Superintendent.

[FR Doc. 2012–9120 Filed 4–13–12; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–761]

Certain Set-Top Boxes, and Hardware and Software Components Thereof; Determination Not To Review Initial Determination Terminating Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 43) granting a joint motion by Complainant and Respondent to terminate the investigation in its entirety based upon the execution of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. 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 Inv. No. 337–TA–761 on March 2, 2011, based on a complaint filed by Microsoft Corporation of Redmond, Washington (''Microsoft''). 76 FR 11512 (Mar. 2, 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 after importation of certain set-top boxes, and hardware and software components thereof by reason of infringement of various claims of United States Patent Nos. 5,585,838; 5,731,844; 6,028,604; and 5,758,258. The notice of investigation named TiVo

Inc. of Alviso, California (''TiVo'') as respondent.

On March 22, 2012, Microsoft and TiVo filed a joint motion to terminate the investigation in its entirety based upon the execution of a settlement agreement. On March 26, 2012, the Commission Investigative Attorney filed a response in support of the motion.

The ALJ issued the subject ID (Order No. 43) granting the motion and terminating the investigation on March 26, 2012. None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID, and thereby renders moot the ALJ's initial determination granting Microsoft's motion for summary determination that it has satisfied the economic prong of the domestic industry. *See* Order No. 42 (March 15, 2012). Accordingly, this investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: April 10, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8990 Filed 4–13–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Residential Lead-Based Paint Hazard Reduction Act

Notice is hereby given that on April 6, 2012, a proposed Consent Decree in *United States* v. *Wilmette Real Estate & Management Co., LLC, et al.,* Civil Action No. 12–cv–2534 was lodged with the United States District Court for the Northern District of Illinois.

The consent decree settles claims against the owners and managers of 463 housing units in 14 separate properties located in or near Chicago, Illinois. The claims were brought on behalf of the Environmental Protection Agency (''U.S. EPA'') and the Department of Housing and Urban Development (''HUD'') under the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4851 *et seq.* (''Lead Hazard Reduction Act.'') The United States alleged in the complaint that the Defendants failed to make one or more of the disclosures or to complete one or more of the disclosure activities required by the Lead Hazard Reduction Act.

Under the Consent Decree, the Defendants will certify that they are complying with residential lead paint notification requirements. The Defendants will submit a plan for window replacement or lead paint abatement work and will replace or abate all windows known to or believed to contain lead-based paint in the 14 residential properties owned or managed by Defendants that are not certified lead-based paint free. In addition, Defendants will abate lead-based paint hazards on friction and impact surfaces on exterior porches in ten of the residential properties, and pay an administrative penalty of $125,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to U.S. Department of Justice, Washington, DC 20044–7611, P.O. Box 7611, and should refer to *United States* v. *Wilmette Real Estate & Management Co., LLC, et al.,* D.J. Ref. # 90–5–2–1–09045.

The Proposed Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the 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. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Karen Dworkin,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–8975 Filed 4–13–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Patriot Porcelain, LLC.

Principal Product/Purpose: The loan, guarantee, or grant application is to purchase new equipment for a china plumbing fixtures and bathroom accessories manufacturing facility, which will be located Kokomo, Indiana. The NAICS industry code for this enterprise is: 327111 (vitreous china manufacturing industry).

DATES: All interested parties may submit comments in writing no later than April 30, 2012.

Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210; or email *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods,

materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC this 6th day of April, 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–9052 Filed 4–13–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts International Indemnity Panel. The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning after July 1, 2012.

DATES: The meeting will be held on Tuesday, May 8, 2012, from 9 a.m. to 5 p.m.

ADDRESSES: The location of the meeting is the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20506, in Room 730.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993.

Dated: April 10, 2012.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2012–8992 Filed 4–13–12; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that five meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 as follows (ending time is approximate):

Arts Education (application review): This meeting will be held by teleconference from 3 p.m. to 4 p.m. EDT, and will be closed.

DATES: May 1, 2012.

Design (application review): This meeting, from 9 a.m. to 6 p.m. in Room 627, will be closed.

DATES: May 7–8, 2012.

Design (application review): This meeting, from 9 a.m. to 5:30 p.m. on May 9th, from 9 a.m. to 6 p.m. on May 10th, and from 9 a.m. to 5:30 p.m. on May 11th, in Room 627, will be closed.

DATES: May 9–11, 2012.

Literature (application review): This meeting, from 9 a.m. to 6:30 p.m. on May 9th and from 9 a.m. to 5 p.m. on May 10th, in Room 716, will be closed.

DATES: May 9–10, 2012.

Design (application review): This meeting, from 9 a.m. to 5:30 p.m. on May 14th, from 9 a.m. to 6 p.m. on May 15th, and from 9 a.m. to 5:30 p.m. on May 16th, in Room 627, will be closed.

DATES: May 14–16, 2012.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: April 10, 2012.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2012–9045 Filed 4–13–12; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Centers for Chemical Evolution (CCE) Site Visit 2012 Site Visit, #1191.

Date and Time: Wednesday, May 9, 2012 (7 p.m.–9:15 p.m.); Thursday, May 10, 2012 (8 a.m.–5 p.m.); Friday, May 11, 2012 (8 a.m.–2 p.m.)

Place: Georgia Institute of Technology Hotel, Atlanta, GA.

Type of Meeting: Partially-Open.

Contact Person: Katharine Covert, Program Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, 703–292–4950.

Purpose of Meeting: To provide advice and recommendations concerning center proposals submitted to NSF for financial support.

Agenda:

Wednesday, May 9, 2012

7:30 p.m.–9:15 p.m. Executive Session (Closed).

Thursday, May 10, 2012

8 a.m.–12 p.m. Welcome & CCE Presentations of research and integrative elements (Open).
12 p.m.–1:15p.m. Executive Session (Closed).
1:15p.m.–4:15p.m. CCE Presentations of research and integrative elements (Open).
4:15p.m.–5 p.m. Executive Session (Closed).

Friday, May 11, 2012

8 a.m.–8:30 a.m. Welcome and Opening Session (Open).
8:30 a.m.–9 a.m. Executive Session (Closed).
9 a.m.–10:30 a.m. Panel meets with CCE Leadership (Open).
10:30 a.m.–2 p.m. Executive Session (Closed).

Reason for Closing: The meeting is closed to the public because the Site Visitors will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act would be improperly disclosed.

Dated: April 10, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–8962 Filed 4–13–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: May 11, 2012, 11 p.m.–5 p.m. EDT.

Place: Teleconference, National Science Foundation, Room 1060, Stafford I Building, 4201 Wilson Blvd., Arlington, VA, 22230.

Type of Meeting: Open.

Contact Person: Dr. James Ulvestad, Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–7165.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: April 11, 2012.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2012–9030 Filed 4–13–12; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF SPECIAL COUNSEL

OSC Forms and Survey Renewal for FY 2012—Request for Comment

AGENCY: Office of Special Counsel.

ACTION: Notice for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and implementing regulations at 5 CFR part 1320, the U.S. Office of Special Counsel (OSC), plans to request approval from the Office of Management and Budget (OMB) for use of four previously approved information collections consisting of three complaint forms and an electronic survey form. These collections are listed below. The current OMB approval for Forms OSC–11, OSC–12, OSC–13, and the OSC Survey expire 9/30/12. We are submitting all three forms and the electronic survey for renewal, based on the upcoming date of expiration. There are no changes being submitted with this request for renewal of the use of these forms. Current and former Federal employees, employee representatives, other Federal agencies, state and local government employees, and the general public are invited to comment on this information collection for the first time. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of OSC functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections 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.

DATES: Comments should be received by May 11, 2012.

FOR FURTHER INFORMATION CONTACT: Karl Kammann, Director of Finance, at the address shown above; by facsimile at (202) 254–3711.

SUPPLEMENTARY INFORMATION: OSC is an independent agency responsible for, among other things, (1) investigation of allegations of prohibited personnel practices defined by law at 5 U.S.C. 2302(b), protection of whistleblowers, and certain other illegal employment practices under titles 5 and 38 of the U.S. Code, affecting current or former Federal employees or applicants for employment, and covered state and local government employees; and (2) the interpretation and enforcement of Hatch Act provisions on political activity in chapters 15 and 73 of title 5 of the U.S. Code. *Title of Collections:* (1) Form OSC–11, (Complaint of Possible Prohibited Personnel Practice of Other Prohibited Activity; (2) Form OSC–12 (Information about filing a Whistleblower Disclosure with the Office of Special Counsel); (3) Form OSC–13 (Complaint of Possible Prohibited Political Activity (Violation of the Hatch Act)); (4) Office of Special Counsel (OSC) Annual Survey; OMB Control Number 3255–0003, Expiration 09/30/12.

Copies of the OSC Forms 11, 12, and 13 can be found at: *http://www.osc.gov/RR_OSCFORMS.htm.* OSC is also required to conduct an annual survey of individuals who seek its assistance. Section 13 of Public Law 103–424 (1994), codified at 5 U.S.C. 1212 note, states, in part: ''[T]he survey shall—(1) determine if the individual seeking assistance was fully apprised of their rights; (2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and (3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel.'' The same section also provides that survey results are to be published in OSC's annual report to Congress. Copies of prior years' annual reports are available on OSC's Web site, at *http://www.osc.gov/RR_AnnualReportsToCongress.htm* or by calling OSC at (202) 254–3600. The survey form for the collection of information is available for review by calling OSC at (202) 254–3600.

Type of Information Collection Request: Approval of previously approved collection of information that expires on September 30, 2012, with no revisions.

Affected Public: Current and former Federal employees, applicants for Federal employment, state and local government employees, and their representatives, and the general public.

Respondent's Obligation: Voluntary.

Estimated Annual Number of OSC Form Respondents: 3,950.

Estimated Annual Number of Survey Form Respondents: 320.

Frequency of Use of OSC Forms: Daily.

Frequency of Survey Form Use: Annual.

Estimated Average Amount of Time for a Person To Respond Using OSC Forms: 64 minutes.

Estimated Average Amount of Time for a Person To Respond to Survey: 12 minutes.

Estimated Annual Burden for the OSC Forms: 2,899 hours.

Estimated Annual Survey Burden: 109 hours.

These forms are used by current and former Federal employees and applicants for Federal employment to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC. This survey form is used to survey current and former Federal employees and applicants for Federal employment who have submitted allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC, and whose matter has been closed or otherwise resolved during the prior fiscal year, on their experience at OSC. Specifically, the survey asks questions relating to whether the respondent was: (1) Apprised of his or her rights; (2) successful at the OSC or at the Merit Systems Protection Board; and (3) satisfied with the treatment received at the OSC.

Dated: April 10, 2012.

Carolyn N. Lerner,

Special Counsel.

[FR Doc. 2012–8999 Filed 4–13–12; 8:45 am]

BILLING CODE 7405–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–3, OMB Control No. 3235–0392, SEC File No. 270–346.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in Rule 15g–3—Broker or dealer disclosure of quotations and other information relating to the penny stock market (17 CFR 240.15g–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 209 broker-dealers will spend an average of 87 hours annually to comply with this rule. Thus, the total compliance burden is approximately 18,200 burden-hours per year.

Rule 15g–3 contains record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self regulatory organizations of which the broker-dealer is a member. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 10, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9011 Filed 4–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–4; OMB Control No. 3235–0393; SEC File No. 270–347.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget (''OMB'') a request for extension of the existing collection of information provided for in Rule 15g–4—Disclosure of compensation to brokers or dealers (17 CRF 240.15g–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 209 broker-dealers will spend an average of 87 hours annually to comply with this rule. Thus, the total compliance burden is approximately 18,200 burden-hours per year.

Rule 15g–4 contains record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self regulatory organizations of which the broker-dealer is a member. The commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to:

Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 10, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9012 Filed 4–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30032; 812–13785]

Huntington Asset Advisors, Inc., et al.; Notice of Application

April 10, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: Huntington Asset Advisors, Inc. (''Adviser''), Huntington Strategy Shares (''Trust''), and SEI Investments Distribution Co.

Summary of Application: Applicants request an order that permits: (a) Actively-managed series of the Trust to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Filing Dates: The application was filed on June 17, 2010, and amended on October 10, 2010, June 10, 2011, February 24, 2012, and April 3, 2012. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 7, 2012, and should be accompanied by proof of service on applicants, 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 reason 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: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, c/o Leslie K. Klenk, Bernstein Shur, 100 Middle Street, P.O. Box 9729, Portland, ME 04104–5029.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Dalia Osman Blass, Assistant Director, 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 h*ttp://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is organized as a Delaware statutory trust. The Trust will initially offer two series, Huntington U.S. Equity Rotation Strategy ETF and Huntington EcoLogical Strategy ETF (together, the ''Initial Funds''). The investment objective of both Initial Funds will be to seek capital appreciation.

2. The Adviser, an Ohio corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), and will serve as investment adviser to the Initial Funds. A Fund may engage one or more sub-advisers (''Sub-Advisers'') to manage specific strategies suited to their expertise. Any Sub-Adviser will be registered under the Advisers Act. SEI Investments Distribution Co., a Pennsylvania corporation, is registered as a broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (''Exchange Act'') and will serve as the principal underwriter and distributor for each of the Funds (''Distributor'').

3. Applicants request that the order apply to the Initial Funds, any future series of the Trust and to any other open-end investment company or series thereof that is an actively managed exchange-traded fund (''ETF'') and (a) is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser [1] and (b) complies with the terms and conditions of the application (collectively, ''Future Funds,'' and together with the Initial Funds, the ''Funds'').[2] The Funds may invest in equity securities (''Equity Funds'') or fixed income securities (''Fixed Income Funds'') traded in the U.S. or non-U.S. markets. The Equity Funds that invest in equity securities traded in the U.S. market (''Domestic Equity Funds''), Fixed Income Funds that invest in fixed income securities traded in the U.S. market (''Domestic Fixed Income Funds'') and Funds that invest in equity and fixed income securities traded in the U.S. market (''Domestic Blend Funds'') together are ''Domestic Funds.'' Funds that invest in foreign and domestic equity securities are ''Global Equity Funds.'' Funds that invest in foreign and domestic fixed income securities are ''Global Fixed Income Funds.'' Funds that invest in equity securities and fixed income securities traded in the U.S. or non-U.S. markets are ''Global Blend Funds'' (and collectively with the Global Equity Funds and Global Fixed Income Funds, ''Global Funds''). Funds that invest solely in foreign equity securities are ''Foreign Equity Funds'', Funds that invest solely in foreign fixed income securities are ''Foreign Fixed Income Funds'' and Funds that invest solely in foreign equity and foreign fixed income securities are ''Foreign Blend Funds'' (and collectively with Foreign Equity Funds and Foreign Fixed Income Funds, ''Foreign Funds''). The Funds may also invest in ''Depositary Receipts.'' [3] No

[1] Any such advisory entity will be registered as an investment adviser under the Advisers Act.

[2] All entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will comply with the terms and conditions of the application.

[3] Depositary Receipts are typically issued by a financial institution (a ''Depositary'') and evidence ownership in a security or pool of securities that have been deposited by the Depositary. A Fund will not invest in any Depositary Receipts that the Adviser deems to be illiquid or for which pricing

Fund relying on the order will invest in options contracts, futures contracts or swap agreements. Each Fund will consist of a portfolio of securities (including equity and fixed income securities), currencies traded in the U.S. or in non-U.S. markets, and other assets (''Portfolio Instruments'').

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as an Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any Brokers selling Shares of a Fund to an Investing Fund (defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Fund within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (defined below) with the Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together are ''Investing Funds''). Investing Funds do not include the Funds.[4]

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the trading price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC,'' and such process the ''NSCC Process''), or (b) a participant in the Depository Trust Company (''DTC,'' such participant ''DTC Participant'' and such process the ''DTC Process''), which, in either case, has executed an agreement with the Distributor with respect to the purchase and redemption of Creation Units.

6. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[5] On any given Business Day[6] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[7] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[8] or (c) TBA Transactions[9] and other positions that cannot be transferred in kind[10] will be excluded from the Creation Basket.[11] If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Global Funds and Foreign Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund or Foreign Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[12]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Listing Market''), on which Shares are listed and traded, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to

information is not readily available. No affiliated persons of applicants or any Sub-Adviser will serve as the Depositary for any Depositary Receipts held by a Fund.

[4] An Investing Fund may rely on the order only to invest in a Fund and not in any other registered investment company.

[5] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[6] Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[7] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[8] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[9] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[10] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[11] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[12] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

correct errors in the published Creation Basket. A Listing Market will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Deposit Instruments and the estimated Cash Amount.

9. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or sale of Creation Units.[13] All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit such orders to the Funds. The Distributor will be responsible for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on a Listing Market. The principal secondary market for Shares will be the Listing Market on which the Shares are listed and traded (the ''Primary Listing Exchange''). When the NYSE Arca, Inc. (''NYSE Arca'') is the Primary Listing Exchange, it is expected that one or more NYSE Arca member firms will be designated by the Listing Market to act as a market maker (a ''Market Maker'').[14] The price of Shares trading on a Listing Market will be based on a current bid-offer in the secondary market. Purchases and sales of Shares in the secondary market will not involve a Fund and will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, in providing a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[15] Applicants believe that the structure and operation of the Funds will be designed to enable efficient arbitrage and, thereby, minimize the probability that Shares will trade at a material premium or discount to a Fund's NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.[16]

13. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or mutual fund. Instead, each Fund will be marketed as an ''actively managed exchange-traded fund.'' All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units, or Shares traded on a Listing Market, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire those Shares from a Fund or tender those Shares for redemption to the Fund in Creation Units only.

14. The Trust's Web site (''Web site''), which will be publicly available prior to the public offering of Shares, will include each Fund's prospectus (''Prospectus'') and/or Summary Prospectus, and Statement of Additional Information (''SAI''). The Web site will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or the Bid/Ask Price against such NAV. On each Business Day, prior to the commencement of trading in Shares on a Listing Market, the Adviser shall post on the Web site the identities and quantities of the Portfolio Instruments held by each Fund that will form the basis for the calculation of the NAV at the end of that Business Day.[17]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer.

[13] Cash purchases and redemptions of Shares may involve a higher Transaction Fee to cover the costs of purchasing and selling the applicable Deposit and Redemption Instruments. In all cases, the Transaction Fee will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

[14] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Listing Market (including NYSE Arca), one or more member firms of that Listing Market will act as Market Maker and maintain a market for Shares trading on that Listing Market. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq stipulate that at least two Market Makers must be registered in Shares to maintain a listing. Registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares.

[15] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[16] *See* supra note 11.

[17] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust and each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and that Creation Units will always be redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the Foreign and Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets for underlying foreign Portfolio Instruments in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fourteen (14) calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Foreign and Global Fund customarily clear and settle, but in all cases no later than fourteen (14) days following the tender of a Creation Unit.[18]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the Prospectus and/or SAI will identify those instances in a given year where, due to local holidays, more than seven calendar days, up to a maximum of fourteen calendar days, will be needed to deliver redemption proceeds and will list such holidays. Applicants are not seeking relief from section 22(e) for Foreign and Global Funds that do not effect redemptions of Creation Units in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act.

11. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

12. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing

[18] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

Management Company (''Investing Fund Adviser''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Fund (''Investing Fund Sub-Adviser''), any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Adviser or any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser (''Investing Fund's Sub-Advisory Group'').

13. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [19] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees (''Board'') of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[20]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

16. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Section 17(a) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person (''Second Tier Affiliates''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund'').

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or Second Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the Shares of the Trust of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the transactions that would accompany such sales and redemptions with, any Investing Fund of which the Fund is an affiliated person or Second-Tier Affiliate.[21]

19. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons or Second Tier Affiliates from acquiring or redeeming Creation Units through in-kind transactions. Both the deposit procedures for in-kind purchases of

[19] An ''Investing Fund Affiliate'' is any Investing Fund Adviser, Investing Fund Sub-Adviser, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[20] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[21] Applicants anticipate that most Investing Funds will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from a Fund. Relief from section 17(a) is not required when an Investing Fund that is an affiliate or Second Tier Affiliate of a Fund purchases or sells Shares in the secondary market as such transactions are not principal transactions with the Fund. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares in Creation Units. The requested relief is intended to cover transactions that would accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of an Investing Fund because the Adviser or an entity controlling, controlled by or under common control with the Adviser is also an investment adviser to that Investing Fund.

Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemptions Instruments will be valued in the same manner as the Portfolio Instruments held by the relevant Fund. Applicants thus believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Creation Units directly from a Fund will be based on the NAV of the Fund.[22] The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase will be in compliance with its investment restrictions and consistent with the investment policies set forth in its registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively Managed Exchange-Traded Fund Relief

1. As long as a Fund operates in reliance on the requested Order, the Shares of the Fund will be listed on a Listing Market.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of the Shares may acquire Shares from a Fund and tender Shares for redemption to the Fund in Creation Units only.

3. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV, the market closing price or the Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on a Listing Market, each Fund will disclose on the Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of that Business Day.

5. No Adviser or any Sub-Adviser, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund through a transaction in which the Fund could not engage directly.

6. The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed ETFs.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Adviser or a person controlling, controlled by or under common control with the Investing Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The Board of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Adviser and any Investing Fund Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section l2(d)(1)(A)(i) of the Act, the board, including a majority of the disinterested board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–l under the Act) received from a Fund by the Investing Fund Adviser, trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Adviser will waive fees otherwise payable to the Investing Fund Sub-Adviser, directly or indirectly, by the Investing Fund in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Adviser, or an affiliated person of the Investing Fund Sub-Adviser, other than any advisory fees paid to the Investing Fund Sub-Adviser or its affiliated person by the Fund, in connection with any investment by the Investing Fund in the Fund made at the direction of the Investing Fund Sub-Adviser. In the event that the Investing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Fund.

[22] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the Shares of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of a Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board were made.

9. Before investing in Shares in excess of the limits in section 12(d)(1)(A), each Investing Fund and a Fund will execute a FOF Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment adviser(s), their Sponsors or trustees, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the Board of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9013 Filed 4–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

AP Henderson Group, BPO Management Services, Inc., Capital Mineral Investors, Inc., CardioVascular BioTherapeutics, Inc., and 1st Centennial Bancorp; Order of Suspension of Trading

April 12, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AP Henderson Group because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BPO Management Services, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Capital Mineral Investors, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CardioVascular BioTherapeutics, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 1st Centennial Bancorp because it has not filed any periodic reports since the period ended September 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 12, 2012, through 11:59 p.m. EDT on April 25, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012–9170 Filed 4–12–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66777; File No. SR–ICC–2012–04]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Add Rules Related to the Clearing of Emerging Markets Sovereign Index CDS

April 10, 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 April 3, 2012, ICE Clear Credit LLC (''ICC'') 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 ICC.[3] 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 purpose of the proposed rule change is to adopt new rules that will provide the basis for ICC to clear additional credit default swap (''CDS'') contracts. Specifically, ICC is proposing to amend Chapter 26 of its rules to add Section 26C to provide for the clearance of the CDX Emerging Markets CDS contracts (''CDX.EM Contracts''), which reference an emerging market sovereign index. Upon Commission approval, ICC will list the five year tenor of the CDX.EM Series 14, 15, 16 and 17 contracts.

As discussed in more detail in Item II(A) below, Section 26C (CDX Untranched Emerging Markets) provides for the definitions and certain specific contract terms for cleared CDX.EM Contracts. A conforming change is also made to the definition of ''Restructuring CDS Contract'' in Section 26E (CDS Restructuring Rules) to encompass components of CDX.EM Contracts that are subject to a restructuring credit event.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the descriptions prepared by ICC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC has identified CDX.EM Contracts as a product that has become increasingly important for market participants to manage risk and express views with respect to emerging market sovereign credit. ICC believes clearance of CDX.EM Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions.

CDX.EM Contracts have similar terms to the CDX North American Index CDS contracts (''CDX.NA Contracts'') currently cleared by ICC and governed by Section 26A of the ICC rules. Accordingly, the proposed rules found in Section 26C largely mirror the ICC rules for CDX.NA Contracts in Section 26A, with certain modifications that reflect the underlying reference entities (sovereign reference entities instead of corporate) and differences in terms and market conventions between CDX.EM Contracts and CDX.NA Contracts. The CDX.EM Contracts reference the CDX.EM Index, the current series of which consists of 15 emerging market sovereign entities: Argentina, Venezuela, Brazil, Malaysia, Colombia, Hungary, Indonesia, Panama, Peru, South Africa, the Philippines, Turkey, Russia, Ukraine and Mexico. CDX.EM Contracts, consistent with market convention and widely used standard terms documentation, can be triggered by credit events for failure to pay, restructuring and repudiation/moratorium (by contrast to the credit events of failure to pay and bankruptcy applicable to the CDX.NA Contracts). CDX.EM Contracts will only be denominated in U.S. dollars.

Rule 26C–102 (Definitions) sets forth the definitions used for the CDX.EM Contract Rules. An ''Eligible CDX.EM Untranched Index'' is defined as ''each particular series and version of a CDX.EM index or sub-index, as published by the CDX.EM Untranched Publisher, included from time to time in the List of Eligible CDX.EM Untranched Indexes,'' which is a list maintained, updated and published from time to time by the ICC board of directors or its designee, containing certain specified information with respect to each index. ''CDX.EM Untranched Terms Supplement'' refers to the market standard form of documentation used for credit default swaps on the CDX.EM index, which is incorporated by reference into the contract specifications in Chapter 26C. The remaining definitions are substantially the same as the definitions found in ICC Section 26A, other than certain conforming changes.

Specifically, Rules 26C–309 (Acceptance of CDX.EM Untranched Contract), 26C–315 (Terms of the Cleared CDX.EM Untranched Contract), and 26C–316 (Updating Index Version of Fungible Contracts After a Credit Event or a Succession Event; Updating Relevant Untranched Standard Terms Supplement) reflect or incorporate the basic contract specifications for CDX.EM Contracts and are substantially the same as under ICC Section 26A for CDX.NA Contracts. In addition to various non-substantive conforming changes, proposed Rule 26C–317 (Terms of CDX.EM Untranched Contracts) differs from the corresponding Rule 26A–317 to reflect the fact that restructuring and repudiation/moratorium are credit events for the CDX.EM Contract. (CDX.NA Contracts currently cleared by ICC do not use the restructuring and repudiation/moratorium credit event.)

In addition, a conforming change is made to the definition of ''Restructuring CDS Contract'' in Section 26E (CDS Restructuring Rules) to address components of CDX.EM Contracts that become subject to a restructuring credit event. The treatment of such restructuring credit events for CDX.EM Contracts will thus be as set forth in existing Section 26E of the Rules.

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to it. ICC believes that the clearance of CDX.EM Contracts will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

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–ICC–2012–04 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–ICC–2012–04. 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 ICC and on ICC's Web site at *https://www.theice.com/publicdocs/regulatory_filings/040312b_ICEClearCredit.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–ICC–2012–04 and should be submitted on or before May 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–9010 Filed 4–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66776; File No. SR–NYSEAmex–2012–20]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Amendments to Its Price List To Raise the Supplemental Liquidity Provider Rebate and Raise the NYSE Crossing Session II Rate and Fee Cap

April 10, 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 29, 2012, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to raise the Supplemental Liquidity Provider (''SLP'') rebate and raise the NYSE Crossing Session II (''NYSE CSII'') rate and fee cap. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to raise the SLP rebate and raise the NYSE CSII rate and fee cap.

The Exchange proposes to raise the SLP rebate from $0.0027 to $0.0032 per share per transaction for SLPs that add liquidity to the Exchange in securities with a per share price of $1.00 or more if the SLP meets the 5% average or more quoting requirement in an assigned security pursuant to NYSE Amex Equities Rule 107B.

The Exchange also proposes to raise the NYSE CSII rate from $0.0001 to $0.0002 per transaction and raise the fee cap from $50,000 to $100,000 per month per member organization for NYSE Amex Equities listed securities and, separately, NYSE Amex Equities traded securities.

The Exchange proposes to make the rule change operative on April 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Act of 1934 (the ''Act''),[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the increased rebate for SLPs is reasonable because it will promote liquidity on the Exchange. The Exchange believes that the increased rebate for SLPs and the proposed fee and cap increase for NYSE CSII are an equitable allocation of fees because all similarly situated member organizations will be subject to the same fee structure and access to the Exchange's market is offered on fair and non-discriminatory terms. In addition, the proposed increased NYSE CSII fee and fee cap are the same as the NYSE CSII fee and fee cap on the New York Stock Exchange (''NYSE'').[5] The Exchange also believes that increasing the fee for NYSE CSII transactions and the monthly cap that is currently applicable thereto is reasonable, equitable and not unfairly discriminatory because it would more closely align the NYSE CSII rate with the other rates within the Price List,[6] while maintaining a cap for member organizations that are particularly active during NYSE CSII.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2012–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2012–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2012–20 and should be submitted on or before May 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9009 Filed 4–13–12; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] *See* NYSE Price List 2012, dated March 1, 2012, *available at https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_price_list_03.01.12_mmr.pdf.*

[6] For example, except for transactions that are free, both the current and proposed NYSE CSII rate of $0.0001 and $0.0002, respectively, are substantially less than the next lowest fee within the Price List (i.e., the $0.0005 rate for Discretionary e-Quotes and verbal agency interest by floor brokers).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Intermediary Lending Pilot (ILP) Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of Funds Availability (NOFA).

SUMMARY: The U.S. Small Business Administration (SBA) requests that eligible organizations submit applications to become Intermediary Lending Pilot (ILP) Intermediaries. SBA will select up to 20 applicants to participate in the ILP program and receive direct loans of up to $1,000,000 each. ILP Intermediaries must use the ILP Loan funds to make loans of up to $200,000 to startup, newly established, or growing small business concerns. ILP Intermediaries that received SBA ILP funding in 2011 are not eligible for funding in 2012.

DATES: The application deadline is 5 p.m. on May 25, 2012.

ADDRESSES: Completed applications must be sent to U.S. Small Business Administration, Office of Financial Assistance, Microenterprise Development Branch, Attention: Jody Raskind, Chief, 409 3rd Street SW., Suite 8200, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jody Raskind, (202) 205–7076.

SUPPLEMENTARY INFORMATION:

Background: The Small Business Jobs Act of 2010 (Pub. L. 111–240), enacted September 27, 2010 (the Act), includes a provision that requires SBA to implement an Intermediary Lending Pilot (ILP) program. Under the ILP program, SBA makes loans to selected nonprofit intermediaries for the purpose of providing loans to small businesses. SBA selected 20 ILP Intermediaries in

2011. SBA will use a competitive selection process to select up to an additional 20 ILP Intermediaries to participate in the program and receive ILP Loans of up to $1 million in 2012. ILP Loans have a 20 year term and an interest rate of 1%, with the first payment deferred for two years. SBA collects no fees on the loans and requires no collateral. An ILP Intermediary must use the ILP Loan proceeds to make loans of up to $200,000 to startup, newly established, or growing small businesses. Eligible intermediaries, which include private, nonprofit community development corporations, must have at least one year of experience making loans to startup, newly established, or growing small businesses. Existing ILP Intermediaries and SBA Microloan Intermediaries are not eligible to apply.

Available funding: The amount currently available for ILP Loans in fiscal year 2012 is $20,000,000. SBA intends to select up to 20 applicants to become ILP Intermediaries and to make loans of up to $1,000,000 to each selected ILP Intermediary. SBA reserves the right to select and fund some, all, or none of the applicants for the ILP program under this NOFA.

Application materials: Organizations seeking to apply for the ILP program can obtain an ILP Application for Selection (SBA Form 2417) and the FY 2012 ILP Program Announcement, which describes the evaluation criteria and SBA's review and selection processes, at *http://www.sba.gov/content/intermediary-lending-pilot*. More information about all aspects of the ILP program is available in the regulations authorizing the ILP program at 13 CFR part 109, as published in the **Federal Register** on April 1, 2011 (76 FR 18007), and in the ILP Procedural Guide, available at *http://www.sba.gov/content/intermediary-lending-pilot*.

Application submission rules: Complete applications must be received by the Chief, Microenterprise Development Branch in the Office of Financial Assistance, or by specific individuals designated by the Chief, by the deadline date and time. Applications received after that date and time will not be considered. Due to the required irradiation of regular mail delivered through the U.S. Postal Service prior to its delivery to Federal offices in the Washington, DC area, organizations are encouraged to use a ''next day'' or ''overnight delivery'' method to ensure the timely receipt of materials. Each application must be submitted in two different formats: (1) Hard copy with original signatures, and (2) in Word or PDF format on a standard Compact Disc. See the instructions in the ILP Program Application for Selection (SBA Form 2417) for specific requirements. Applications sent via email or by facsimile will not be accepted.

Authority: 15 U.S.C. 636(l) and 13 CFR 109.200(a).

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. 2012–8998 Filed 4–13–12; 8:45 am]

BILLING CODE 8025–01–P

SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

Office of Privacy, Records, and Disclosure; Privacy Act of 1974, as Amended

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Notice of Proposed Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Special Inspector General for Afghanistan Reconstruction (SIGAR) gives notice of the establishment of three Privacy Act systems of records.

DATES: Comments must be received no later than May 16, 2012. The new system of records will be effective June 15, 2012 unless SIGAR receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Hugo Teufel, Acting General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934. Comments will be made available for inspection up written request. SIGAR will make such comments available for public inspection in the Office of Privacy, Records, and Disclosure, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. You can make an appointment to inspect comments by telephoning (703) 602–2500. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Public Information Manager, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934, (703) 545–5993.

SUPPLEMENTARY INFORMATION: On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR is responsible for coordinating and conducting audits and investigations to promote efficiency and effectiveness of reconstruction programs, and to detect and prevent waste, fraud, and abuse of taxpayers' dollars. Under 5 U.S.C. 301, heads of Executive or military departments may prescribe regulations governing the conduct of its employees and the custody, use, and preservation of the department's records, papers, and property. To facilitate SIGAR's audits, investigations, and other operations, it plans to create the following systems of records:

SIGAR—01 Firearm Qualification Records;

SIGAR—02 Property Accountability Records;

SIGAR—03 Public Affairs Records.

In the notice of proposed rulemaking which is published separately in the **Federal Register**, SIGAR is proposing to exempt records maintained in several systems from certain of the Privacy Act's requirements pursuant to 5 U.S.C.552a(j)(2) and (k)(2).

The Report of the a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

Sections 552a(e)(4) and (11) of title 5, United States Code, provide that an agency public a notice of the establishment or revision of a record system which affords the public a 30-day period in which to submit comments. To meet this requirement, descriptions of the three new systems of records are published in their entirety below.

Dated: April 10, 2012.

Steven J. Trent,

Acting Inspector General.

SIGAR–01

SYSTEM LOCATION:

Special Inspector General for Afghanistan Reconstruction (SIGAR), 9th Floor, 1550 Crystal Drive, Arlington, VA 22202–4135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SIGAR employees, consultants, and detailees who are required to conduct and/or to maintain firearms qualification, training, and proficiency activities in the performance of their regular duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of an individual's annual qualification scores; Social Security Number (SSN); approvals of arming authority and issue of federal officer credentials and firearms accountability and maintenance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 110–181, Section 1229, National Defense Authorization Act for Fiscal Year 2008; 5 U.S.C. Appendix 3, Inspector General Act of 1978, as amended; and 5 U.S.C. Section 301, Government Organization and Employees.

PURPOSE(S):

Records are maintained and used to document the SIGAR firearms program information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside SIGAR as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the appropriate local, state, foreign, or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

2. For the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing SIGAR in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witnesses, potential witnesses, or their representatives and assistants, and any person possessing information pertinent to the matter when it is necessary to obtain information or testimony relevant to the matter.

3. To the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) compatible with the purpose for which SIGAR collected the records; and (3) the proceedings involve: SIGAR, current or former contractors of the agency, or other United States Government agencies and their components, or a current or former employee of SIGAR, current of former contractors of SIGAR, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where SIGAR or other United States Government agency has agreed to represent the employee.

4. To a federal, foreign, state, or local agency to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit. The agency must deem such disclosure to be compatible with the purpose for which the agency collected the information.

5. To SIGAR contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to agency officers and employees under the Privacy Act.

6. To training, administrative, and operations personnel of local law enforcement agencies in the performance of their regular duties in order to process and to maintain documentation for investigative personnel who have been commissioned as reserve officers or deputies.

7. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored as paper records and/or electronic storage media.

RETRIEVABILITY:

Records are retrieved by name and/or SSN.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Pursuant to General Records Schedule 1, item 29, individual qualification scores, are destroyed when five years old or five years after completion of a specific training program.

Pursuant to General Records Schedule 11, item 4, credentials files, are destroyed 3 months after return to issuing office.

SYSTEM MANAGER AND ADDRESS:

Assistant Inspector General for Investigations, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Privacy Act Officer, 2530 Crystal Drive, Arlington, VA 22202.

The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, 2530 Crystal Drive, Arlington, VA 22202. The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Arming and arrest credential notifications and firearms qualifications results from individuals and training personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SIGAR–02

SYSTEM NAME:

Property Accountability System.

SYSTEM LOCATION:

Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR), 9th Floor, 1550 Crystal Drive, Arlington, VA 22202–4135, and in SIGAR field offices in Afghanistan.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SIGAR employees, including consultants and detailees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and employee/custodian identification and position numbers of employees assigned equipment, account numbers, organization, organization code, and location. Item description, date of purchase, acquired date, purchase price, purchase order number, vendor and manufacturer, model/serial/license number, serial number, catalog number, contract number, property tag identification, status/date, condition of property, operation number, high risk field, disposal code, storage location, responsible officer name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 110–181, Section 1229, National Defense Authorization Act for Fiscal Year 2008; 5 U.S.C. App. 3, Inspector General Act of 1978, as amended,; 40 U.S.C. 524, Section 202(b), Federal Property and Administrative Services Act of 1949;41 CFR, Chapter 101, Subtitle C., Federal Property Management Regulation (FPMR); and 5 U.S.C. Section 301, Government Organization and Employees.

PURPOSE(S):

To identify employees/custodians of issued equipment and provide inventories to satisfy other Federal Procurement Management Regulation requirements; to maintain a record of location of emergency equipment; to provide management information necessary for the budgeting and allocation of equipment; and to provide evidence of assignment, location, and value in the event that government property is stolen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside SIGAR as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To any law enforcement agency as needed to provide evidence of assignment, location, and value in the event that Government property is stolen.

2. To the appropriate local, tribal, state, foreign or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

3. For the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing SIGAR in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any other person who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

4. To the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which SIGAR collected the records; and (3) the proceedings involve: (a) SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, or (b) A current or former employee of SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where SIGAR or another United States Government agency has agreed to represent the employee.

5. To a Federal, foreign, state, tribal, or local agency to obtain information relevant to an Agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. SIGAR must deem such disclosure to be compatible with the purpose for which it collected the information.

6. To SIGAR contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to SIGAR officers and employees under the Privacy Act.

7. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored as paper records and/or electronic storage media.

RETRIEVABILITY:

Records are retrieved by tag number, license number, employee/custodian name, employee identification number, position number, accounting information, catalog number, contract number, make, model, security logon identification, serial number, and/or storage location.

SAFEGUARDS:

Paper records are maintained in secured areas and/or maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Pursuant to the General Records Schedule 3, item 4 and item 9, supply management and inventory files, are destroyed when 2 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management and Support, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, 2530 Crystal Drive, Arlington, VA 22202.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Director, Privacy, Records and Disclosure, Office of Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202.

The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Payroll/Personnel system applications, various internal forms, accountable property representative and employees, data processing personnel, and supply officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SIGAR–03

SYSTEM NAME:

Public Affairs Files

SYSTEM LOCATION:

Special Inspector General for Afghanistan Reconstruction (SIGAR), 9th Floor, 1550 Crystal Drive, Arlington, VA 22202–4135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Media representatives who request interviews with the Inspector General or agency principals; individuals who request information from a press officer concerning an issue(s) or information about SIGAR and its policies; and representatives of nongovernmental organizations throughout the United States; federal, foreign, state and local government officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains contact information for individuals who are involved in the operations of SIGAR; name, address, phone number, email addresses, and the like; assignments, biographies, speaking engagements, interviews and communications of executive level staff, principals and members of the media; press releases; names of media organizations; information on SIGAR employees who asked Public Affairs to publish information/articles about them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 110–181, Section 1229, National Defense Authorization Act for Fiscal Year 2008; Inspector General Act of 1978, as amended; 5 U.S.C. Appendix 3, Investigations; and 5 U.S.C. Section 301, Government Organization and Employees.

PURPOSE(S):

Enables SIGAR Public Affairs to establish and maintain contact with the media, members of civil society organizations and the general public and circulate information to specific individuals or groups based on self-identified regional and policy interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside SIGAR as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To contact members of the media to inform them of events, travel opportunities; respond to media representatives' and general public inquiries on various topics; and prepare briefing materials for interviewees.

2. To other U.S. Government agencies and the White House, and to foreign, state and local governments for purposes of planning and coordinating public engagement activities relevant to SIGAR's external and public affairs activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored as paper records and electronic storage media.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with a schedule to be submitted for approval by the National Archives and Records Administration (NARA) and other government-wide records schedules, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Affairs, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Privacy Act Officer, 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

These records contain information obtained directly from the individual who is the subject of these records, the agency or organization that the individual represents, published

directories and/or other bureaus in SIGAR.

EXEMPTIONS:

None.

[FR Doc. 2012–8989 Filed 4–13–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF STATE

[Public Notice 7847]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Printed Image in China, 8th–21st Century''

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, I hereby determine that the objects to be included in the exhibition ''The Printed Image in China, 8th–21st Century,'' 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 Metropolitan Museum of Art, New York, New York from on or about May 5, 2012, until on or about July 29, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 10, 2012.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–9082 Filed 4–13–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 2012–0057]

Notice of Submission of Proposed Information Collection to OMB

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

ACTION: Notice.

SUMMARY: The Department of Transportation has submitted to the Office of Management and Budget (OMB) for review and clearance utilizing emergency review procedures in accordance with the Paperwork Reduction Act of 1995 (PRA) information collection requests regarding submission of tarmac delay plans to DOT and posting of these plans on airlines' and airports' Web sites. DOT requests that OMB authorize these new collections of information on or before April 20, 2012, for 90 days after the date of approval by OMB.

DATES: OMB approval has been requested by April 20, 2012. Comments are due April 23, 2012. Interested persons are invited to submit comments regarding this proposal.

ADDRESSES: Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Transportation, Office of Management and Budget, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll free numbers), email: *OIRA_submission@omb.eop.gov*. You may also submit comments [identified by Docket No. DOT–OST–2012–0057] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* West Building, Ground Floor, Rm. W–12–140, 1200 New Jersey Ave., 20590–0001 (between 9 a.m. and 5 p.m. EST, Monday through Friday, except on Federal holidays).

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–9342 (Voice), 202–366–7152 (Fax), *blane.workie@dot.gov* (Email). Arrangements to receive this notice in an alternative format may be made by contacting the above-named individual.

SUPPLEMENTARY INFORMATION: The FAA Modernization and Reform Act, which was signed into law on February 14, 2012, requires U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats, and operators of large hub, medium hub, small hub, or non-hub U.S. airports to submit contingency plans for lengthy tarmac delays to the Secretary of Transportation for review and approval no later than May 14, 2012. The Act also requires each covered carrier and airport to ensure public access to its plan after DOT approval by posting the plan on its Web site. The Department notes that these information collection requirements are specifically required by statute and are not being imposed as an exercise of the Department's discretion. The Department seeks OMB approval for the submission and posting of these plans under the PRA emergency clearance process because use of the normal clearance procedures is reasonably likely to cause the May 14 statutory deadline for submission of plans to be missed. The Department has established a Web address for the filing of contingency plans to enable covered U.S. airlines and airports to easily submit their required plans through the World Wide Web. Once OMB approves this information collection, the Department intends to issue a notice that provides information on how covered U.S. carriers and airports can submit the required plans to the Department through the World Wide Web.

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.

This notice addresses two new information collection requirements concerning tarmac delays as a result of the FAA Modernization and Reform Act. For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

1. Requirement to submit tarmac delay plan to DOT for review and approval.

Title: Filing of Tarmac Delay Plan to DOT.

Respondents: Each large, medium, small and non-hub airport in the U.S.; U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats.

Estimated Number of Respondents: 368 U.S. airports and 61 U.S. airlines.

Estimated Total Burden on Respondents: 736 hours for U.S. airports (Average of 2 hours per U.S. airport to prepare and submit plan through electronic submission system since airport associations have prepared templates for use by U.S. airports); 30.5 hours for U.S. carriers (Average of 30 minutes per U.S. carrier to prepare and submit plan through electronic submission system since U.S. carriers already have such plans in place).

Frequency: Every 5 years for covered U.S. airports; every 3 years for covered U.S. carriers.

2. Requirement to ensure public access to tarmac delay plan after DOT approval.

Title: Posting of Tarmac Delay Plan on Web sites.

Respondents: Each large, medium, small and non-hub airport in the U.S.; U.S. carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more seats.

Estimated Number of Respondents: 368 U.S. airports and 61 U.S. airlines.

Estimated Total Burden on Respondents: 107 hours and 15 minutes (Average of 15 minutes per respondent to post plan on Web site).

Frequency: Every 5 years for covered U.S. airports; every 3 years for covered U.S. airlines.

We invite comments on (a) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; we note that these information collection requirements are specifically required by statute; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology. As noted above, the Department intends to provide a portal for electronic submission of the required information. All comments will also become a matter of public record.

Issued this 12th day of April 2012, at Washington, DC.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 2012–9176 Filed 4–13–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0049]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SPIRIT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 16, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012 0049. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SPIRIT is:

Intended Commercial Use of Vessel: ''Coastwise sailing charters along the California coast predominately in the near shore waters of Estero Bay and San Luis Bay.''

Geographic Region: ''California''.

The complete application is given in DOT docket MARAD–2012 0049 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: April 10, 2012.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–9104 Filed 4–13–12; 8:45 am]

BILLING CODE 4910–81–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—April 19, 2012, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Dennis Shea, Chairman of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the

United States and the People's Republic of China''. Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC, on April 19, 2012, to address the ''China-Europe Relationship and Transatlantic Implications''.

Background: This is the fourth public hearing the Commission will hold during its 2012 report cycle to collect input from academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The April 19 hearing will examine the economic, security, and foreign policy aspects of the China-Europe relationship, and their implications for the United States. The hearing will be co-chaired by Commissioners Carolyn Bartholomew and Daniel Blumenthal. Any interested party may file a written statement by April 18, 2012, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Date and Time: Thursday April 19, 2012, 8 a.m.–4:15 p.m. Eastern Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *www.uscc.gov* as soon as available. Please check the Web site for possible changes to the hearing schedule. Reservations are not required to attend the hearing.

ADDRESSES: Please check our Web site at *www.uscc.gov* for further information. Reservations are not required to attend the hearing.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Gavin Williams, 444 North Capitol Street NW., Suite 602, Washington DC 20001; phone: 202–624–1492, or via email at *contact@uscc.gov*. Reservations are not required to attend the hearing.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: April 11, 2012.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2012–9058 Filed 4–13–12; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''Spinal Cord Injury and Disorders Outcomes—Repository (SCIDO–R)–VA'' (108VA11S) as set forth in the **Federal Register** 74 FR 11185–11186 dated March 16, 2009. VA is amending the System Name, System Location, Categories of Records in the System, Routine Uses of Records Maintained in the System, Storage, and System Manager and Address. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than May 16, 2012. If no public comment is received, the amended system will become effective May 16, 2012.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The Spinal Cord Injury and Disorders Outcomes—Repository (SCIDO–R) provides a registry of veterans with spinal cord injury and disorders (SCI&D). This repository contains pertinent information on veterans with SCI&D and enables better coordination of care among VHA staff. The purpose of the repository is to assist clinicians, administrators, and researchers in identifying and tracking services for veterans with spinal cord injuries and disorders resulting from trauma or diseases. The SCIDO–R can also facilitate clinical, administrative, and research reports for medical center use. Regional SCIDO repositories provide aggregate data to the National SCIDO–R database at the Austin Information Technology Center (AITC). This centralized AITC repository is used to provide a VA-wide review of veteran demographics and clinical aspects of injury and disorders for administrative and research purposes. VHA's Spinal Cord Injury and Disorders Services developed the SCIDO–R and these records are maintained exclusively by VA.

VA is renaming the system of records from Spinal Cord Dysfunction Registry—VA to Spinal Cord Injury and Disorders Outcomes—Repository (SCIDO–R)–VA.

The Location has been amended to include that each Spinal Cord Injury Center has a SCIDO application deployment.

The Category of Records in the System is amended to reflect that the SCIDO–R will also store outcome measures of impairment, and a registrant may have multiple outcome entries.

The following routine use disclosure statements are added:

Routine use fourteen (14) states that VA may disclose identifying information, including social security number, concerning veterans, spouses of veterans, and the beneficiaries of veterans to other federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA medical care under Title 38, U.S.C.

Routine use fifteen (15) states that VA may disclose patient identifying information to federal agencies and VA and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish this purpose.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and

guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: March 20, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

SOR #: 108VA11S

SYSTEM NAME:

''Spinal Cord Injury and Disorders Outcomes—Repository (SCIDO–R)–VA''.

SYSTEM LOCATION:

All electronic and paper records are maintained at the Austin Information Technology Center (AITC), Department of Veterans Affairs (VA), 1615 Woodward Street, Austin, Texas 78772, and at VA health care facilities listed in VA Appendix 1 of the biennial publication of VA's Systems of Records. Each Spinal Cord Injury Center has a SCIDO application deployment. Data transmissions between the SCIDO application and the VA databases housed at the AITC are accomplished using the Department's wide area network.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans identified with spinal cord injury and disorders that have applied for VA health care services are included in the system. Occasionally, non-veterans who have received VA health care or rehabilitation services under sharing agreements, contracted care, or humanitarian emergencies will also have information recorded in the Spinal Cord Injury and Disorders Outcomes (SCIDO) Repository.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain identifying information including name, social security number, date of birth, and registration date in the SCIDO–R. SCIDO –Repository registration information may include information about whether individuals are receiving services from VA's spinal cord system of care, neurologic level of injury, etiology, date of onset, type of cause, completeness of injury, and annual evaluation dates offered and received. The SCIDO–R also stores outcome measures of impairment, activity, social role participation, and satisfaction with life. A registrant may have multiple outcome entries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Sections 501 and 7304.

PURPOSE(S):

The SCIO–Repository provides a registry of Veterans with spinal cord injury and disorders (SCI&D). This registry contains pertinent information on Veterans with SCI&D and enables better coordination of care among VHA staff. The purpose of the repository is to assist clinicians, administrators, and researchers in identifying and tracking services for Veterans with spinal cord dysfunction resulting from trauma or diseases. The SCIDO–R can also facilitate clinical, administrative, and research reports for medical center use. Regional SCIDO Repositories provide data extracts to the National SCIDO–Repository database at the AITC. This centralized AITC repository is used to provide a VA-wide review of Veteran demographics and clinical aspects of injuries and disorders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR Parts 160 and 164, i.e., individually identifiable health information, and 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the member, when the member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited Veterans service organization representatives, and other individuals named as approved agents or attorneys for a documented purpose and period of time. These agents/attorneys must be aiding beneficiaries in the preparation/presentation of their cases during verification and/or due process procedures or in the presentation/prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

a. To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

b. To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

4. Disclosure may be made to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requester) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the armed services and/or their dependents may be disclosed;

a. To a Federal department or agency; or

b. Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to ensure the appropriateness of the disclosure to the contractor.

7. VA may disclose on its own initiative any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged

with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Rehabilitation Accreditation Commission, The Joint Commission (JC), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

9. Records from this system of records may be disclosed in a proceeding before a court, adjudicative body, or other administrative body when the Department, or any Department component or employee (in his or her official capacity as a VA employee), is a party to litigation; when the Department determines that litigation is likely to affect the Department, any of its components or employees, or the United States has an interest in the litigation, and such records are deemed to be relevant and necessary to the legal proceedings; provided, however, that the disclosure is compatible with the purpose for which the records were collected.

10. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

11. Records from a system of records may be disclosed to the Department of Justice (DOJ) (including U.S. Attorneys) or in a proceeding before a court, adjudicative body, or other administrative body when litigation or the adjudicative or administrative process is likely to affect VA, its employees, or any of its components is a party to the litigation or process, or has an interest in the litigation or process, and the use of such records is deemed by VA to be relevant and necessary to the litigation or process, provided that the disclosure is compatible with the purpose for which the records were collected.

12. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

13. Disclosure of information may be made when (1) it is suspected or confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is to agencies, entities, and persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosure by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

14. VA may disclose identifying information, including social security number, concerning veterans, spouses of veterans, and the beneficiaries of veterans to other federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA medical care under Title 38, U.S.C.

15. VA may disclose patient identifying information to federal agencies and VA and government-wide third-party insurers responsible for payment of the cost of medical care for the identified patients, in order for VA to seek recovery of the medical care costs. These records may also be disclosed as part of a computer matching program to accomplish this purpose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/disks and optical discs. Electronic data are maintained on Direct Access Storage Devices at the AITC. The AITC stores registry tapes for disaster backup at a secure, off-site location. Electronic backup files for the regional SCIDO–R applications are stored at the Regional Data Processing Center (RDPC1) at Denver, CO also for disaster backup at a secure, off-site location.

RETRIEVABILITY:

Records are indexed by name of Veteran, social security number, and unique patient identifiers.

SAFEGUARDS:

1. Data transmissions between VA health care facilities and the VA databases housed at the AITC are accomplished using the Department's wide area network. The SCIDO–Repository program and other programs at the respective facilities automatically flag records or events for transmission based upon functionality requirements. VA health care facilities control access to data by using VHA's VistA security modules. The Department's Telecommunications Support Service has oversight responsibility for planning, security, and management of the wide area network.

2. Access to records at VA health care facilities is only authorized to VA personnel on a ''need-to-know'' basis. Records are maintained in staffed rooms during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel. Access to the AITC is generally restricted to AITC staff, VA Central Office employees, custodial personnel, Federal Protective Service, and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted. Backup records stored off-site for both the AITC and VA Central Office are safeguarded in secured storage areas.

3. Strict control measures are enforced to ensure that access to and disclosure from all records including electronic files and Veteran-specific data elements are limited to VHA employees whose official duties warrant access to those files. The automated record system recognizes authorized users by keyboard entry of unique passwords, access, and verify codes.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with record disposition authority approved by the Archivist of the United States. Depending on the record medium, records are destroyed by either shredding or degaussing. Optical disks or other electronic media are deleted when no longer required for official duties.

VA has submitted a request for records disposition authority to the National Archives and Records

Administration (NARA) for approval. Upon approval by NARA, VA will publish an amendment to this System of Records. In the interim, no records will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for Spinal Cord Injury and Disorders Outcomes—Repository design, development, and maintenance: SCIDO Program Specialist (128N), 1660 South Columbian Way, Seattle, Washington 98108.

Official responsible for policies and procedures: Chief Consultant, Spinal Cord Injury and Disorders Services (128N), 1660 South Columbian Way, Seattle, Washington 98108.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where medical care was provided or submit a written request to the Chief Consultant, Spinal Cord Injury and Disorders Services (128N), 1660 South Columbian Way, Seattle, Washington 98108. Inquiries should include the Veteran's name, social security number, and return address.

RECORD ACCESS PROCEDURE:

An individual who seeks access to records maintained under his or her name may write or visit the nearest VA facility or write to the Chief Consultant, Spinal Cord Injury and Disorders Services (128N), 1660 South Columbian Way, Seattle, Washington 98108.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Various automated record systems providing clinical and managerial support to VA health care facilities, the Veteran, family members, accredited representatives or friends, and ''Patient Medical Records—VA'' (24VA19) system of records.

[FR Doc. 2012–9043 Filed 4–13–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Monday,

No. 73 April 16, 2012

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Accelerator Control Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2012–0038]

RIN 2127–AK18

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In this NPRM, we (NHTSA) propose to revise the Federal Motor Vehicle Safety Standard for accelerator control systems (ACS) in two ways. First, we propose to amend the Standard to address more fully the failure modes of electronic throttle control (ETC) systems and also to include test procedures for hybrid vehicles and certain other vehicles. This part of today's proposal is related to an NPRM that NHTSA published in 2002.

Second, we propose to add a new provision for a brake-throttle override (BTO) system, which would require that input to the brake pedal in a vehicle must have the capability of overriding input to the accelerator pedal. This BTO proposal is an outgrowth of NHTSA's research and defect investigation efforts aimed at addressing floor mat entrapment and related situations.[1] We propose to apply the requirement for BTO systems to new passenger cars, multipurpose passenger vehicles, trucks and buses that have a gross vehicle weight rating of 10,000 pounds (4,536 kilograms) or less and ETC.

DATES: Comments must be received on or before June 15, 2012.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Michael Pyne, Office of Crash Avoidance Standards (telephone: 202–366–4171) (fax: 202–493–2990). Mr. Pyne's mailing address is National Highway Traffic Safety Administration, NVS–112, 1200 New Jersey Avenue SE., Washington, DC 20590.

For legal issues, Mr. William Shakely, Office of the Chief Counsel (telephone: 202–366–2992) (fax: 202–366–3820). Mr. Shakely's mailing address is National Highway Traffic Safety Administration, NCC–112, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

NHTSA is proposing to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 124, *Accelerator Control Systems,*[2] in two ways. First, we are proposing to update the throttle control disconnection test procedures in FMVSS No. 124. This would apply to passenger cars, multipurpose passenger vehicles, trucks and buses, regardless of weight. Second, we propose to add a new requirement for a Brake-Throttle Override (BTO) system. The latter would be applicable to the same types of vehicles with 10,000 lbs. (4,536 kilograms) gross vehicle weight rating (GVWR) or less and that have ETC.

The first part of today's proposal follows up on a previous rulemaking effort. In 2002, NHTSA published an NPRM to update FMVSS No. 124. That proposal was withdrawn in 2004 mainly because the agency concluded that further development was needed on some of the proposed test procedures. Today's proposal revives that effort and resolves test procedure issues raised in the previous rulemaking.

The second part of our proposal, a BTO system requirement, would require that the brake pedal in a vehicle have

[1] Accelerator pedal entrapment is a particular category of "unintended acceleration." The latter is the general term we use to refer broadly to any vehicle acceleration that a driver did not purposely cause to occur.

[2] 49 CFR 571.124.

the capability of overriding input to the accelerator pedal when both are pressed at the same time. This action augments NHTSA's ongoing research and defect investigation efforts aimed at addressing a serious safety situation where a pedal becomes entrapped by a floor mat or no longer responds to driver release of the pedal because of some other obstruction or resistance.

In general, this proposal aims to minimize the risk that loss of vehicle control will be caused by either: (1) Accelerator control system disconnections; or (2) accelerator pedal sticking and entrapment. For both of these safety risks, which can affect vehicles with mechanical as well as ETCs, the purpose of this rulemaking is to ensure that stopping a vehicle is possible without extraordinary driver actions. Accordingly, we believe both aspects of this rulemaking to update FMVSS No. 124 are warranted.

For measuring return-to-idle in the event of a disconnection, this proposal includes updated test procedures carried over from the 2002 proposal including a powertrain output test procedure which, under today's proposal, would be based on measurement of vehicle creep speed.

For situations where the accelerator pedal fails to return after release, this proposal incorporates a new BTO requirement which comprises:

- An equipment requirement to ensure the presence of BTO in each vehicle; and
- A performance requirement using a stopping distance criterion with the accelerator pedal applied.

II. Introduction

Controlling acceleration is one of the fundamental tasks required for safe operation of a motor vehicle. Loss of control of vehicle acceleration and/or speed, so-called ''unintended acceleration'' or ''UA'', can have serious safety consequences.[3] It can arise either from driver error or for vehicle-based reasons including accelerator pedal interference and separation of throttle control components.

To address loss of control of vehicle acceleration, FMVSS No. 124 requires an engine's throttle to return to idle when the driver stops pressing on the accelerator pedal or when any one component of the accelerator control system is disconnected or severed at a single point. The standard was issued under 49 U.S.C. 30111(a), which directs NHTSA (by delegation from the Secretary of Transportation) to prescribe FMVSSs. Section 30111(a) also states that ''Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.'' This subsection is also the basis for this proposal.

In recent years, NHTSA has been working to update FMVSS No. 124 to more directly address newer electronic engine control systems and also to address different types of accelerator control safety issues such as those that could be mitigated by BTO technology.

We have evaluated BTO technology to understand its performance characteristics and how it differs among manufacturers using this technology. Based on that evaluation, we believe that light-vehicle manufacturers in the U.S. can implement BTO on vehicles having ETC without significant difficulty or cost.

Currently, there are a few vehicle models that still have mechanical throttle controls, and the manufacturers of those vehicles may lack sufficient lead time at this point and probably would incur significant cost to change their manufacturing plans to install BTO systems within the next one or two model years. This is due to the need to change over from mechanical throttle control to ETC for implementation of BTO. However, we believe in the near future these mechanically-throttled vehicles will be discontinued or replaced with new models having ETC.

Based on compliance information that NHTSA receives from vehicle manufacturers annually, almost all model year 2012 light vehicles sold in the U.S. will have a BTO system. Based on our experience with these BTO systems, we believe they will comply with this proposed rule without significant modification. Consequently, any manufacturer design, validation, and implementation costs associated with this proposal should be minimal. Furthermore, compliance testing costs are expected to be low since the proposed test procedure is nearly identical to existing brake performance test procedures. Tests could be conducted along with existing brake performance tests.

Although we do not have a statistical estimate for the number of fatalities or injuries that could be prevented by brake-throttle override technology, we believe that BTO would prevent a significant number of crashes and thus have a positive impact on motor vehicle safety. In NHTSA's complaint database, over a period of about ten years starting in January 2000, the agency identified thousands of reports of UA events of all types (see Section VIIB of this proposal). Based on NHTSA's review and analysis of a subset of vehicle owner-provided narratives in the complaints, some UA incidents appear to have involved stuck or trapped accelerator pedals, and a portion of those resulted in crashes. We believe brake-throttle override would prevent most crashes where a stuck or trapped accelerator pedal was to blame because, with a BTO system, the driver would be able to maintain control through normal application of the vehicle's brakes. We believe brake-throttle override also could prevent stuck-pedal incidents which do not result in a crash but which may require extraordinary driver actions to avoid a crash.

III. Safety Need for Brake-Throttle Override Systems

One of the specific observations of the NASA in its report to NHTSA on Toyota unintended acceleration stated: ''When the brake can override the throttle command it provides a broad defense against unintended engine power whether caused by electronic, software, or mechanical failures.''[4] In Section A, below, we discuss actual incidents where a brake-throttle override system very likely would have provided a safety benefit. Of interest are driving emergencies in which drivers have extreme difficulty stopping or slowing their speeding vehicle because the accelerator pedal is prevented from returning to its normal rest position. Some of these incidents resulted in crashes and, in rare cases, deaths. These instances involve vehicles both with and without ETC systems. In Section B, we discuss how trapped pedal scenarios may lead to crashes. In Section C, we discuss how loss of power brake boost necessitates greater brake pedal pressure to stop a vehicle. Finally, in Section D, we discuss our conclusion that brake-throttle override systems can effectively prevent crashes involving trapped-pedal and sticking-pedal scenarios, and why we are proposing to require brake-throttle override systems on light vehicles with ETC.

A. Inability to Stop a Moving Vehicle in a Panic Situation

On August 28, 2009, there was a passenger car crash near San Diego, California that resulted in the deaths of

[3] In NHTSA's February 2011 final report ''Technical Assessment of Toyota Electronic Throttle Control Systems,'' the agency defined ''Unintended Acceleration'' or ''UA'' very broadly as ''the occurrence of any degree of acceleration that the vehicle driver did not purposely cause to occur.'' Today's proposal deals mainly with a sub-category of UA which is characterized by accelerator pedals that fail to return because they are stuck or trapped.

[4] See Observation O–2 in section 7.2, page 173, of the NASA report at: *http://www.nhtsa.gov/PR/DOT-16-11*.

four people. NHTSA's Office of Defects Investigation (ODI) inspected the crash site on September 3, 2009, and subsequently both ODI and the NHTSA Vehicle Research and Test Center inspected the vehicle. A report was filed on September 30, 2009.[5] The investigators noted the following:

- The vehicle was a loaned Lexus ES350 traveling at a very high rate of speed that failed to stop at the end of Highway 125.
- The driver was a 19-year veteran of the California Highway Patrol.
- The cause of the crash was ''very excessive speed.''
- A customer who had previously used the same loaner car involved in this crash reported an unwanted acceleration event, experiencing speeds in excess of 80 mph.

Investigating this crash, NHTSA inspectors and the San Diego County Sheriff's Department discovered evidence that floor mats had trapped the accelerator pedal, as it was apparent that floor mats had been stacked in the driver footwell, the floor mat was unsecured, and the mat was not appropriate for the vehicle.

The driver in this crash used the brakes during the prolonged event as evidenced by heat-related destruction of some brake components, but it is apparent that the brake application was insufficient to control the vehicle. It is unknown if the driver and occupants made attempts to use other means to stop the vehicle, including shifting the transmission to neutral and turning off the engine. The passenger car involved in the crash was equipped with a push-button keyless start system and a gated automatic transmission shifter with a manual shift mode. It did not have a BTO feature.

NHTSA's Office of Defect Investigation has received complaints through the Vehicle Owner's Questionnaire (VOQ) of similar situations in which a driver attempted to stop a runaway vehicle. The following examples of this are excerpted from narrative descriptions in VOQs:

> Truck was in cruise control. Accelerated to pass slower traffic. Let off throttle. Truck went to full throttle. Could not get truck to decelerate. Had to stand on brakes to bring to a stop. Truck needs new rotors and pads. *The consumer stated the floor mat and gas pedal can interact. When the all weather mat is not clipped in place, and is moved under the gas pedal, it will become fully depressed. The mat can trap the pedal. *Updated [NHTSA–ODI ID# 10245488]

and;

> I was accelerating on the highway and my car continued to accelerate after I took my foot off the gas. I tried to brake and the pedal was extremely hard to press on. The car was able to slow down a bit but once I took foot off brake pedal the car would speed up again. I took my car in for service and was told they could not duplicate the problem and maybe a floor mat caused the problem. My car continues to have trouble braking. [NHTSA–ODI ID# 10260682]

and;

> While driving on a two-lane road * * * the accelerator became stuck. My car reached speeds of up to 80 mph. I could only reduce the speed to 60 mph by riding the brakes. I finally stopped the car by finding a safe pull-off and shifted into Neutral and then Park. My brakes were completely ruined and required replacement. My car was towed to a Toyota dealer. * * * The service department determined that the faulty acceleration was due to a rubber all-weather mat. The mat had been placed over the standard floor mat. [NHTSA–ODI ID# 10200097]

There are similar examples of these kinds of incidents, with and without crashes, in complaint narratives in the VOQ database. Given our evaluation of brake-throttle override technology and the impact it could have in these types of incidents, we believe a regulation is necessary. Furthermore, this can be done at low cost and with minimal vehicle design impact. Therefore, NHTSA has decided to proceed with this proposal to require brake-throttle override systems.

B. How Trapped-Pedal Scenarios May Lead to Crashes

The possibility of a trapped accelerator pedal has been widely acknowledged by NHTSA, vehicle manufacturers, consumer groups, and in the media as a key contributor to the problem of UA. Based on review of UA complaints in the agency's VOQ data and other sources such as media accounts, we can reconstruct how a pedal entrapment event might lead to a crash.

Based on VOQ narratives, when a pedal entrapment occurs, it often follows an acceleration event such as an overtaking maneuver or a merge onto a highway. Upon completion of such a maneuver, when the driver backs off or releases the accelerator pedal, the pedal may be trapped due to interference caused in many cases by stacked or out-of-position floor mats, but it also can be caused by bunched or worn carpets or foreign objects in the driver footwell. In at least one case, a sharp edge on a plastic pedal snagged on the carpeting at wide-open throttle. We also have seen examples where internal friction in a pedal assembly prevented the accelerator pedal from springing back fully (i.e., to a neutral position).

When pedal entrapment or sticking occurs, the driver is likely to be startled upon realizing that the vehicle is continuing to accelerate or is proceeding without an expected drop in speed, without any action on the driver's part. One possible reaction is to re-apply the accelerator pedal, which may dislodge it. More likely, a driver will attempt to apply the brakes. In doing so, a driver's conditioned expectation is that the brakes will produce quick and deliberate deceleration, responding with the same feel and feedback they provide in everyday driving.

However, because the accelerator pedal is being held down and thus the vehicle is trying to accelerate or maintain speed, normal brake application usually will not result in the expected braking effect. This has been characterized as feeling like a ''tug-of-war'' between the engine and brakes. The problem is exacerbated at higher vehicle speeds where increased stopping effort is necessary. Also, if the brakes are applied with light to moderate force for an extended period, *i.e.,* if the driver ''rides'' the brakes, heat-induced brake fade can result which lessens braking effectiveness. The loss of braking effectiveness may be compounded further by a reduction in brake boost, as described in the next section.

From the perspective of a driver in a vehicle that is accelerating unexpectedly or that fails to slow down in the usual manner when the brake is applied, this may amount to confusing and even frightening vehicle behavior. Depending on the duration of the event, many drivers in this situation may experience panic to some degree, and their subsequent actions may be unpredictable.

Especially in cases involving a high level of throttle input, in order to overcome the racing engine, the driver's application of the brakes has to be forceful and steady enough to produce a strong braking effect, ideally over a short duration to avoid brake fade. It is apparent from the complaint narratives that drivers sometimes do not apply steady, hard pressure to the brake pedal in these situations. Instead, they may ''ride'' the brakes with insufficient pedal force. Or they may release the brakes and repeatedly try to re-apply them, sometimes stabbing at the brake pedal. This kind of driver reaction is evident in incidents investigated by NHTSA and

[5] Memorandum from B. Collins (Investigator and Interviewer, Vehicle Research and Test Center) to K. DeMeter (Director, Office of Defects Investigation), September 30, 2009, available in the docket cited in the heading at the beginning of this notice.

also in complaint narratives, and it may lead to or be a result of a loss of power brake boost, as described below.

C. Loss of Power Brake Boost Requires Greater Brake Pedal Force

Power brakes, as contrasted with manual brakes, provide boost to the brake pedal so that the force a driver must apply to the pedal in order to stop a vehicle is reduced. If the power assist fails, the brakes would still work, but the pedal force required to stop the vehicle would be multiplied. On vacuum-assisted power brake systems, which are by far the most common type in light vehicles, power assist is maintained by negative pressure (i.e., below atmospheric) in the engine's intake manifold.

When an accelerator pedal is stuck with the throttle open, manifold vacuum is diminished.[6] In order to maintain brake boost until the throttle closes and restores vacuum in the manifold, many light vehicle brake systems have to rely on residual vacuum, which usually is very limited.

If the brake pedal is pumped while the throttle is open, a loss of boost can ensue quickly for some vehicles. This depends on several factors including the rate of brake pedal application and how far the pedal is depressed. Brake booster volume and residual capacity are important factors that vary among different vehicles. Some vehicles have an auxiliary vacuum pump to maintain brake boost under low vacuum conditions, but even those systems have limitations. On vehicles with a hydraulic boost system, brake boost is unaffected by manifold vacuum, as are air brake systems in heavy vehicles. If a vehicle is equipped with an anti-lock brake system (ABS), engagement of the ABS provides brake hydraulic pressure to stop the vehicle, but sufficient brake pedal force still must be maintained by the driver, so having ABS does not always mitigate a loss of brake boost.

Even with a loss of boost, a driver can usually bring a vehicle with a stuck accelerator to a stop. If a high enough brake pedal force is applied and held steadily, a vehicle's brakes typically are capable of overpowering its engine, but the force necessary on the brake pedal can be many times greater than that used in daily driving.

In some of the UA complaints in the ODI database, it was reported that the driver eventually was able to stop a vehicle with a stuck accelerator by holding down the brake pedal forcefully. However, presumably because the required pedal pressure was much greater than what those drivers were accustomed to, many complainants stated that the brakes seemed to have failed even in cases where the vehicle was successfully stopped without a crash.

D. Description of Brake-Throttle Override

A BTO is a feature that helps to address UA in trapped accelerator pedal situations and possibly in some other related situations. As reported in the press and to NHTSA, a number of vehicle manufacturers already have adopted brake-throttle override or will be incorporating BTO into their vehicle designs over the next few model years.

Based on our technical review of the technology, brake-throttle override is an electronic function of the engine control system. Generally, it works by continuously checking the position of the brake and accelerator pedals and by recognizing when an acceleration command through the accelerator pedal is in conflict with a concurrent application of the brake pedal. If the BTO system identifies that a pedal conflict exists, it invokes the override function which causes the engine control system to ignore or reduce the commanded throttle input, thus allowing the vehicle to stop in a normal fashion. How this is accomplished depends on the design of the vehicle control system. In some vehicles, BTO engagement may partially close the throttle or return it to idle. In other types of powertrains, it may reduce fuel flow or, in the case of an electric drive system, attenuate the electric current driving the vehicle. Regardless of the specific means used, BTO intervention quickly reduces or eliminates the unintended vehicle propulsion.

If a BTO system uses throttle closure to reduce power, this action may have the additional benefit of preventing loss of brake-boost by maintaining manifold vacuum (see discussion in the previous section).[7]

On a vehicle equipped with a BTO system, if for any reason an accelerator pedal fails to return after the driver stops pressing on it, BTO will engage as soon as the driver applies the brake pedal (there may be a delay built into the system on the order of one second; in some systems, other pre-conditions have to be met for the BTO to engage, as discussed below). By intervening in this way, the BTO system essentially gives the brake pedal priority over the accelerator pedal, allowing for normal braking. Thus, the vehicle can be brought to a stop with an amount of pedal effort that drivers are accustomed to, even though it may be clear that something out of the ordinary has occurred. Without a BTO system, the brakes would have to overcome the propulsive force of a racing engine, and the driver would have to ''fight'' the drivetrain as the vehicle is slowed and brought to a stop.

Because it reduces or eliminates propulsive force and also has the potential to minimize loss of power brake boost, we believe that BTO would be very effective in scenarios like those described in the relevant VOQs where drivers apparently experienced trapped pedals. In those cases, BTO would ensure that normal application of the brake pedal would produce sufficient braking to stop the vehicle. This should minimize panic on the driver's part and very likely would lower the risk of a crash following a trapped pedal event.[8]

Some manufacturers' implementation of a BTO system may include checking for certain prerequisite conditions prior to actuation. The BTO system may check conditions such as vehicle speed, engine revolutions per minute (RPM), brake pedal travel, and pedal sequence (i.e., whether the brake was pressed first and then the gas pedal, or vice versa) to determine if the driver's intention is to stop the vehicle. Based on these conditions, the BTO system may determine that the combined brake and gas pedal inputs are actually intentional, and it would not necessarily intervene in that case. This may occur, for example, if the vehicle is at very low speed and the driver presses on the brake first and then on the accelerator. This behavior is consistent with intentional driving maneuvers which may be used for such things as trailer positioning or similar situations. We believe there is no particular safety issue in these situations, and in fact this type of ''two-footed'' driving capability can be desirable and may be in widespread use. Since there is no reason for the BTO to intervene in this case, today's proposal would not prohibit this kind of BTO design. In fact, our proposal intentionally avoids restricting the specific design aspects of BTO systems so that current BTO systems

[6] The degree of this diminishment depends mainly on throttle position and engine speed.

[7] Loss of brake boost is highly dependent on the type of vehicle propulsion and the design of its braking system.

[8] We note that a BTO system fundamentally relies on brake pedal application. If the brake is not applied, even if all other necessary conditions are met, the BTO system will not engage and the vehicle accelerating force will not be suppressed. For this reason, pure pedal misapplication (meaning that a driver unintentionally steps on the accelerator pedal and does not apply the brake at all) is not addressed by installation of a BTO system.

can be accommodated to the greatest extent possible, because we believe those systems (based on our testing) would address the safety issue at hand.

Although often caused by floor mat interference, the failure of an accelerator pedal to return after release may also result from ''sticky pedal'' situations.[9] Depending on the source of ''stickiness'' in an accelerator pedal, we believe that brake-throttle override will be an effective countermeasure in most instances as it would treat sticky pedals the same as trapped pedals, and thus would prevent any significant vehicle acceleration once the brake pedal is applied.

We note that an ETC system may recognize when a pedal assembly is malfunctioning, and it may be able to invoke some fail-safe action without involving BTO. This would depend on the nature of the malfunction and the design of the control system. For example, an ETC could override the accelerator pedal assembly if signals from the pedal position sensor exceed design limits. This could occur without brake pedal application. This is a desirable response to a broken pedal assembly and meets the need for safety independent of any brake-throttle override capability.

IV. Technical Discussion of Accelerator Control System Safety Issues

A. Accelerator Control System Disconnections

In the past, vehicles had mechanical throttle systems consisting of rods, levers, cables, and springs to translate movement of the driver-operated accelerator pedal into throttle plate rotation. These systems were subject to the possibility of disconnection or separation of its linkages. Without a safety countermeasure such as a spring-loaded throttle plate, a disconnection in a mechanical system could result in a throttle plate that remained open after the driver let off of the accelerator pedal.

Similarly, return springs are susceptible to the possibility of disconnection or breakage, which could lead to an open throttle if the control system lacks a backup spring or other supplemental means of closing the throttle.

There also is the possibility that an accelerator control system could have excessive friction between its moving parts, especially in very cold temperatures. This could inhibit the throttle from immediately rotating back to idle after release of the accelerator pedal.

FMVSS No. 124 has been in place since the 1970s to ensure that disconnections, separations, or severances do not result in an open throttle and potentially a runaway vehicle. The Standard also prohibits ACSs that return the throttle to idle too slowly even with no disconnections, which could be hazardous in severe instances.

These protections against disconnections and slow-returning throttles are carried forward in today's proposal.

B. Electronic Throttle Control

Now that mechanical accelerator controls have been superseded by ETC, the kinds of failures that might occur are somewhat different. In an ETC or ''throttle-by-wire'' system, the driver still uses an accelerator pedal to modulate drivetrain output. However, most of the mechanical components linking the pedal to the throttle on the engine now are supplanted by electronic components including sensors, electric motors, a control module, and connecting wires. Some mechanical parts, particularly springs, are still employed, but the primary connection between the pedal and the engine throttle is electronic.

Disconnections of the kind covered by FMVSS No. 124 are possible in ETC systems, but would involve separation of electrical connectors or severance of connecting wires rather than disconnection of linkages or cables. In official letters of interpretation, NHTSA has asserted that disconnection of power and ground wires in ETC systems, as well as shorting of those wires, are to be considered among the faults covered by the Standard, and the agency has conducted compliance testing accordingly. However, none of these electrical disconnections are explicitly addressed in FMVSS No. 124 currently.[10] As such, today's proposal updates FMVSS No. 124 to incorporate these interpretations so that the standard will now have specific regulatory language to address electronic ACSs.

C. Potential ETC Failures Not Covered

ETC systems generally are designed with fail-safe characteristics such as fault checking and control redundancy to prevent throttles from opening unintentionally. They often have ''limp home'' modes which restrict the throttle opening to a small range when a fault occurs. These fail-safe characteristics limit engine power so that the vehicle is incapable of abrupt acceleration. However, NHTSA understands that manufacturers and suppliers have implemented ETC systems in different ways and have incorporated different fail-safe characteristics in the design of these systems.

Allegations of throttles failing to close after accelerator pedal release, or throttles opening unexpectedly without accelerator pedal input, have been widely publicized, and it has been alleged that some such incidents have been caused by electronic faults such as errant throttle control signals or ambient electrical disturbances. The agency has been carefully evaluating the safety of ETC systems through research and defect analysis, and we engaged the National Academy of Sciences (NAS), an independent scientific body, to study the problem of UA in motor vehicles. The NAS issued a report in January 2012 to broadly address the issue of safety in electronic vehicle control systems. (Note that this study is different from the NASA report released in February 2011 which focused specifically on Toyota ETC systems.)[11]

Until this work is complete, it is premature to propose additional safety requirements at this time. Therefore, the only ETC failures within the scope of this proposal are disconnections of ETC components and wiring which result in open or short circuits, which is consistent with NHTSA interpretations of the current language of FMVSS No. 124.

V. Proposed Update of FMVSS No. 124 Test Procedures

We believe that changes set forth in this proposal are necessary to ensure that the longstanding requirements in FMVSS No. 124 remain relevant for modern ACSs.

[9] This may occur due to a malfunction in the moving parts of an accelerator pedal assembly causing the pedal to lose its ability to quickly spring back to its rest position. The assembly, after it has been in service, may develop excessive internal friction for a variety of possible reasons such as: internal springs or sensing elements can break; seating surfaces and housings can deform or fracture and fragments may lodge in moving parts; or foreign liquids can penetrate and coagulate inside the assembly. Manufacturing variation can play a role, as well as environmental factors like heat, cold, and moisture, which can lead to warping and corrosion. NHTSA has experience with pedal defects of this kind which have led to recalls, most notably the Jan. 2010 recall of accelerator pedal assemblies in Toyota vehicles [NHTSA Recall no. 10V–017].

[10] For a fuller discussion of these letters of interpretation, please see NPRM of July 23, 2002 (67 FR 48117).

[11] The NASA report is available at: *http://www.nhtsa.gov/PR/DOT-16-11.* After ten months of studying Toyota's ETC system, NASA was not able to identify an electronic cause of large, unintended throttle openings.

Although this proposal introduces new test procedures, we believe it does not impose a significant new burden on vehicle manufacturers. In fact, we expect it can relieve certification burden by providing test procedures for different kinds of accelerator control systems and also by accommodating fail-safe strategies other than return of a throttle to a mechanical stop.

We note that this portion of today's proposal is nearly the same as the 2002 NPRM (July 23, 2002, 67 FR 48117), with two exceptions. First, an intake airflow rate criterion has been added to the other disconnection test procedures as a compliance option that may be useful for spark ignition engines. This criterion has been added in response to comments on the 2002 NPRM. Secondly, the powertrain output test we are proposing would use vehicle terminal speed or ''creep speed'' instead of some other parameter like engine speed or torque. This also has been added in response to comments on the 2002 NPRM.

A. Purpose and Scope of FMVSS No. 124 at Present

The scope of FMVSS No. 124 as it currently exists is limited to how quickly a throttle returns to idle, either in normal operation (i.e., without any disconnections) or in the event of a disconnection or severance in the control system. We have sought to maintain the scope of the existing Standard by limiting today's proposal to what was designated in past agency interpretations as being within scope, and by limiting the additional test procedures to the minimum necessary for non-mechanical ACSs. For example, where the present Standard applies to single-point failures such as the disconnection of one end of a throttle cable, today's proposal also is limited to single-point disconnections such as removal of a single electrical connector or severing a conductor at one location.

The current language of the test procedure in FMVSS No. 124 is expressed in terms of the return of an observable moving part, i.e., the throttle plate, to a closed or nearly closed position. It does not prescribe other types of vehicle fail-safe responses besides throttle closure. This neglects the variety of ways in which powertrain output in a vehicle with a modern throttle control system can be reduced to an acceptably benign level, e.g., spark adjustment, even though the throttle plate may be at a non-idle position. It also leads to non-optimal test procedures for hybrid or electric vehicles and diesel-engine vehicles whose drive power may not be governed by throttle position.

The current Standard's stated purpose is to ''prevent engine over-speed.'' The sole performance criterion, expressed in terms of throttle plate closure, does indeed have the effect of limiting engine speed, or more specifically engine torque. That, in turn, limits power output to the drive wheels.

FMVSS 124's focus on control of the throttle was a convenient criterion at the time the Standard was adopted. However, NHTSA does not believe the intent of the Standard should be construed as merely setting a limitation on throttle position. Instead, it is evident that the fundamental safety purpose of the Standard is to prevent a vehicle's powertrain from creating excessive driving force when there is no input to the accelerator pedal. There would be no safety reason whatsoever to require the throttle to close if that did not limit vehicle propulsion.

B. Need for Update of FMVSS No. 124

Even if it is well established that FMVSS 124 does apply to ETC systems, regulating ETC systems by drawing analogies to mechanical systems has undesirable outcomes. This can lead to situations, as we have mentioned, where safe engine responses are discounted, and test methods for some alternative types of vehicle propulsion are not clearly defined.

There are important questions about exactly how the Standard should be applied to ETC. For example, in a request for interpretation, one vehicle manufacturer suggested that merely placing two return springs on the accelerator pedal assembly satisfied the requirement for ''two sources of energy'' capable of returning the throttle to idle. NHTSA responded that, while that approach might be enough to satisfy the need for pedal return, it could not ensure return of the engine throttle itself in the event of a disconnection beyond the pedal.

Another reason that FMVSS 124 needs updating is that powertrain responses that can result from failures in electronic systems are much more varied than with mechanical systems. Fuel injection and ignition timing are among factors that can be varied without any change in throttle position.

For example, we have seen engines with spring-loaded throttles that do not close fully to idle when disconnected from the electrical harness. They assume a default position that is slightly more open than idle. This kind of ''limp-home'' feature presents no safety hazard. In fact, it provides a safety benefit by avoiding engine stalling and allowing the vehicle to be moved out of traffic, which can be critical for preventing a crash. Engines with this kind of design may accomplish the essential fail-safe performance by retarding the ignition timing or restricting fuel delivery so that the engine torque output is limited to a level at or below what is normally provided at idle. A design of this kind thus is able to achieve an equivalent level of safety without full return of the throttle.

Other technology also illustrates the need for this update of FMVSS 124. Modern engines routinely have variable valve lift and/or timing control. In at least one recent engine design, the level of valve control is great enough that the throttle plate no longer throttles the engine during at least part of the engine's operating range. Instead, air intake is throttled to a large extent by the intake valves themselves while the throttle plate stays in an open position. In such a design, requiring ''return of the throttle to the idle position'' would be design restrictive without any safety justification.

Furthermore, the reduced relevancy of the throttle plate removes the most easily observable component for verifying return-to-idle. For some engines such as electronically controlled diesel engines with unitized injectors, assessing compliance cannot be done by simply observing retraction of a traditional fuel rack to a set position. This means that some alternative method of verifying return-to-idle is needed.

In spite of these facts, even the most advanced engines do have an idle state, and it is still possible to identify a measurement criterion for them and to expect these types of engines to return to a safe idle state.

In order to recognize the advancement of engine technology, and to better regulate advanced vehicle propulsion systems, improved regulatory language is needed. This proposal addresses this need with revised regulatory language to include new test procedures that can be applied to a variety of vehicle propulsion systems.

C. Applicability to Electronic Throttle Control Components

NHTSA concluded in published interpretation letters that electrical wires and connectors in an electronic ACS are analogous to mechanical components in a traditional ACS and are therefore subject to the same safety requirements as their mechanical counterparts. We were able to conclude this because the regulatory language, although modeled on mechanical

features of carbureted engines, actually is stated in very general terms. It defines the ACS as ''all vehicle components, except the fuel-metering device, that regulate engine speed in direct response to the movement of the driver-operated control and that return the throttle to the idle position upon release of the actuating force.''

NHTSA stated that the ACS does not consist only of the accelerator pedal assembly and the wiring harness connecting it to the engine control module (ECM), but extends beyond the ECM to include connections to the actual throttling device on the engine. We stated that the ACS must extend beyond the pedal assembly because those components are the only link between the engine throttle and the accelerator pedal. Otherwise, if the electrical connection between the ECM and throttle actuator was disconnected for example, no fail-safe action would be required, which would be contrary to the Standard's primary purpose.

There was also the issue of whether the ECM itself should be considered part of the ACS. We concluded in the interpretation letters that the ECM should be considered an ACS component for the purposes of the Standard because throttle control signals originate within it. We stated that the ECM as a whole unit, along with its associated external connective wires, are critical ''linkages'' that in effect form a connection from the gas pedal to the engine throttling device.

On the other hand, it was less clear whether internal circuitry within the ECM or another enclosed electronic module should be subject to ''severances and disconnections.'' If that were the case, the system might have to withstand disruption of internal electronic elements such as the microprocessor without causing loss of throttle control. Instead, we concluded that the internal elements of an ECM, besides serving functions unrelated to throttle control, are analogous to the internal fuel-metering parts of a carburetor, which the existing Standard's ACS definition specifically excludes. Thus, the agency's position has been that severances or disconnections of elements inside of the ECM or another enclosed module in the ACS are outside the scope of Standard No. 124.

The 2002 proposal included new regulatory language to clarify FMVSS 124's applicability to electronic components. It included the following requirement for fail-safe performance:

> Severances and disconnections include those which can occur in the external connections of an electronic control module to other components of the accelerator control system and exclude those which can occur internally in an electronic control module.

The interpretation letters (discussed in the July 2002 NPRM) also recognized that disconnections of wires between electronic components could result in short circuits, not just open circuits. For that reason, the proposed regulation also stated:

> The accelerator control system shall meet [these] requirements * * * when either open circuits or short circuits to ground result from disconnections and severances of electrical wires and connectors.

These requirements are carried forward in today's proposal.

D. Test Procedures of the 2002 NPRM

Of the several test procedures included in the 2002 NPRM, the first was essentially the air throttle plate position of the original Standard, normally applicable to conventional gasoline engines.

A second proposed procedure, new to FMVSS 124, allowed for measurement of net fuel flow rate, and was included primarily for diesel engines, but could be applied to vehicles with other types of powertrains.

A third proposed procedure, also new, allowed for measurement of electric current flow to an electric drive motor, and was intended for electric vehicles and for the electric driven portion of hybrid vehicles.

Finally, the 2002 NPRM proposed a new procedure which would use engine speed to indicate idle state. As conceived, the procedure was to be conducted on a chassis dynamometer in order to simulate a realistic load on the drivetrain. RPM was thought to be a valid idle-state measurement as long as the appropriate amount of load was exerted on the drivetrain of the vehicle so that the engine speed response reflected actual driving conditions. The engine RPM test was considered a multi-purpose test because it could be applied to different powertrain types including those of gasoline, diesel, and possibly electric vehicles.

Under the 2002 NPRM, a manufacturer could choose any one of the proposed test procedures as a basis for compliance, and the choice was to be irrevocable so that failure to comply under the selected procedure could not be negated merely by trying each of the other procedures in hopes of successfully complying.

All of the procedures in the proposal were premised on return to a ''baseline'' idle condition which was the measured idle of the vehicle in normal operation, i.e., without any faults or disconnections in the ACS. Return to the ''baseline'' idle was treated as analogous to return of a throttle plate to the idle position. A tolerance was deemed appropriate to accommodate overshoot and/or fluctuation which are possible responses when disconnections are present in electronically controlled throttle systems. The proposal set the idle state tolerance at 50 percent above the measured baseline value.

E. Powertrain Output Test Procedures and ''Creep Speed''

Early on in the effort to update FMVSS No. 124, comments from industry groups led to the idea that a performance test which measured engine output would be a useful alternative to a throttle position test. Among suggested measurement criteria were engine RPM and drive wheel torque. This idea evolved into using vehicle speed as a measurement criterion, and the term ''creep speed'' was applied to this because it would measure the speed that a vehicle has when it ''creeps'' along. Creep speed describes the condition of a vehicle moving under its own power when it is in gear and has no input to the driver-operated accelerator control. It is defined as the maximum or terminal speed that a vehicle can achieve in that condition both with its ACS intact and with disconnections.

This test had the significant advantage of being ''technology-neutral'' meaning that it would be applicable to all forms of vehicle propulsion. However, measuring vehicle speed as a compliance criterion necessitates testing a vehicle under real or simulated driving conditions. That meant that a chassis dynamometer would be required for a creep speed test, or else the vehicle would have to be tested on a test track.

At the time of the 2002 proposal, NHTSA was persuaded that the creep speed test had merit, but decided that further evaluation of the idea was necessary for a number of reasons. First, it was necessary to verify feasibility of using a dynamometer to measure creep speed since the agency did not have a similar procedure in any other regulation. Second, it would be necessary to determine whether creep speed was a useful and practical performance criterion. Lastly, we wanted to demonstrate the practicability of conducting compliance tests using that approach.

Subsequent to the 2002 NPRM, NHTSA conducted a series of tests using a wheel-driven (chassis) dynamometer at the Transportation Research Center (TRC) in East Liberty, Ohio. A report

describing the testing and results is available in the docket number cited in the heading of this notice. Tests were conducted using three ETC-equipped vehicles instrumented with torque wheels on their drive axles for measurement of the net acceleration or deceleration torque. As described in the report, the dynamometer was programmed so that its power absorption simulated the net road force of actual driving conditions, including the effects of tire rolling resistance and aerodynamic drag unique to each test vehicle.[12]

Dynamometer tests were conducted on each vehicle in a variety of operational conditions including both normal operation and with disconnection faults. The testing evaluated vehicle response to the types of disconnections that are possible in electronic ACS systems. Torque output, vehicle speed, and engine RPM were measured parameters of each test. Throttle plate position was also monitored. The latter was useful for determining if a vehicle's design strategy to limit engine power during fail-safe operation was to use throttle control or some other factor. The following are key test results of NHTSA's testing:

ACS CREEP SPEED TEST RESULTS

	Chevrolet pick-up, LT245/75R16	Buick Lacrosse sedan, P225/55R17	Toyota Corolla sedan, P195/65R15
Creep Speed at unfaulted idle	3 mph–4 mph	5 mph	4.9 mph.
Maximum faulted creep speed	9 mph	23.5 mph	23.6 mph.
Fault condition where maximum creep speed occurs.	Disconnection at throttle actuator (whole connector).	Pedal harness disconnect at 40 mph or greater.	Disconnection at throttle actuator (whole connector).

This NHTSA testing indicated that drivetrain torque values were low following each sampled type of ACS disconnection. This was evident in that the test vehicles' engines did not race to a high RPM level and the vehicles decelerated or gradually accelerated (depending on the initial test speed) to their terminal creep speeds. The vehicles behaved as if they were operating either in a normal idle or a ''high idle'' condition, except in a few cases where the result was stalling or rough idling. The vehicles remained easily controllable in terms of being free of any abrupt acceleration. At any point in each test, it was possible to bring the test vehicles to a stop on the dynamometer with only light brake application (equivalent to or only marginally greater than that needed to prevent movement of an in-gear vehicle at a normal idle).

The drivetrain output test procedure that we are proposing today as an alternative to throttle position, fuel delivery rate, air intake rate, or electric power delivery is based on this creep speed methodology. We are proposing that FMVSS No. 124 should allow a maximum creep speed for all vehicles of 50 km/h (31 mph). This is a speed that we concluded would accommodate typical light vehicle responses to ACS disconnections including various limp-home modes. This was based in part on a demonstration of vehicle response to pedal position sensor disconnection using a popular passenger vehicle with ETC. The demonstration was conducted as part of an ex-parte meeting and discussion with vehicle manufacturers as a follow-on to the 2002 NPRM.[13]

Our subsequent laboratory tests, as reported above, showed that this level of speed is equivalent to a relatively small amount of drivetrain torque output. Considering that this speed would be the ultimate terminal speed of a vehicle with an ACS disconnection, it represents a small and easily controllable amount of vehicle acceleration. We believe that it is a reasonable threshold that would ensure safety in the event of an ACS disconnection.

The proposed procedure would measure terminal speed following an ACS disconnection from any initial vehicle speed. It is divided into two parts, corresponding to whether the initial test speed is greater or less than the required maximum of 50 km/h. For initial speeds lower than 50 km/h, the vehicle's terminal speed following an ACS disconnection would have to stay below the 50 km/h threshold. For higher initial speeds, the terminal speed following a disconnection would have to drop to 50 km/h or lower within some specified period of time after the accelerator control is released. We call the latter case the ''coastdown'' procedure. The creep speed and coastdown procedures are discussed in more detail later in this document.

F. Comments on the 2002 NPRM

A number of comments were submitted in response to NHTSA's 2002 NPRM (before it was withdrawn). Commenters included The Alliance of Automobile Manufacturers (Alliance), The American Trucking Associations (ATA), The Association of International Automobile Manufacturers (AIAM), and The Truck Manufacturers Association (TMA). Some individual member companies of those organizations also submitted comments including Blue Bird Body Company, BMW Group, Ford Motor Company, American Honda Motor Company, and Volkswagen of America, Inc.

The comments were generally supportive of NHTSA's effort to update FMVSS 124, but raised a number of important issues. To a great extent, changes we have made in the current proposal vis-à-vis the 2002 NPRM address those issues. The following is a brief point-by-point summary of the comments:

AIAM

- Cancellation of ''limp-off-the-road'' mode by brake pedal application is design restrictive.
- 50 percent idle state tolerance is insufficient and could lead to stalling; range should be defined by manufacturer or some different way.[14]
- Favors having compliance options, but objects to ''irrevocable selection.''
- Suggests fuel delivery and air intake rate tests be done simultaneously (combine S6.2 and 6.3), i.e., measure both quantities at once; vehicle ''passes'' if either measurement meets the specification.
- Recommends allowing optional early compliance with the new standard.

[12] Road force data is available for U.S. vehicles through the Environmental Protection Agency's annual vehicle database which is available on the EPA Web site: *http://www.epa.gov/otaq/crttst.htm.* The EPA measurements are derived using a coastdown technique defined in SAE J2264 ''Chassis Dynamometer Simulation of Road Load Using Coast Down Techniques'' (APRIL 1995).

[13] See docket NHTSA–2002–12845–0014, record of discussion and demonstration held on December 10, 2002, with Toyota.

[14] AIAM did not suggest a specific definition.

BMW

• Favors deleting ''normal operation'' requirement or at least adding appropriate test procedures.
• Increase delay time allowed for return of entire powertrain to idle state in the proposed RPM test.
• Allow manufacturer to define an acceptable range for idle.
• If NHTSA keeps tolerance, 50 percent is not large enough.
• Procedure in S6.2.5, S6.3.5, and S6.5.5 should say ''remove actuating force after at least 3 sec. but before X sec.''
• Concerned with use of ''indefinitely'' with respect to maintaining idle following disconnection.
• The dynamometer-based RPM test procedure would be overly burdensome because manufacturers would have to consider so many permutations of vehicle mass, final drive gearing, and drag.
• Uncertainty in measurement of RPM return time by itself is probably greater than the specified 3 second allowance.

Honda

• Tolerance of 50 percent is too small—high altitude example given; suggests much larger tolerance since even twice the baseline (100 percent tolerance) would still be safe for drivers to handle.
• With automatic transmissions, gear selection is modified after an ETC failure occurs, *i.e.,* the vehicle cannot maintain same gears in failure-mode tests as in baseline tests.
• Favors measuring vehicle speed, not engine speed, in RPM procedure.

Volkswagen

• Favors establishing an overall powertrain output test as main criterion in the safety standard.
• Maximum idle should be defined according to manufacturer, not according to baseline measurement.

Blue Bird

• Supports the 2002 NPRM in full; two year lead-time relieves burden of compliance.

Ford

• Supports NHTSA effort; specific comments included with Alliance and TMA submittals.

ATA

• Recommends that the ''idle state'' definition be consistent throughout the standard.
• Recommends performance-based test for cancellation of ''limp-home'' mode instead of specifying brake application which is too design restrictive.
• Believes that the 50 percent tolerance should be adjusted to account for likely variation in fuel rate at or near idle.

Alliance

• Believes tolerance concept is impracticable and 50 percent is inadequate.
• linking maximum idle to baseline is design restrictive and unnecessary for safety.
• Fail-safe idle state varies too much to achieve stable conditions for comparison to baseline.
• Stalling will result if fail-safe idle is restricted as proposed.
• Standard 124 should be based on a manufacturer-specified maximum idle.
• Suggests technology neutral ''powertrain torque output'' test for fail-safe operation.
• Technology-neutral test should apply to normal operation as well as fail-safe (but not sure what compliance criterion should be used).
• Return to idle should not be required before removal of pedal force after fault inducement.
• Asks for confirmation that manufacturers will be allowed to make running changes in production to ''irrevocable selection''.
• Electronic ''dashpots'' should be treated the same as mechanical ones in current standard (however, this would be unnecessary if NHTSA allows manufacturer-specified maximum idle).
• ''Detection by powertrain control system'' should be added to stop-lamp illumination as an allowable indicant of brake pedal application.
• When air throttle percent-opening is close to zero at idle, 50 percent is meaningless.
• Definition of ''air throttle position'' neglects non-rotating (slide type) throttles; suggests a simplified definition.

TMA

• Anticipates most trucks using fuel rate test to comply; suggests that fuel rate signal, not fuel delivery rate, is the appropriate criterion.
• Severing power to the ECM shuts down processor, which means fuel rate signal goes away, which would necessitate observing some other compliance measure.
• Wants to allow bench test of stand-alone engine instead of whole vehicle but not sure how ''impose test load'' as used in the procedures would apply to a test of a stand-alone engine, *i.e.,* not mounted in a truck chassis.
• Irrevocable selection wording too restrictive.
• Recommends performance-based specification for removal of limp-home mode, not the design-restrictive ''service brake apply'' in the NHTSA proposal.
• Wants return to or below the baseline to be an acceptable response.
• Asks if the tolerance is based on 50 percent of the average, maximum, minimum, or what? Also thinks the term ''indefinitely'' should be defined or quantified.

Generally, these comments have been addressed in today's proposal where appropriate or necessary. We have removed the procedure which specified that a limp-home mode would have to be cancelled by a light application of the service brake. Limp-home modes instead have to fall within the 50 percent tolerance of the applicable idle state indicant, or cannot exceed the allowable creep speed of 50 km/h.

We have not increased the tolerance but left it at 50 percent as proposed in 2002 because commenters did not provide a specific alternative value or any rationale to support changing the tolerance.

We have maintained the ''irrevocable selection'' stipulation given that we want to deter a manufacturer that fails to comply under their chosen test option from claiming compliance under another test option.

In regard to determining the idle state for a test vehicle, we continue to believe that measuring a baseline value for the idle prior to executing any disconnections is a better alternative than requiring the vehicle manufacturer to provide idle state information for each test vehicle. This issue was discussed in the 2002 NPRM, and the reasoning has not changed. Essentially, we believe it is more expedient and practical to ascertain the baseline idle as part of the test methodology.

Among other issues raised in comments on the 2002 proposal, and how we propose to address them, are the following:

• We have elected to leave FMVSS No. 124's ''normal operation'' requirement in today's proposal because it has always been part of the Standard and no compelling reason for removing it was offered by any commenter. It may be relevant for vehicle operation in very cold temperatures.
• Some commenters disagreed with our use of ''indefinitely'' to refer to the required duration of a vehicle's return-to-idle following a disconnection. We believe it is necessary for safety to prohibit a design in which the throttle initially responds to an ACS disconnection by closing but re-opens

after a short time. We would consider alternative suggestions for how to ensure that idle is maintained following disconnection, and we request comment on this issue.

• The tolerance of 50 percent may not be relevant when applied to a throttle position because it is not valid for a closed or nearly closed throttle. In general, engine output is not a linear function of ''percent throttle opening.'' NHTSA requests comment on the best way to evaluate throttle position as it relates to engine output (i.e., angular position, percent of full open, or some other measure) and how the 50 percent tolerance should be applied to throttle position.

• Regarding the comment suggesting how to define throttle position for rotating air throttles, we note that the term ''percent throttle opening'' was not defined in the 2002 proposal even though it was used in one of the proposed compliance criteria. As above, we are requesting comment on how best to define throttle position so that it corresponds with drivetrain output.

• Regarding the comment that, when measuring fuel rate or air intake rate, disconnection of the ECM power might cause the internal processor to stop functioning, and thus the fuel rate or air intake rate signal would cease: We do not view this as a significant difficulty because it can be assumed that the engine would shut down in this case, which would of course qualify as a complying vehicle response since powertrain output would go to zero.

• To the extent that we have not addressed in today's proposal comments that were made on the 2002 NPRM and remain relevant, we request further comment in response to this proposal.

VI. Notice of Proposed Rulemaking

This section explains how we propose to amend FMVSS No. 124 so that crashes and associated injuries or deaths as described previously can be minimized.

Based in part on NHTSA's VOQ data, we propose in this NPRM to address drivers' inability to stop vehicles in stuck-accelerator emergencies by amending FMVSS No. 124 to require a brake-throttle override system on all light vehicles having ETC.

With this requirement, we intend for the effect of the BTO system to be independent of the stopping capability provided by a vehicle's service brakes. That is, even if stopping power alone is sufficient for a vehicle to meet the performance requirement under high-speed, open-throttle conditions, we are proposing that there still must be electronic intervention invoked by brake application to abate drive torque caused by a stuck accelerator pedal.

A. Definition of Electronic Throttle Control System

We propose to define electronic throttle control as an accelerator control system in which movement of a driver-operated control is translated into throttle actuation at least in part by electronic, instead of mechanical, means. Note that in this definition, ''accelerator control system,'' ''driver-operated accelerator control,'' and ''throttle'' are separately defined terms whose definitions are included in the regulatory text. This definition is necessary to identify vehicles to which the BTO requirements would apply, i.e., those having ETC.

B. Brake-Throttle Override Equipment Requirement

We also are proposing an equipment requirement for BTO. This would be included in addition to a BTO performance requirement as described in the next section. We are proposing the requirement in paragraph S5.4.1 of § 571.124.

The equipment requirement also would specify that a BTO system may be designed so that it does not engage at speeds below 10 mph, as discussed below.

This equipment requirement is necessary to ensure that a brake-throttle override capability is installed on each vehicle, and that a manufacturer's certification is not based only on brake system performance. Otherwise, it might be possible for a manufacturer whose vehicle meets the BTO performance test without engagement of a BTO system to avoid installing BTO altogether.[15] Under this requirement, BTO must engage if the powertrain controller determines that inputs to the brake and accelerator pedals are conflicting. This means not just that the pedal inputs are overlapping but also that they probably are unintentional; are unlikely to occur in normal driving; and may create an unsafe operating condition. For example, if a vehicle is travelling at a high rate of speed, and the brake is forcefully applied while accelerator pedal input signal remains high, it is logical to conclude that the driver's intent is to slow the vehicle and that the throttle command should be ignored. On the other hand, if overlap between the accelerator pedal and brake exists only briefly, such as for less than one second, there is no reason to engage an override feature since a vehicle could not accelerate much in such a short time span, and the potential for loss of control would be very small.

This proposed equipment requirement makes BTO engagement optional below 16 km/h (10 mph). We believe this will accommodate most ''two-footed'' driving situations which have legitimate purposes such as maneuvering trailers, pushing other vehicles (as police sometimes do to move stalled vehicles out of traffic), and in off-road driving. These driving scenarios are not considered to be unsafe, and there is no compelling safety reason to prohibit them.

The proposed equipment requirement limits required BTO engagement to ''conflicts'' between the accelerator pedal and brake, so that BTO systems can allow for left-foot braking and other two-footed driving situations as manufacturers see fit to accommodate their customers. For example, a brake-first-then-accelerator sequence of pedal application would not necessarily be considered a ''conflict'' and so would not always have to engage the BTO.

The 10 mph (16 km/h) cut-off is the speed below which initial engagement of BTO is not required. That is, if a pedal conflict initially occurs below 10 mph, the onset of BTO intervention is not required until the vehicle speed reaches 10 mph. Once vehicle speed reaches 10 mph, BTO must engage at that point, assuming other conditions for engagement exist. This does not mean that, if BTO engages at a speed above 10 mph, the BTO can disengage as the vehicle slows to below 10 mph. It must remain engaged until the vehicle has been brought to a stop and remain engaged until either the pedal conflict no longer exists (for example, if the driver releases the brake, or the gas pedal becomes unstuck), or vehicle drive power is removed by another action such as turning off the ignition.

We have considered whether it is appropriate to require that BTO activation be accompanied by a warning or alert to signal to the driver that BTO intervention has occurred. This could be in the form of either a visible or audible alert. We are not proposing that such an

[15] This approach of combining an equipment requirement with a performance test is similar to the approach NHTSA used in establishing FMVSS No. 126, ''Electronic Stability Control Systems.'' In that rulemaking, NHTSA stated, ''An equipment requirement is necessary because it would be almost impossible to devise a single performance test that could not be met through some action by the manufacturer other than providing an ESC system.'' [72FR17238]. In the case of brake-throttle override, whereas the proposed performance test is based on stopping distance requirements in FMVSS No. 135 which many vehicles can meet with a significant margin, it is likely that some vehicles, for instance those with high brake-torque-to-drive-torque ratios, could meet the proposed BTO performance test without actually having a BTO system.

alert be required, but we request comment on this issue, specifically if there is any safety data that would justify such a requirement.

A related issue is whether it should be possible for a vehicle operator to manually turn off the BTO function. For example, a switch or control could be provided for that purpose, similar to on/off switches for disabling Electronic Stability Control (ESC). Alternatively, a manufacturer might design an ''ESC off'' switch so that it also disables the BTO. We are not proposing to prohibit controls that turn off BTO. However, if a vehicle is equipped with a control for turning off BTO, we believe that the driver should be warned that the system is off, and the system should always default to a ''BTO On'' state whenever the ignition is cycled. We request comment on whether a BTO Off function should be allowed and, if so, how it should function.

C. Brake-Throttle Override Performance Requirement

As indicated previously, we are taking the approach in this proposal of including both a performance requirement and an equipment requirement for brake-throttle override systems. We considered establishing a design requirement as the sole requirement for BTO, but the differences among BTO systems currently available from different vehicle manufacturers are significant enough that a design requirement by itself cannot effectively accommodate them all without being overly complex and/or design restrictive. By combining a relatively simple performance test with the basic equipment requirement described above, we can achieve a robust standard which is largely performance-based and minimally costly or burdensome.

We believe this approach is appropriate because, by all indications, existing BTO systems are effective for their intended purpose, and we would not be able to justify a BTO requirement that favors one design over another or compels some manufacturers to go to the expense of re-designing their systems. In fact, NHTSA recently sampled a number of current BTO systems in a brief series of high-speed, open-throttle braking tests.[16] Those tests demonstrated that each of the different BTO designs was very effective. In each test, at speeds up to 99 mph, stopping distances of BTO-equipped vehicles with their accelerator pedal held to the floor typically were less than 5 percent to no more than 15 percent greater than normal (''normal'' meaning in a drop-throttle condition from the same test speed). That was contrasted with open-throttle stopping distances from similar speeds that were about 35 to 70 percent greater than normal for vehicles without BTO. The stopping distance improvement for vehicles with BTO compared to those without BTO was even larger in tests in which the brake pedal was modulated or ''pumped''. When combined with an open throttle, pumping of the brakes increases the pedal force needed to stop a vehicle, and this seems to be a fairly common occurrence in stuck accelerator pedal situations according to complaint narratives in the ODI database.

In order to ensure the effectiveness of new BTO systems, we are proposing an open-throttle stopping distance test. The proposed requirement specifies a stopping distance measurement in which the accelerator pedal is applied at up to 100 percent of pedal travel for the duration of the braking event. The procedure would consist of conventional stopping distance measurements in accordance with specifications found in FMVSS No. 135, ''Light vehicle brake systems.'' Where Standard No. 135 specifies that the throttle is released or the vehicle is placed in neutral, the vehicle would remain in gear with the accelerator pedal held down to as much as 100 percent of its travel. This represents the situation when an accelerator pedal is trapped by a floor mat, with 100 percent pedal application being the worst-case scenario. For the purposes of these tests, we are proposing that the minimum accelerator pedal input would be 25 percent because pedal inputs below that level may not produce significant vehicle acceleration and may not require intervention by the BTO system. (We note that this is merely to facilitate consistent BTO performance testing, and does not mean that BTO systems cannot engage at less than 25 percent accelerator pedal input.)

Test speeds for the proposed BTO procedure would be any speed from 30 km/h (18.6 mph) up to as much as 160 km/h (99.4 mph). The latter is the maximum specified under FMVSS No. 135. The procedure carries over the specification in S7.6 of FMVSS No. 135 that limits test speed to 80 percent of a vehicle's maximum speed, not to exceed 160 km/h.

The required stopping distance would be based on one of two requirements in FMVSS No. 135, depending on whether the test speed was greater or less than 100 km/h, to reflect the fact that FMVSS No. 135 stopping distances are somewhat different for speeds above and below 100 km/h. For test speeds of 100 km/h or below, the stopping distance requirement in S7.5, ''Cold Effectiveness,'' would apply. For speeds above 100 km/h, the stopping distance requirement in S7.6, ''High-Speed Effectiveness,'' would apply.

We propose that the BTO performance test would be conducted at Lightly Loaded Vehicle Weight (LLVW) as defined in S6.3 of FMVSS No. 135. Although the Cold Effectiveness and High Speed Effectiveness procedures in FMVSS No. 135 specify conducting tests at both LLVW and GVWR, the stopping distance requirement is the same regardless of the loading condition. Consequently, we believe it is unnecessary to include the GVWR loading condition in the BTO performance test. We request comments with supporting data on whether there is any safety need for BTO performance to be measured at GVWR.

Under S6.5.3.2 of FMVSS No. 135, for stopping distance procedures specifying multiple test runs, compliance is achieved if any one of the test runs is within the prescribed distance. This applies to the Cold Effectiveness and High Speed Effectiveness procedures, where six test runs are required for each set of test conditions. The vehicle is deemed to comply if at least one stop is within the required distance. We propose using this same methodology for the BTO performance tests.

All other test conditions and procedures would be in accordance with FMVSS No. 135 specifications. This includes ambient environmental conditions, track conditions, and vehicle set-up. This would utilize existing practices to the greatest extent possible, thus reducing test burden and cost.

We are proposing that the stopping distance of a vehicle in an open-throttle condition shall not be more than 5 percent greater than the required stopping distance in FMVSS No. 135, specifically as set forth in S7.5 for test speeds up to 100 km/h and S7.6 for test speeds over 100 km/h. This 5 percent margin allows for any additional stopping distance resulting from the delay that may be needed for the BTO system to engage and during which the brakes have to work against the powertrain drive torque. The stopping distances in FMVSS No. 135 do not account for any such drive torque because they are measured with the vehicle in neutral or with the accelerator pedal released. The 5 percent margin represents approximately the additional stopping distance NHTSA found was needed in

[16] See test summary ''Results of NHTSA Stopping Distance Tests of Production Brake-Throttle Override Systems'' at the beginning of the notice.

our tests of BTO-equipped vehicles (the same tests cited immediately above) comparing their wide-open throttle stopping distance to their drop-throttle stopping distance at maximum FMVSS No. 135 test speeds.

D. Update of FMVSS No. 124 Disconnection Test Procedures

New Creep Speed and Coastdown Test Procedures

We are proposing a new vehicle performance test of powertrain output as an optional test procedure for compliance with the FMVSS No. 124 disconnection requirements. This procedure would measure vehicle speed following an ACS disconnection, so-called ''creep speed,'' as the criterion for compliance. Other criteria such as engine RPM were considered and rejected as a result of comments on the 2002 rulemaking effort. By evaluating vehicle speed and acceleration, the creep speed test will directly measure the fundamental parameter that affects safety with respect to vehicle accelerator controls.

Specifically, the compliance criterion we are proposing is vehicle terminal speed following an ACS disconnection and removal of force on the accelerator pedal. In order to comply, the measured creep speed obtained with no accelerator pedal input would have to fall below a maximum allowable value, which we are proposing should be 50 km/h (31 mph). As mentioned previously in this proposal, this speed was suggested by a vehicle manufacturer and was confirmed as an appropriate level in NHTSA's tests of two passenger cars and one light truck. It would accommodate typical responses of vehicle control systems to ACS disconnections, including limp-home modes. Our tests also confirmed that this level of speed corresponds to a low level of drivetrain torque capability and thus is easily controllable.

Under our proposed requirement, in the worst case of a vehicle whose torque output following an ACS disconnection allows the vehicle to reach a creep speed of exactly 50 km/h, the vehicle would accelerate at a rate only marginally greater than it would with no ACS faults. The vehicle's acceleration would be limited to the equivalent of the aerodynamic and frictional drag forces on the vehicle at 50 km/h which, for light vehicles, is a small fraction of what the powertrain is capable of producing.

Compliance with the creep speed requirement would be evaluated by selecting any accelerator pedal input (including zero input) that results in an initial test speed below 50 km/h. Then, following disconnection of the ACS and release of the accelerator pedal (if it was initially applied), the vehicle's speed would have to remain below 50 km/h. We are proposing a time limit of 90 seconds for this procedure, meaning that the vehicle would comply if its speed does not exceed 50 km/h before 90 seconds have elapsed. If a vehicle is accelerating so slowly that it meets this requirement, then that is sufficient indication that it has an acceptable fail-safe response. The average acceleration rate to reach 50 km/h in 90 seconds is approximately 0.015 g's,[17] which is a very low value considering that conventional passenger cars are capable of well over twenty times that value at low initial speeds. The 90-second time limit also will avoid unnecessarily prolonging the tests to wait for very slowly accelerating vehicles to finally reach a terminal speed. We request comment on whether 90 seconds is an appropriate value and, if not, what time limit should be substituted and why.

For creep speed tests where the initial test speed is above 50 km/h, we are proposing a coastdown procedure which uses as a baseline the coastdown time of the test vehicle with its transmission in neutral. This compliance criterion was suggested by a vehicle manufacturer and appears to be a practical and appropriate specification. Under this procedure, each assessment of compliance would require two test runs as follows:

- The first run would measure the elapsed time required for the test vehicle to coastdown from a selected target speed to exactly 50 km/h in neutral gear. The coastdown time measured in this way should constitute a worst-case since there would be no engine braking (resistance to vehicle motion resulting from engine friction and compression, independent of the vehicle brake system) to decelerate the vehicle. This elapsed time would be a ''baseline'' for comparison to the result of the second test run.
- In the second run, conducted at the same target speed but with the vehicle remaining in gear, coastdown would commence following an induced ACS disconnection and release of accelerator pedal. As in the first run, elapsed time for the vehicle to decelerate to 50 km/h would be the measured value.

Compliance would be determined by comparing the coastdown time in these two runs. The coastdown time in gear, from the second run, would have to be less than the coastdown time in neutral, from the first run. This comparison would verify that the powertrain output of the test vehicle in fact was reduced to a safe level, i.e., a level that produces less than a 50 km/h terminal speed, while at the same time establishing a time limitation to ensure that the rate of deceleration is not unreasonably low.

As NHTSA has not had the opportunity to conduct trials using this methodology, we are requesting comment on any issues related to this proposed coastdown test procedure.

We are proposing that the vehicle creep speed and coastdown time measurements would be conducted using a chassis dynamometer to impose road force through the vehicle's drive wheels. The general test parameters for this type of dynamometer testing are available in an industry standard, SAE J2264, ''Chassis Dynamometer Simulation of Road Load Using Coastdown Techniques.'' We are proposing to incorporate by reference portions of that SAE standard. In NHTSA compliance testing, the vehicle's terminal speed would be measured following an ACS disconnection when using the test procedures and environmental conditions specified in the SAE standard. For testing using a dynamometer, manufacturers would have the option of either measuring a vehicle's road load characteristic directly by use of the procedure in SAE J2264, or by looking up the necessary road load coefficients in an Environmental Protection Agency database.[18]

A potential issue with creep speed and coast-down measurements conducted on a chassis dynamometer is that FMVSS No. 124 includes test temperatures down to as low as minus 40 Celsius (equivalent to minus 40° F). To the best of our knowledge, existing vehicle dynamometer facilities normally cannot achieve ambient temperatures that low. Therefore, we specifically request comment on whether a different lower limit on environmental temperature should be specified in the FMVSS for tests of vehicle ACSs conducted using a dynamometer facility.

We are proposing that the new creep speed test also could be conducted on a test track, to the extent that a suitable test area with adequate straightaway space is available. When starting from a high speed in the coastdown portion of the proposed test procedure, a vehicle may coast for a number of minutes. The

[17] 'G' or 'g' is a unit that refers to the average acceleration produced by gravity at the Earth's surface.

[18] See *http://www.epa.gov/otaq/crttst.htm.*

required length of the test area could easily be on the order of a mile or more. This may limit the feasibility of substituting a track test for a dynamometer test.

For a track test, the test area should meet a maximum slope specification since any significant grade could affect test outcome. Furthermore, in order for the test to be repeatable, wind conditions would have to be light, and air temperature should also be within a limited range because these factors influence aerodynamic drag. We are proposing the following conditions for creep and coastdown speed measurements conducted on a test track:

- Straight course of dry, smooth, unbroken concrete or asphalt pavement with a continuous grade of not more than 0.5 percent in any direction;
- Ambient temperature between 5 C (41 °F) and 32 C (90 °F);
- Average wind speed no greater than 16 km/h (10 mph) with gusts no greater than 20 km/h (12 mph) and with the wind velocity component perpendicular to the test direction no greater than 8 km/h (5 mph).

To the best of our knowledge, these conditions are consistent with current industry practice for this kind of testing. We request comment on these proposed conditions, specifically any information to support why NHTSA should consider different test conditions.

We believe that this new method of compliance is a necessary addition to FMVSS No. 124 that fulfills the need for a ''technology neutral'' test that can be applied to any type of wheel-driven motor vehicle regardless of the type of propulsion system it uses. This procedure is performance-based and uses established vehicle test methods that should be familiar to the industry. Therefore, we believe that this new proposed procedure is both practicable and objective.

New Air Intake and Fuel Delivery Rate Tests

This proposal includes a fuel delivery rate test procedure as in the 2002 NPRM. It also includes a new air intake rate test procedure that was not included in the 2002 NPRM. This procedure was suggested in comments as an alternative that will expedite testing of some vehicles. It is identical to the fuel rate test, but uses mass airflow rate rather than fuel flow rate to quantify the state of vehicle power output and whether the engine is at idle.

These test procedures are logical extensions of the traditional throttle position test. For most existing gasoline engines, throttle position indicates (and in fact controls) the rate of intake of air/fuel mixture into the engine which, in turn, determines engine power output. Since the air/fuel ratio stays relatively constant over the engine's operating range, observing either the fuel intake rate or air intake rate also provides a valid indicant of engine output, and either quantity can substitute for throttle position. In effect, fuel rate, air intake rate, and throttle position are equivalent for FMVSS 124 purposes in that they each can indicate whether the engine is at idle.

For diesel engines, the traditional FMVSS 124 test indicant is the fuel rack position which determines fuel flow. (The fuel rack is the mechanical linkage on older diesel engines that moves back and forth when the accelerator pedal is pressed and released; its operation is analogous to a mechanical throttle linkage on a gasoline engine.) Fuel rack position corresponds to fuel intake rate, so we are proposing that, on modern diesels without a fuel rack, the net fuel delivery rate is the appropriate engine power indicant. Diesels operate on excess intake air unlike a gasoline engine, so power output cannot necessarily be gauged by air intake rate alone. We request comment as to the appropriateness of air intake rate as a measurement criterion for diesel engines, and also whether there are other possibilities for diesels besides those we have considered here.

Components Included in an Accelerator Control System

In interpretation letters on FMVSS No. 124 which responded to questions about which parts of an ETC system are considered ACS components, we treated an ACS as a series of linked components extending from the driver-operated control to the throttling or fuel-metering device on the engine or motor. Electronic systems using wires, relays, control modules, and electric actuators joining the accelerator pedal to the throttle or injectors on the engine are analogous to mechanical systems in which levers, cables, and springs serve the same purpose. We indicated that a severance at any one point in the system should not result in a large increase in engine power, and that this also applies to an ACS that mixes mechanical and electronic components.

Nevertheless, an ETC system is less easily defined than a mechanical one because a variety of components can influence engine speed without being in the direct line of action between the accelerator pedal and the throttling device on the engine. As in the 2002 NPRM, we see two basic approaches for defining the items included in an electronic ACS.

One approach would be to list in the regulatory text of the Standard each and every component, including each conductor, connector, module, etc., which is subject to the fail-safe requirements. This explicit approach would provide a high degree of specificity, but would lack flexibility. It carries a significant risk that a connective component omitted from specific mention in the standard would be excluded from regulation, even if the omission was unintentional.

An alternative approach, and the one that we have chosen to adopt in this proposal, is to specify in general terms the connective components that are regulated. This approach lends a greater degree of flexibility and leaves open the possibility that the regulatory language can be adapted to new technology. The covered ACS parts still would be limited to ''connective components'' only, so we believe that using this general approach does not diverge from the scope of the existing Standard.

We are listing here some common components of an ACS to illustrate the intent of the proposed Standard and to make it widely acknowledged that these components are considered connective components of an ACS. This is not intended to be an all-inclusive list. The following enumerates some of the connective components for both mechanical and electronic systems that we believe must comply with the disconnection requirements of FMVSS No. 124:

- Components of an Air- or Fuel-Throttled Engine

The critical connective components of the ACS are: (1) The springs or other sources of stored energy that return the driver-operated control and the throttle to their idle position; (2) the linkages, rods, cables or equivalent components which are actuated by the driver-operated control; (3) the linkages, rods, cables or equivalent components which actuate the throttle; (4) the hoses which connect hydraulic or pneumatic systems within an ACS; (5) the connectors and individual conductors in the electrical wiring which connect the driver-operated control to the engine control processor; (6) the connectors and individual conductors in the electrical wiring which connect the ECM to the throttle or other fuel-metering device; and (7) the connectors and individual conductors in the electrical wiring which connect the ECM to the electrical power source and electrical ground.

The ECM itself is also included as a single component of an electronic ACS. However, as before, we treat the fail-safe (i.e., disconnection) requirements of the

Standard as pertaining to the external connections to and from the ECM. We consider the internal elements of the ECM to be like the internal elements of a carburetor or throttle body injector, which are not subject to the fail-safe requirements of the Standard. The wiring and connectors between the pedal position sensor and the ECM, the wiring and connectors between the ECM and the fuel or air throttling device on the engine, and the power and ground connections to the ECM all qualify as connective elements rather than internal ones.

• Components of an Electric Propulsion System's ACS

For an electric motor-driven vehicle, the critical connective components of an ACS are: (1) Springs or other sources of energy that return the driver-operated control and the motor speed controller to the idle position; (2) linkages, rods, cables or equivalent components which are actuated by the driver-operated control; (3) linkages, rods, cables or equivalent components which actuate the motor speed controller; (4) hoses which connect hydraulic or pneumatic actuators and components within the ACS; (5) connectors and individual conductors in electrical wiring connecting the driver-operated control to the motor speed controller or motor control processor; (6) connectors and individual conductors which connect the motor control processor to the motor speed controller (if they are separate modules); (7) connectors and individual conductors in the electrical wiring which connect the motor control processor to electrical power and ground; and (8) the connectors and individual conductors in the electrical wiring from the motor speed controller to the electric traction motor.

Definition of Idle State

Based on comments NHTSA received on the 2002 NPRM, manufacturers would prefer that the Safety Standard allow the manufacturers to determine what is an acceptable idle state. Manufacturers consistently commented that the idle state varies according to a number of factors such as engine temperature, accessory load, emission controls, and altitude. It may not be possible to specify fixed values for throttle position, engine speed, fuel rate, etc., because those characteristics can change according to many conditions without any input from the accelerator pedal. They pointed out that limp-home modes can adjust engine operation to prevent stalling and to provide enough power for a vehicle to be moved from an unsafe location in the event of a malfunction.

The current Standard accommodates a range of idle state values by allowing any throttle position ''appropriate for existing conditions.'' In a traditional air-throttled engine which has a mechanical throttle stop that designates the idle position of the throttle, the throttle stop can change position as dictated by operating conditions. For example, it may move to a position of increased throttle opening when the engine is cold. In testing, the throttle stop provides a convenient reference position that makes determination of compliance a simple matter.

Vehicle manufacturers recommended that idle state should be a manufacturer-specified data item provided to NHTSA for each compliance test. Under this approach, each manufacturer would specify a value or range of values for the applicable idle state indicant for each of its vehicles.

After considering the comments, we are not persuaded that this approach is the best solution to the question of how to define an appropriate idle state value. We believe it would be burdensome to have to obtain idle state data from manufacturers for each test vehicle, potentially for numerous possible operating conditions.

Instead, we believe it is easier and more practical to establish a baseline idle state simply by measuring the initial value of the applicable idle state indicant (throttle position, fuel delivery rate, electrical power input, etc.) at the beginning of a compliance test (i.e., immediately before any fault is induced). This initial value would be an appropriate baseline because it would account for whatever operating conditions exist at the time a test takes place. It is convenient because it is measured directly as part of the test procedure, and it does not depend on information provided by vehicle manufacturers.

Once the baseline is established, the value of the idle state indicant at the end of the test is expected to be the same as or close to the baseline value established at the start of the test (within a tolerance range, as defined below). Compliance is indicated by whether or not the idle state returns to the baseline value within the elapsed time specified in S5.3 of the regulatory text.

This approach is valid only if operating conditions such as engine temperature, accessory load, etc., are fairly constant during a test since adjustments made by an electronic control system to compensate for changes in conditions would not be observable but rather would take place within the ECM. Consequently, it could be difficult to distinguish between a permissible increase in idle state and a noncomplying one.

In order to address this, NHTSA's proposal specifies that operating conditions must be held constant to the greatest extent possible during fail-safe tests in order to minimize variations in engine idle that are not due to an ACS disconnection. In a compliance test, the engine must be stabilized and all accessory controls fixed so that conditions that affect idle state do not change significantly during the course of the test. This includes operating the engine long enough to deactivate cold start features as well as to stabilize emission controls. We have specified that the engine must be operated for at least 5 minutes prior to any measurement of idle, as this should be sufficient to achieve a reasonably steady idle state. We request comment whether 5 minutes is an appropriate value.

For some operating characteristics such as ''variable displacement'' or cylinder de-activation modes, we recognize that maintaining a constant operating condition may not be straightforward. It would be acceptable to either prevent engagement of these kinds of features during testing or to ensure that they do not change the idle state during testing. We request comment on what means are available to ensure that features like cylinder deactivation do not influence test results.

Under today's proposal, the baseline value is established by observing the idle state indicant for an engine with a normally functioning ACS. For the ''normal operation'' requirement, the compliance criterion would be the time to return to the baseline value from the moment of release of the accelerator pedal from any position within its full range of movement. For the ''fail-safe'' requirement, the idle state following a disconnection in the ACS is compared to the baseline value to ensure that it is close to (i.e., within the tolerance) or below the baseline. The time elapsed from the moment of the disconnection and pedal release for the measured value to return to the baseline value must be within the Standard's specified time spans (1 second for light vehicles). With the engine operating in a steady state with accessory controls at fixed settings, any difference in the ''before and after'' idle states should be attributable to the induced disconnection.

Two Sources of Energy for Returning Throttle to Idle

At present, FMVSS No. 124 states in S5.1, ''there shall be at least two sources of energy capable of returning the throttle to the idle position'' within the specified time limits from any accelerator position or speed, whenever the driver removes the actuating force on the accelerator pedal. It also specifies that, whenever one source of energy fails, the other shall be able to return the throttle to idle. In the past, springs have been the predominant sources of energy for return to idle. That appears to still be the case for accelerator pedal assemblies of vehicles with electronic accelerator controls and for throttle bodies. These assemblies usually incorporate multiple springs, and testing of fail-safe operation would still include disconnection of each single spring.

However, because the standard requires return-to-idle regardless of whether there are two sources of energy present, this requirement may be considered superfluous. Most if not all manufacturers will continue to provide two or more return springs on accelerator pedal assemblies and throttle bodies whether or not there is an explicit requirement for it because it is a simple way of meeting the ''single-point disconnection'' requirement when one of the springs is disconnected.

As we have noted elsewhere in this proposal, our letters of interpretation have stated that, although having two or more springs on a pedal assembly is a good idea, that alone is not sufficient to ensure compliance with the FMVSS No. 124 fail-safe requirements. For example, dual springs on the pedal assembly would be irrelevant if the assembly's electrical connector was disconnected.

For these reasons, we believe it may be appropriate to delete the requirement for two sources of energy which return the throttle to idle. We request comment on this issue.

Under today's proposal, the single-point disconnection requirement is applicable to any source of throttle return energy connected to the ACS. This includes electric motors and actuators, solenoids, and other electrically powered devices. The electric power source for these components would be considered a ''source of energy'' for closing the throttle, and thus the power and ground leads for these components would be subject to disconnection.

Criteria for Return to Idle in Normal Operation

Engines With a Traditional Throttle Plate

Like the previous NPRM, this proposal retains return of a throttle plate to the idle position as the criterion for normal operation of air-throttled engines with a traditional throttle. This criterion is still valid for many gasoline engines with either mechanical or electronic accelerator controls, and probably will continue to be for the foreseeable future.

Diesel Engines

For diesels (and other fuel-throttled engines), this proposal provides fuel delivery rate (gallons/hour of fuel entering the combustion chambers of the engine) as a measure of idle state. It requires return of the fuel rate to the idle fuel rate as a measure of return-to-idle. For diesel engines, power is controlled directly by controlling fuel flow. The result of rapidly releasing the accelerator control is a rapid return of the fuel rate to the steady idle rate, and there is no need to account for the time lag required for the engine speed to return to idle. In this respect, the fuel rate of fuel-throttled engines is analogous to the throttle position of air-throttled engines.

Engines With Unitized Injectors

An engine with self-contained, integrated fuel injectors (called ''HEUI'' injectors for High Energy Unit Injector), now commonplace in commercial trucks, is potentially problematic with respect to return to idle criteria because it has multiple ''throttles,'' those being its individual injectors, which can operate independently of each other. However, fuel flow rate for these engines generally can still be used to quantify the operational state of the engine. The fuel rate combines the action of the individual injectors and represents the steady effect of all the injectors' dynamic duty cycles (percent open time or pulse width and frequency). It also avoids the problem of the lack of a visibly observable throttle reference position. Fuel rate thus provides a satisfactory return-to-idle indicant for modern diesel engines with electronic fuel systems.

For light vehicles, similar fuel control arrangements may become more prevalent as diesels become more common and direct-injection gasoline engines enter the marketplace. We believe these vehicles will be able to comply by either the fuel rate test or one of the other available test procedures described in this proposal.

For many heavy vehicles, we understand that a fuel rate signal which consolidates the effect of fuel pressure and fuel injector duty cycle is available as a standardized diagnostic channel. For engines without this diagnostic signal, direct measurement of fuel flow in the supply and return lines would be necessary to ascertain the net fuel rate.

Electric Motors

For vehicles which use electric motor propulsion, the electric power input at the drive motor (computed from voltage and current) would be used as the indicant idle state. This measurement responds directly to the operation of the motor controller which, like a unitized electronic fuel injector, is a throttle without a measurable reference position. Since drive torque is directly proportional to the drive motor input current and voltage, this indicant is equivalent to throttle position. Alternative measurement criteria used for non-electric vehicles such as fuel delivery rate are not applicable to electric vehicles, but we request comment on whether there are any other measurement criteria that would be appropriate for electric vehicles.

No Normal Operation Test Corresponding to Creep Speed Method

Unlike the test procedures for throttle position, fuel delivery rate, air intake rate, and electric power delivery, the creep speed test does not have a corresponding normal operation criterion. This was the subject of at least one comment on the 2002 NPRM that suggested that an engine output criterion should be provided for normal as well as fail-safe operation. However, establishing a normal operation requirement based on creep speed would require restricting aspects of vehicle performance such as engine braking effect that have never been part of FMVSS No. 124 or any other NHTSA regulation. For example, a normal operation requirement for creep speed might specify that a vehicle has to coastdown to a speed of 'X' from an initial test speed of 'Y' in 'Z' seconds. This would place restrictions on vehicle rolling resistance and engine-braking that are unrelated to safety. Therefore, a creep speed-based normal operation requirement is not feasible under FMVSS No. 124.

Consequently, if a manufacturer selects the creep speed procedure to certify to the fail-safe requirement, a different procedure would have to be selected to certify to the normal operation requirement.

Response Time for Normal Operation

This proposal maintains the existing requirement that, in normal operation (i.e., without faults in the ACS), return to idle must occur within 1 second after release of the accelerator pedal for light vehicles, and within 2 seconds for heavy vehicles (over 10,000 lb. GVWR). The required response time is 3 seconds if the test vehicle is exposed to temperatures of minus 18 Celsius or lower during any portion of the 24-hour conditioning period, for both light and heavy vehicles.

Fail-Safe Performance Criteria

Because electronic ACSs can use various means to reduce vehicle power in response to an ACS disconnection, our intent in this proposal is to allow manufacturers to take advantage of those possibilities by establishing fail-safe criteria that are performance-oriented rather than design-oriented.

Powertrain Output ''Creep Speed'' Test Option

We have included in S6.5 of the proposed regulatory text a new ''technology-neutral'' powertrain output test performed on a dynamometer or test track, as described previously in this document (see ''New Creep Speed and Coastdown Test Procedures'' under section VI D, above). This test of fail-safe response is performance-based and independent of powertrain design, i.e., it is valid for any type of powertrain in any wheel-driven vehicle. It provides a universal measurement criterion, i.e., maximum vehicle terminal speed, that has direct relevance to the safety purpose of FMVSS 124. The new creep speed and coastdown procedures require that a test vehicle cannot accelerate appreciably if its initial speed is below 50 km/h and must decelerate if its initial speed is above 50 km/h upon release of the accelerator pedal following an ACS disconnection. The new creep speed and coastdown procedures appear in section S6.5 of the regulatory text of this rule which specifies controlled test conditions for accurate exertion of road load on the drivetrain.

Fail-Safe Performance Test for Air-Throttled Engines

For air-throttled engines, return of the throttle plate to the idle position is the least burdensome test for many vehicles in current production. This alternative is identical to the procedure of the present Standard. A second alternative is return of the fuel rate to the idle state. For air-throttled engines, engine power cannot vary substantially from the idle state if the fuel rate is constrained to the value observed at the idle state. Thus, fuel delivery rate is a reliable indicant that engine power is constrained. Similarly, a third alternative is mass airflow rate through the intake manifold. Air intake rate behaves like fuel delivery rate for vehicles whose fuel-air ratio stays relatively constant as operating conditions vary. Thus, air intake rate is also an acceptable indicant of engine power output.

Fail-Safe Performance Test for Fuel-Throttled Engines

Since fuel-throttled engines such as diesel engines may operate with excess intake airflow, neither the position of an air throttle, if one is present, nor the air intake rate would be an accurate indicant of engine power. Fuel delivery rate, on the other hand, is an accurate and sufficient indicant of engine power for these engines in most cases. The same fuel delivery rate criterion specified for evaluating compliance in normal operation of fuel-throttled engines is included in this proposal as an optional test for fail-safe performance.

Some modern diesel and gasoline direct injection engines may inject additional small amounts of fuel during a single injection cycle. This extra fuel does not contribute to propulsion, but is intended to smooth engine operation or to meet emissions requirements. If vehicles with these types of engines could not be adequately tested using the fuel delivery rate procedure, then the optional creep speed procedure would be an appropriate alternative since that test is not sensitive to any particular fuel delivery characteristics.

Fail-Safe Performance Test for Electric Vehicles

For vehicles driven solely by electric motors, we are proposing that an optional test of fail-safe performance be the same as the normal operation criterion, i.e., return of the drive motor electric power input to the idle state. This procedure can also be applied to the electric drive motor of a hybrid vehicle.

Fail-Safe Performance Test for Hybrid Vehicles

For a hybrid vehicle that combines more than one type of propulsion system, the most applicable test procedure would be the creep speed test which would evaluate the net driving effect of the various propulsion systems working together. Alternatively, fail-safe performance of each separate engine's or motor's accelerator controls could be demonstrated independently using test options appropriate for each type of propulsion system. For example, on a gas-electric hybrid, the gas engine might be tested by measuring the throttle position while the electric motor is tested by measuring current and voltage.

Response Time Requirements for Fail-Safe Operation

The required response times for the idle state indicant to return to or near the baseline value following an ACS disconnection are the same as those given in the current Standard and also for normal operation of the ACS. For light vehicles (under 10,000 lb GVWR), return to idle must occur within 1 second after ACS disconnection and release of the accelerator pedal, or, within 2 seconds for heavy vehicles (over 10,000 lb. GVWR). The required response time is 3 seconds if the test vehicle is exposed to temperatures of minus 18 Celsius or lower during any portion of the 24-hour conditioning period, for both light and heavy vehicles.

For the proposed creep speed procedure, compliance is not based directly on the time required for an idle state indicant to return to idle. Instead, for test speeds at or below 50 km/h, compliance is based on whether the vehicle's terminal speed remains below 50 km/h for at least 90 seconds after an ACS disconnection; for test speeds greater than 50 km/h, compliance is based on whether the time required to coast down to 50 km/h is greater or less than the coastdown time in neutral from the same test speed.

E. Compliance Options for Various Vehicles

Our proposal would require manufacturers to specify one of the following criteria as the basis for certifying a vehicle to the requirements of S5.1 (normal operation) and S5.2 (fail-safe operation) of the standard: Throttle position, fuel delivery rate, air intake rate, electric power delivery, and creep speed/coastdown performance. The selection would be at the option of the manufacturer. However, while one of the criteria, creep speed/coastdown performance, could be used for any vehicle, the appropriateness of the other criteria would depend on the nature of the vehicle. For example, an electric vehicle could be certified based on electric power delivery in addition to creep speed/coastdown performance, and a vehicle with a gasoline engine could be certified based on throttle position, fuel delivery rate, and air intake rate, as well as creep speed/coastdown performance. We believe it is appropriate to permit multiple options to manufacturers so long as each option

would meet the relevant safety need. We request comments on the appropriateness of each of the proposed options; the possibility of a manufacturer seeking to use an option that might not be appropriate for a vehicle given the characteristics of the vehicle and, if so, the safety consequences; and whether there is a need for the regulation to limit any of the options to vehicles with particular characteristics.

VII. Safety Benefits and Crash Data

A rule based on today's proposal would be expected to prevent most crashes resulting from accelerator pedal entrapment, including floor mat incidents. The accidents that could be avoided are similar to highly publicized crashes that have played a key role in the escalation of UA as a nationally recognized safety problem.

With regard to the ACS disconnection requirements, any benefits associated with the original FMVSS No. 124 safety standard would be unchanged by this proposal.

A. Summary of Crash Data on Accelerator Control Issues

Three of NHTSA's crash datasets were identified as potential sources of information about possible accelerator control issues in passenger vehicles: Fatality Analysis Reporting System (FARS), National Motor Vehicle Crash Causation Survey (NMVCCS), and National Automotive Sampling System—Crashworthiness Data System (NASS–CDS). FARS is an annual census of fatal traffic crashes based upon secondary data sources such as the police accident report. NMVCCS was a one-time three year special study of crashes involving at least one passenger vehicle towed due to damage and investigated by NHTSA with an emphasis on pre-crash factors. NASS–CDS is an annual sample of crashes involving at least one passenger vehicle towed due to damage and investigated by NHTSA with an emphasis on crashworthiness factors. Overall these databases each contain cases involving an allegation of a stuck accelerator or throttle, and the available information is summarized below. However, each of these sources also has limitations that should be considered when using the results.

Fatality Analysis Reporting System (FARS)

FARS is a nationwide census providing yearly data regarding fatal injuries suffered in motor vehicle traffic crashes. FARS records when a pre-existing vehicle defect or condition is noted in police accident report (PAR) as a vehicle related factor. According to the FARS Coding and Validation Manual, ''the report may indicate that a component is inadequate, inoperative, faulty, damaged or defective.'' The FARS Manual also cautions that the presence of a vehicle related factor ''only indicates the existence of the condition(s)'' and that the condition ''may or may not have played a role in the crash.''

The most relevant vehicle related factor in FARS to identify possible accelerator control issues is ''power train.'' The code for ''power train'' includes the following components: universal joint, drive shaft, transmission, engine, clutch and gas pedal. In the 2009 data there were seven light passenger vehicles with the presence of a power train related factor involved in seven fatal crashes resulting in ten fatalities.

Because of the inclusion of many different components and situations in the category of powertrain, researchers must request the PAR from the State and review the narrative sections to extract additional information. However, in this case, analysis of these seven PARs indicated that the police reports did not typically contain useful information for understanding whether the accelerator control was a factor in the crash. Our analysis also indicated that many of the reports with this designation involve vehicles that stalled.

National Motor Vehicle Crash Causation Survey (NMVCCS)

NMVCCS was a nationwide survey of crashes involving light passenger vehicles, with a focus on the factors related to pre-crash events. A total of 6,949 crashes were investigated between January 1, 2005, and December 31, 2007. Of these, 5,470 cases comprise a nationally representative sample. The remaining 1,479 cases are suitable for clinical study. Each investigated crash involved at least one light passenger vehicle that was towed due to damage.

The advantage of NMVCCS over FARS for identifying possible accelerator control issues is twofold. The first is that the data in NMVCCS are based upon the investigation of a researcher trained to focus on pre-crash events rather than exclusively on secondary sources such as the PAR. The second is that NMVCCS contains a more specific vehicle related factor. According to the NMVCCS SAS Analytical Users Manual, the vehicle related factor of ''engine'' in NMVCCS ''documents if the vehicle experienced an engine related problem during the pre-crash phase. Examples of engine related problems include stalling, missing, and throttle problems.'' There were 26 cases that included a vehicle with an engine related problem—20 in the nationally representative sample and 6 among the case studies. After reading the crash narratives associated with these cases, most of them involved engines that stalled or overheated. Only three cases involved a problem with the accelerator control: Case numbers 2005074596262, 2007008450848 and 2007079486127. The first case involved a 1984 Oldsmobile Cutlass that was known to have an accelerator problem before the crash. The driver reported that ''the vehicle would not remain running unless [he] held [his] foot on the gas and then [put] the vehicle into gear'' and that while doing this right before the crash ''the accelerator stuck at full throttle.'' The second case involved a 1994 Chevrolet Corvette that the driver reported was not running properly. The driver ''tried to feather the gas, upon doing so the gas pedal stuck down.'' The driver lost control while braking and steering. The third case involved a 1965 Ford Mustang where the ''accelerator became stuck and the vehicle accelerated to approximately 129 km/h (80 mph).'' The driver lost control and left the roadway after applying the brakes. Only two of these three cases were part of the nationally representative sample, and there are not enough cases to accurately estimate a sample size for the problem.

National Automotive Sampling Survey—Crashworthiness Data System (NASS–CDS)

NASS–CDS is an annual nationally representative sample of traffic crashes involving at least one passenger vehicle towed due to damage. The advantage of NASS–CDS is that many years of data can be examined, and this analysis focuses on the most recent ten years (2000 through 2009). A limitation, however, is that NASS–CDS does not have a coded variable to search for possible accelerator control factors. Instead, the identification of potentially relevant cases is based upon searching the crash narrative for key words. A caveat associated with this search is that the potential accelerator control issue must be mentioned in the crash narrative and the key words must be able to identify these cases.

A search of the crash narrative for ''throttle,'' ''accelerator'' or ''gas pedal'' resulted in 44 cases from 2000 through 2009. However, in many of these cases the person applied the gas pedal rather than the brake. In a few cases the driver's foot struck the accelerator usually because of a medical condition

such as a seizure but sometimes because of the foot becoming trapped or wedged. However, eleven cases during the ten-year period indicated an accelerator control issue. Additional searches were conducted for ''racing,'' ''acceleration'' and ''runaway'' to find cases related to racing engines, sudden or UA and runaway vehicles. However, these searches did not produce any additional relevant cases.

The following table summarizes the results, including a brief recap of the accelerator control issue as described in the narrative:

Make	Model	MY	Notes
Chevrolet	Corvette	1995	The PAR reported the throttle had stuck open for some reason.
Oldsmobile	Cutlass	1989	Vehicle throttle stuck open.
Oldsmobile	Ciera	1990	The driver of the vehicle has indicated that his accelerator pedal stuck causing the loss of vehicle control.
Ford	F-Series Pickup	1997	The driver stated the accelerator stuck.
Chevrolet	C/K/R/V-Series Pickup	1988	The driver experienced a problem with the accelerator, attempted to stop at the marked intersection, but was unable to stop.
Buick	LeSabre	1989	The driver stated that the accelerator stuck and he could not stop the vehicle.
Pontiac	Bonneville	2002	The PAR related the driver was driving in lane one of the three-lane, one-way street when the accelerator stuck and the driver took evasive action and steered the vehicle to the left so he would not run out into traffic. But the interview stated the driver was parked on the right side of the road and when he started up the vehicle it took off.
Chevrolet	Cavalier	1990	The vehicle's accelerator stuck depressed.
Chevrolet	Blazer	1996	A portable oxygen tank fell onto the accelerator.
Ford	Bronco	1985	The accelerator of vehicle got stuck.
Infiniti	J30	1993	The driver claimed the accelerator stuck.

Overall it appears that the claims of accelerator control issues span a variety of vehicle models and model years. Also, in most cases, the only information available about the nature of the problem is a claim that an accelerator or throttle ''stuck'' while the vehicle was in motion. In some cases the narrative explicitly mentioned that the driver tried to stop but could not. Two of the eleven cases do not fit the general pattern of a stuck accelerator with little additional information. In one case an oxygen tank fell on the accelerator, and the driver was unable to stop the vehicle. In another case, there were conflicting reports of whether the driver could not stop a moving vehicle or whether the vehicle suddenly accelerated from a stopped position.

There are several reasons that NASS–CDS is not particularly useful for providing national estimates of the incidence of accelerator control issues. As mentioned previously, searching for key words in the narrative requires that the information be recorded in the narrative and that the key words are capturing all of the appropriate cases. A second reason is that the information available in the narrative is usually just the claim of a stuck accelerator or throttle with little additional information to understand the nature of the problem. A final reason is that the sample size of eleven cases over ten years is not sufficient for accurately estimating the problem size. Nevertheless, to the extent that we are able to identify in NASS–CDS some cases where an accelerator pedal became stuck, along with out test track assessment of vehicles with the technology, we believe brake-throttle override would be a solution for mitigating the subsequent crashes that occurred.

Because the FARS, NASS, and NMVCSS data are of limited usefulness for estimating harm caused by ACS-related failures, we cannot estimate the safety problem on a national level. However, based on media reports, our analysis of recent ODI complaint data, observations from NASA's review of certain Toyota vehicles, and NHTSA's history with floormat issues and other types of problems that prevent an accelerator pedal from responding normally, we believe this rulemaking is necessary.

B. Owner Complaint Data

The Office of Defects Investigation (ODI) is the office within NHTSA responsible for conducting defect investigations and administering safety recalls in support of NHTSA's mission to improve safety on our nation's roadways. One important means by which ODI discovers vehicle safety-related defects is self-reporting by vehicle owners. By relating the information over a toll-free hotline or by filling out a VOQ on-line,[19] vehicle owners can provide complaint information that is entered into ODI's vehicle owner complaint database. This information is used with other complaints and information to determine if a safety-related defect trend exists.

Our analysis and discussion of stuck and trapped accelerator pedals in today's notice is exemplified by ODI VOQs because consumers have described crashes or incidents involving a vehicle speeding out of control with a stuck accelerator pedal. These incidents cannot be identified readily from data elements in NHTSA's traditional crash data sources (as discussed in the previous section) or there are too few cases available in those databases. In addition, one of the specific observations made by the NASA in its report to NHTSA on Toyota unintended acceleration stated that some VOQs indicate that drivers may not know or understand the vehicle response when they attempt to control a runaway vehicle, i.e., that the high engine speed resulting from a shift to neutral will not harm the vehicle, or that pumping vacuum-assisted brakes can decrease their effectiveness.[20]

There are important qualifications in the use of VOQs as a data source for conducting rulemaking. Among them are:

- VOQs are self-reported data, meaning that the information they contain is dependent on the description of an incident provided by the driver, another involved party, or someone related.

[19] The VOQ form and other information about filing a complaint can be found at the following NHTSA-administered Web site: *www.safercar.gov*

[20] See Observation O–1 in section 7.2, page 172, of the NASA report at: *http://www.nhtsa.gov/PR/DOT-16-11*.

• There may be no follow up investigation to verify what actually happened or to make an objective analysis of the root cause of a crash. However, in the case of complaints involving UA, ODI did do extensive follow-up work, mostly in connection with defect investigations that were opened, and attempted to confirm, for example, if there was evidence of floor mat interference contributing to a UA incident.

• Important facts about other possible contributing factors in these incidents may be unavailable.

• The crashes and incidents reported are not randomly selected (random selection is a normal prerequisite for statistical analysis.) In the case of UA incidents, selection depended partly on which vehicles were involved in ODI investigations.

• Many relevant incidents may be unreported because the driver or other party chose not to file a complaint or did not know how or where to do so.

• The numbers of complaints relating to any safety problem may either under-represent or over-represent the extent of the problem on a national level.

VOQs can, however, help to identify emerging safety issues and problems that drivers are having, which is appropriate for what we are trying to address with this proposal. NHTSA's analysis and breakdown of UA complaints is available in the February 2011 NHTSA report, ''Technical Assessment of Toyota Electronic Throttle Control (ETC) Systems,'' [21] Section 2. Using a broad keyword search and manual review of the results, NHTSA identified a total of 9,701 UA incidents of all types involving model year 1998–2010 vehicles reported in VOQs between January 1, 2000, and March 5, 2010. It was possible to identify the UA initiation speed in 5,512 of those incidents, and a crash was indicated in 2,039 of the 5,512. Of those crashes, 16 percent had either medium or high initiation speed (defined as at least 15 mph or 45 mph, respectively).

Although we do not know how many of those complaints are attributable to UA resulting from stuck or trapped accelerator pedals, there are many examples of VOQs which indicate that the accelerator pedal was stuck, or something to that effect, including some that specifically mention floor mat entrapment. A few of these go into greater detail, describing harrowing incidents that exceed a minute in duration, include swerving in and out of traffic, and are accompanied by severe heat damage to the brakes. While these are relatively uncommon compared to overall crash/incident risk, they often pose extra danger because of the longer duration of the events and the freeway environment where they often occur which may include evasive action by surrounding vehicles, therefore exposing more people to crash risk.

In any case, it appears that stuck or trapped accelerator pedals present a serious safety problem and occur frequently enough to warrant regulatory action, even if accurate quantification of the problem is not possible at the present time.

VIII. Cost, Lead Time and Other Issues

A. Cost of the Proposed BTO Requirement

We expect the cost of a brake-throttle override requirement for light vehicles to be close to zero for the following reasons. As of model year 2012, all but two light vehicle manufacturers have incorporated brake-throttle override in the ETC-equipped vehicle models that they produce for sale in the U.S. This is based on manufacturer-supplied information that NHTSA receives as part of our annual safety compliance testing program. There are a few specific ETC-equipped models currently without BTO because they are at the end of their product design cycle and which either will be discontinued or will be equipped with BTO in the next design cycle, prior to the effective date of any final rule which results from this proposal.

The proposed BTO regulation would set minimum requirements for existing as well as future light vehicle BTO systems. Based on our experience with them, existing systems will meet the proposed standard without modification. However, if some systems do require changes to meet the proposed standard, we believe the changes would be minimal.

Because of the nearly 100 percent market penetration of the technology, the fact that most if not all systems already would meet the rule, and given that a final rule would not take effect for at least one or two years from the date of today's notice, we expect that manufacturer design, validation, and implementation costs attributable to the proposed brake-throttle override requirement for light vehicles would be close to zero.

Compliance testing costs also are expected to be low since the proposed test procedure is nearly identical to existing brake performance test procedures and could be conducted along with existing brake performance tests.

B. Proposed Lead Time and Phase-In

As discussed in Section V, we believe that current vehicles should be able to comply with the ACS disconnection requirements in this proposal without significant lead time because the updated procedures in this proposal do not change the basic return-to-idle requirement that has applied to motor vehicles for as long as the current standard has been in effect. We are proposing the following lead time for compliance with the disconnection requirements in this proposal as follows:

• Each vehicle shall comply within one year from the next September 1 following the date of publication of the final rule.

We are not proposing a phase-in period for the disconnection requirements because the proposed rule codifies the positions taken by the agency on those requirements that have been promulgated in interpretation letters available for a number of years to industry and the public. Also, our compliance testing of vehicles with ETC has not demonstrated significant compliance issues to date.

We are proposing that lead time for compliance with the new brake-throttle override requirements should be as follows:

• Each vehicle subject to the requirements shall comply within two years from the next September 1 of the date of publication of the final rule.

For example, if a final rule were published on October 1, 2012, the disconnection requirements in the final rule would take effect on September 1, 2013, and the brake-throttle override requirements would take effect on September 1, 2014. We believe that this would give vehicle manufacturers ample time to implement the new requirements at minimal cost.

For the brake-throttle override requirements, we believe a phase-in is unnecessary because a significant portion of new vehicles already are either equipped with a BTO system or will be by the coming model year.

We request comment on the proposed lead time, including specific safety issues or cost and production issues that might influence the effective date of the rule.

C. Vehicles Over 10,000 lb GVWR

In addition to covering light vehicles, FMVSS No. 124 also applies to heavy vehicles, i.e., trucks and buses. Many heavy trucks are diesel-powered. For

[21] The report is available on the internet at: *http://nhtsa.gov/staticfiles/nvs/pdf/NHTSA-UA_report.pdf.*

throttle system disconnection testing on those vehicles, the fuel rate compliance option would be applicable. The creep speed procedure on a dynamometer or test track would be an option also. However, since heavy truck powertrains and chassis often are produced separately by different manufacturers, a given powertrain might have to be certified for several different chassis. Responsibility for certification (assuming it is a multi-stage manufacturing situation) typically would fall to the chassis manufacturer.

For heavy vehicles, a brake-throttle override requirement may or may not be necessary. Trucks and buses already are subject to compliance with FMVSS No. 105, *Hydraulic and electric brake systems* and FMVSS No. 121, *Air brake systems,* so performance tests based on braking distance are practicable. In addition, NHTSA's complaint and crash data reports do not indicate a trapped pedal problem in heavy vehicles.

Furthermore, trucks and buses often operate at full throttle during normal driving, and the acceleration rate of trucks and buses is significantly lower than for light vehicles. Additionally, most trucks have manual transmissions for which the clutch functions as an available countermeasure in the case of a stuck throttle in a truck.

Since there is no apparent safety need for brake-throttle override systems to apply to heavy vehicles, we are proposing that the brake-throttle override requirement would apply only to passenger cars, multipurpose passenger vehicles, trucks, and buses with GVWRs of 10,000 pounds or less. However, we seek comment on this issue, specifically any data related to pedal entrapment or similar issues where BTO might be an effective safeguard.

D. Manual Transmission Vehicles

In the proposed brake-throttle override system regulation, we have not made any distinction for vehicles with GVWRs of 10,000 pounds or less equipped with manual transmissions. There are cogent reasons why manual transmission-equipped vehicles might be less susceptible to crashes resulting from trapped pedals. Primarily, these vehicles have a clutch pedal which disengages the engine from the drive-wheels. This provides an expedient countermeasure for a driver in the event of a trapped accelerator pedal. Furthermore, clutch operation is not influenced by a stuck throttle the way that brake operation may be.

Compared to vehicles with automatic transmissions, pedal placement in a manual transmission vehicle may be different and the brake pedal typically is smaller. We do not know if these factors influence trapped pedal incidents, either positively or negatively.

NHTSA invites comments on this issue. If comments include sufficient justification for excluding manual transmission vehicles from the BTO requirements, and we are convinced that there will be no safety-related consequences, we will consider adopting that exclusion. Otherwise, we would not have any basis for excluding vehicles from the brake-throttle override system requirements based on their having a manual transmission.

E. Proposed New Title for FMVSS No. 124

To reflect the addition of a Brake-Throttle Override requirement, we are proposing that the title of FMVSS No. 124 be changed from ''Accelerator control systems'' to ''Accelerator control and brake-throttle override systems.'' We invite comment on this proposed change.

IX. Rulemaking Analyses and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 (January 18, 2011, ''Improving Regulation and Regulatory Review'') the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979). OMB has advised us that this NPRM is not significant. This action was not reviewed by the Office of Management and Budget under these executive orders. It is not considered to be significant under the Department's Regulatory Policies and Procedures.[1]

This NPRM includes the following proposed changes to FMVSS No. 124: Adds language so the Standard explicitly applies to ETC systems; includes test procedures for hybrids and other vehicles whose propulsion is not governed by throttling of combustion air intake; and adds a new requirement for a brake-throttle override system. We believe that the cost of implementing this proposal, if adopted, would be relatively small. Given the interpretations issued by NHTSA, manufacturers should have been aware for a long time of the applicability of FMVSS No. 124 to ETC-equipped vehicles. Since this proposal does not change the scope of the ACS disconnection requirements and only defines specific test procedures for ETC systems, all vehicles should be able to comply without costly re-design. Also, since this proposal allows new alternative methods of compliance for ACS disconnections, vehicles should not have significant compliance issues.

There would likely be costs associated with certification testing. Those costs might vary somewhat depending on which procedure a manufacturer selects, but they should be similar to the costs of certifying to the current standard. In the case of the powertrain output (i.e., creep speed) test option, we expect the cost would be comparable to that for a single test run conducted for EPA emission or fuel economy purposes in a dynamometer facility or on a test track. These are tests that vehicle manufacturers conduct routinely either in their own facilities or through a commercially available source.

For Brake-Throttle-Override systems, we believe the cost of the rule would be minimal because manufacturers already are incorporating BTO in their light vehicle fleets, and those systems are likely to meet the new safety requirement without modification. This would minimize any costs attributable to a NHTSA rule. There would be compliance testing costs.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the

[1] Department of Transportation, *Adoption of Regulatory Policies and Procedures,* 44 FR 11034 (Feb. 26, 1979).

Regulatory Flexibility Act. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, manufacturers of passenger vehicles would fall under North American Industry Classification System (NAICS) No. 336111, Automobile Manufacturing, which has a size standard of 1,000 employees or fewer. Using the size standard of 1,000 employees or fewer, NHTSA estimates that there are fewer than 20 small business manufacturers of passenger vehicles subject to the proposed requirements.

The Head of the Agency hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that if made final, none of the proposed changes will require the addition of new systems or equipment on existing vehicles that manufacturers are not already putting on vehicles (i.e., brake-override systems), and costs associated with the proposal will be minimal for all manufacturers, including small businesses.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's proposal pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposal would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. 30103(b)(1). It is this statutory command that preempts any non-identical State legislative and administrative law [22] addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's rule. NHTSA does not intend that this rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the proposal announced here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

D. National Environmental Policy Act

NHTSA has analyzed this NPRM for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

E. Paperwork Reduction Act

Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. NHTSA has carefully examined this notice of proposed rulemaking and has determined that there are no Paperwork Reduction Act consequences on motor vehicle manufacturers or any other members of the public if this NPRM is made final.

F. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' In today's NPRM, NHTSA proposes to incorporate by reference, in whole or in part, two voluntary consensus standards developed by the Society of Automotive Engineers (SAE): SAE J2264 (APR 95) ''Chassis Dynamometer Simulation of Road Load Using Coastdown Techniques'' and in SAE J1263 (JAN2009), ''Road Load Measurement and Dynamometer Simulation Using Coastdown Techniques,'' the following test conditions: S7.1, ''Ambient Temperature''; S7.2 ''Fog,'' S7.3 ''Winds,'' and S7.4 ''Road Conditions.''

G. Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies

[22] The issue of potential preemption of state tort law is addressed in the immediately following paragraph discussing implied preemption.

the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This NPRM, if made final, would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. However, since this NPRM, if made final, would require an updated ACS on passenger cars, multipurpose passenger vehicles, trucks and buses, and would require a brake-throttle override system on passenger cars, multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less, it should have a beneficial safety effect on children riding in such vehicles.

J. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

K. Plain Language

The Plain Writing Act of 2010 (Pub. L. 111–274) and Executive Order 12866 require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

M. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

X. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg_reproducible.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the docket at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent

possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material. You can arrange with the docket to be notified when others file comments in the docket. See *http://www.regulations.gov* for more information.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

Proposed Regulatory Text for FMVSS No. 124

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.5 is amended by adding paragraphs (k)(50) and (k)(51) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(k) * * *

(50) SAE 1263 (JAN2009) ''Road Load Measurement and Dynamometer Simulation Using Coastdown Techniques,'' Sections S7.1 ''Ambient Temperature,'' S7.2 ''Fog,'' S7.3 ''Winds,'' and S7.4 ''Road Conditions.''

(51) SAE J2264 (APR 1995) ''Chassis Dynamometer Simulation of Road Load Using Coastdown Techniques.''

* * * * *

3. Section 571.124 is revised to read as follows:

§ 571.124 Standard No. 124; Accelerator control and brake-throttle override systems.

S1. *Scope.* This standard establishes requirements for each engine, electric motor, and other motive power source connected to a vehicle's drive wheels to return to idle, within a specified time and a specified tolerance, whenever actuating force on the driver-operated accelerator control is removed and whenever there is a severance or disconnection in the accelerator control system. This standard also establishes requirements for brake-actuated throttle override systems.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries resulting from uncontrolled vehicle propulsion caused by malfunctions or disconnections in accelerator control systems and from conflicting inputs to the brake and accelerator controls in a vehicle.

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. Section S6.6 does not apply to vehicles having a GVWR greater than 10,000 lb (4545 kg), or to vehicles without Electronic Throttle Control.

S4. *Definitions.*

Accelerator control system means all vehicle components, including both mechanical and electrical/electronic components and modules, that operate a vehicle's throttle in response to movement of the driver-operated accelerator control and that, upon removal of actuating force on the driver-operated control, return both the throttle and the driver-operated control to their idle or rest positions. For the purposes of this standard, an electronic control module is considered a single component, and the external wiring and connections of each module to other accelerator control system components and to other vehicle components including power and ground connections are subject to severance or disconnection.

Air intake rate means the rate at which combustion air is supplied to an engine.

Air-throttled engine means an internal combustion engine in which output power is controlled primarily through regulation of the air intake rate.

Ambient temperature means the temperature of air surrounding a test vehicle measured at a sufficient distance to not be significantly affected by heat from the test vehicle.

Coastdown means vehicle deceleration which occurs when there is no input to either the brake or accelerator pedals.

Creep speed means the maximum terminal speed that can be achieved when a vehicle in a lightly loaded condition, starting from a standstill or any speed of which the vehicle is capable, is driven in any gear with no input to its driver-operated accelerator control.

Driver-operated accelerator control means any device on a vehicle, such as an accelerator pedal, that a driver uses to modulate engine or motor power, but not including cruise control, locking hand throttles, or any engine or motor control not intended for regulating vehicle propulsion.

Electric power delivery means a power computation (such as wattage) derived from the current and voltage input to an electric motor that drives a vehicle.

Electronic throttle control means an accelerator control system in which movement of the driver-operated control is translated into throttle actuation, at least in part by electronic, instead of mechanical, means.

Engine or motor means any source of motive power in a vehicle, including internal combustion engines and electric motors, connected to the drive wheels and capable of propelling the vehicle.

Fuel delivery rate means the net rate of fuel use (supply minus return) in an engine.

Fuel metering device means the internal parts of a carburetor, fuel injector, fuel distributor, or fuel injection pump, and the internal elements of electronic modules in the accelerator control system such as circuit boards and discrete electrical components contained inside an engine control module, which adjust engine or motor operating variables such as fuel-air ratio and ignition timing.

Fuel-throttled engine means an internal combustion engine in which output power is controlled primarily through regulation of fuel delivery rate.

Idle or idle state means the normal running condition of a vehicle's engine or motor with no faults or malfunctions affecting engine or motor output when there is no input to the driver-operated accelerator control.

Idle state conditions are conditions which influence idle state during normal operation of a vehicle, including but not limited to engine temperature, air-conditioner load, emission control state, and the use of speed setting devices such as cruise control.

Idle state indicant means a vehicle operating parameter which varies directly with engine or motor output, including: throttle position, fuel delivery rate, air intake rate, electric power delivery, and creep speed.

Throttle means the component of an accelerator control system which, in

response to movement of the driver-operated accelerator control, modulates vehicle propulsion by varying throttle position, fuel delivery rate, air intake rate, electric power delivery, or other means by which powertrain output is regulated.

S5. *Requirements.* Each vehicle shall meet the requirements of S5.1 through S5.3 when tested in accordance with applicable procedures in S6, at any ambient temperature between minus 40 and plus 50 degrees Celsius and after 12 hours of conditioning at any temperature within that range unless otherwise specified, and with its engine or motor running under any load condition and at any speed of which the engine or motor is capable.

S5.1 *Normal Operation.* The throttle shall return to idle within the time limit specified in S5.3 whenever the driver-operated accelerator control is released from any position when the vehicle is tested in accordance with S6.3.

S5.2 *Fail-safe Operation.* Each vehicle shall meet S5.2.1 or S5.2.2. A fuel metering device is not subject to disconnection or severance under this test procedure.

S5.2.1 In the event of a disconnection or severance at a single point of any one component of the accelerator control system, including disconnection or severance of an electrical component that results in an open circuit or a short circuit to ground, but not a disconnection or severance inside of an electronic module, the throttle shall return to or below idle plus a tolerance of 50 percent, within the time limit specified in S5.3 after release of the driver-operated accelerator control from any position, when tested in accordance with S6.4; or

S5.2.2 When tested in accordance with S6.5, each vehicle's maximum creep speed shall be no greater than 50 km/h (31 mph), and the vehicle shall decelerate continuously from any initial speed greater than 50 km/h of which the vehicle is capable until its speed is reduced to 50 km/h or lower, and the time required to coast down to 50 km/h shall not exceed the time required to coast down to 50 km/h from the same speed in neutral gear without faults in the accelerator control system.

S5.3 *Response Time.* When tested in accordance with S6.3 and S6.4, the maximum time to return to idle as indicated by the throttle position or other selected idle state indicant shall be

(a) Not greater than 1 second for vehicles of 4536 kilograms (10,000 pounds) or less gross vehicle weight rating (GVWR),

(b) Not greater than 2 seconds for vehicles of more than 4536 kilograms (10,000 pounds) GVWR, and

(c) Not greater than 3 seconds for vehicles, regardless of GVWR, that are exposed to ambient air at minus 18 to minus 40 degrees Celsius during a test or any portion of the 12-hour conditioning period.

S5.4 *Brake-Throttle Override.*

S5.4.1 Each motor vehicle under 10,000 lb GVWR having electronic throttle control shall meet the performance requirement of S6.6 and shall be equipped with a throttle-override system that is engaged by application of the vehicle's service brake and that meets the following requirements:

(a) The system shall consist of hardware and/or software components on the vehicle which have the capability of identifying and reacting to conflicts between accelerator pedal and brake pedal inputs;

(b) At vehicle speeds greater than 16 km/h (10 mph), when a conflict exists between the vehicle's accelerator and brake pedals, the override system must engage and must substantially reduce propulsive force delivered to the driving wheels to a controllable level by means of a change in throttle opening, fuel delivery rate, air intake rate, electric power delivery, or an equivalent means;

(c) Once engaged, the override must remain engaged at any speed as long as brake pedal application is maintained at or above the force level or travel which initially engaged the override, and as long as accelerator pedal input is in conflict with the brake application.

S5.4.2 When tested in accordance with the brake-throttle override performance test in S6.6, a vehicle is deemed to comply if at least one of the six stops is made within the prescribed distance. However, in all of the six stops, the brake-throttle override must engage if the system identifies a conflict between the accelerator pedal and brake.

S5.4.3 If a means is provided for the vehicle operator to turn off the brake-throttle override system—

(a) There must be an illuminated alert or message that remains in view of the driver as long as the system is turned off and the vehicle ignition is on, and

(b) The system must default to an active state whenever the vehicle ignition is started.

S6. *Test Procedures.*

S6.1 *Irrevocable Selection.* The manufacturer shall select one of the following criteria upon which it bases its certification to the requirements in section S5.1 and S5.2 in this standard: throttle position, fuel delivery rate, air intake rate, electric power delivery, or creep speed/coastdown performance. This selection is irrevocable and shall be made prior to or at the time of certification of the vehicle pursuant to 49 CFR Part 567, ''Certification.''

S6.2 *General.* For the test procedures in sections S6.3 and S6.4, the ''baseline'' value is the value of the selected idle state indicant measured for an engine or motor operating at idle without accelerator control system faults under the conditions that exist at the beginning of a test and which are held constant during the test.

(a) For idle state conditions that provide a means of driver control, for example air-conditioner setting, the selected setting for testing may be any point within the control range, including ''off.''

(b) The engine or motor is operated for not less than 5 minutes to stabilize the idle state prior to testing.

(c) Vehicles are conditioned and tested at any ambient temperature between minus 40 and plus 50 degrees Celsius, except as specified for creep speed and coastdown test procedures in S6.5.

(d) The time to return to idle in S6.4 is measured first from the instant that a severance or disconnection occurs and then, if necessary, from the instant of release of the driver-operated accelerator control.

S6.3 *Test Procedure for Evaluating Return-to-Idle in Normal Operation*

S6.3.1 Condition the test vehicle to a selected ambient temperature for up to 12 hours.

S6.3.2 Start the vehicle, set controls such as for the air-conditioner, and operate the engine for not less than 5 minutes.

S6.3.3 Measure the baseline value of one of the following idle state indicants identified by the vehicle manufacturer for the test vehicle: throttle position, fuel delivery rate, air intake rate, or electric power delivery.

S6.3.4 Set engine speed and powertrain loading condition by shifting the transmission to neutral or any gear and moving the driver-operated accelerator control to any position, with or without resistance applied to the vehicle's drive wheels.

S6.3.5 After at least 3 seconds, release the driver-operated accelerator control.

S6.3.6 Verify that the measured idle state indicant returns to or below its baseline value determined in S6.3.3 following release of the driver-operated accelerator control within the response time specified in S5.3.

6.4 *Test Procedure for Evaluating Return-to-Idle Following a Disconnection or Severance*

6.4.1 Condition the test vehicle to a selected ambient temperature for up to 12 hours.

S6.4.2 Start the vehicle, set controls such as for air-conditioning, and operate the engine for not less than 5 minutes.

S6.4.3 Measure the baseline idle value of one of the following idle state indicants identified by the vehicle manufacturer for the test vehicle: throttle position, fuel delivery rate, air intake rate, or electric power delivery.

S6.4.4 Set engine speed and powertrain loading condition by shifting the transmission to neutral or any gear and moving the driver-operated accelerator control to any position, with or without resistance applied to the vehicle's drive wheels.

S6.4.5 While continuing to measure the idle state indicant, disconnect one component of the accelerator control system by removing one connector or severing a wiring harness or individual wire, leaving the disconnected or severed component in either an open circuit condition or shorted to ground.

S6.4.6 If there is no change in the idle state indicant after at least 3 seconds, release the driver-operated accelerator control.

S6.4.7 Verify that, following either S6.4.5 or S6.4.6, the idle state indicant returns to and remains at or below a value that is no more than 50 percent greater than its baseline value as measured in S6.4.3, within the response time specified in S5.3.

S6.5 *Alternative Procedure for Evaluating Return-to-Idle Following a Disconnection or Severance, Using Creep Speed and Coastdown*

S6.5.1 This test procedure measures creep speed and coastdown time on a chassis (wheel-driven) dynamometer configured to simulate the correct road load as a function of speed for the test vehicle as determined in accordance with SAE J2264 (APR 95), ''Chassis Dynamometer Simulation of Road Load Using Coastdown Techniques.'' (Incorporated by reference, see § 571.5.) This test procedure also may be performed on a straight road course consisting of dry, smooth, unbroken asphalt or concrete pavement with a continuous grade of not more than 0.5 percent in any direction.

S6.5.2 The test vehicle is lightly loaded (driver-only with no cargo and fuel tank level between one-quarter and full.) Tires are set at cold inflation pressures provided on the vehicle placard and/or the tire inflation label, and all vehicle windows are fully closed. For track tests, ambient conditions are as specified in SAE J1263 (JAN 2009), ''Road Load Measurement and Dynamometer Simulation Using Countdown Techniques'' in section 7, ''Test Conditions'' at S7.1 ''Ambient Temperatures'', S7.2 ''Fog,'' S7.3 ''Winds,'' and S7.4 ''Road Conditions'' (incorporated by reference, see § 571.5).

S6.5.3 Time intervals measured in S6.5.5 and S6.5.6 begin at the instant that a disconnection or severance is induced in the accelerator control system, or from the instant that the accelerator pedal is released or the transmission is shifted to neutral, as applicable, depending on which of those actions initiates a vehicle response. Test vehicle speed versus time are recorded continuously during test runs.

S6.5.4 Start up the test vehicle, set accessory controls such as for air-conditioning, and operate the vehicle for not less than 5 minutes.

S6.5.5 Creep Speed Measurement Procedure

(a) With the vehicle's drive wheels on the dynamometer roller(s) or with the vehicle positioned on the road test course, place the transmission selector in the ''drive'' position. For manual transmissions, select the highest gear (lowest numerical gear ratio) which allows the vehicle to coast without stalling if the clutch is gradually released when there is no input to the accelerator pedal.

(b) With the vehicle operating at idle or at any target speed up to 50 km/h (31 mph), simultaneously release the accelerator pedal (if applied) and disconnect one component of the accelerator control system by removing one connector or severing a wiring harness or individual wire, leaving the disconnected or severed component in either an open circuit condition or shorted to ground.

(c) Note the speed of the test vehicle at 90 seconds after the disconnection and verify that it does not exceed 50 km/h.

S6.5.6 Coastdown Time Measurement Procedure

(a) With the vehicle's drive wheels on the dynamometer roller(s) or with the vehicle positioned on the road test course, place the transmission selector in the ''drive'' position and drive the vehicle up to any selected target speed greater than 50 km/h. For manual transmissions, select any gear appropriate for the selected target speed.

(b) At the target speed, release the accelerator pedal and simultaneously shift the vehicle into neutral. Allow the vehicle to coast without any brake input.

(c) Verify that the vehicle decelerates to or below 50 km/h and record the elapsed time needed for the vehicle to reach 50 km/h.

(d) Repeat the step in S6.5.6(a) and, at the same target speed, simultaneously release the accelerator pedal and disconnect one component of the accelerator control system by removing one connector or severing a wiring harness or individual wire, leaving the disconnected or severed component in either an open circuit condition or shorted to ground.

(e) Record the elapsed time needed for the vehicle to decelerate to 50 km/h, and verify that it does not exceed the elapsed time in the step in S6.5.6(c).

S6.6 *Performance Test for Brake-Throttle Override Systems.*

Measure vehicle stopping distance with the test vehicle's accelerator pedal applied as specified in the following procedure:

S6.6.1 Select a target speed which is greater than or equal to 30 km/h and less than or equal to 160 km/h and which, if greater than 100 km/h, does not exceed 80 percent of the test vehicle's maximum speed. ''Maximum speed'' is used as defined in section S4 of 49 CFR 571.135, ''Light Vehicle Brake Systems,'' (FMVSS No. 135).

S6.6.2 Conduct stopping distance measurements in accordance with the general procedures and test conditions specified in S6 of FMVSS No. 135, and as follows:

(a) Accelerate the test vehicle and, while still in gear, hold the accelerator pedal in any fixed position between 25 and 100 percent of the full range of pedal travel.

(b) At the target speed, without releasing the accelerator pedal from the position as selected in S6.6.2(a), apply the service brake and bring the vehicle to a stop using a brake pedal force of not less than 65N (14.6 lbs) and not more than 500N (112.4 lbs).;

(c) Repeat six times for a total of six test runs at each target speed.

S6.6.3 Verify that the stopping distance 'S' (in meters) for each vehicle speed 'V' (in km/h) is no more than 5 percent greater than the stopping distance specified in either S7.5.3(b) or S7.6.3 of FMVSS No. 135 by meeting one of the following requirements:

(a) For test speeds up to and including 100 km/h: $S \leq 1.05(0.10V + 0.0060V^2)$.

(b) For test speeds greater than 100 km/h: $S \leq 1.05(0.10V + 0.0067V^2)$.

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Christopher J. Bonanti,

Associate Administrator for Rulemaking.

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