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FEDERAL REGISTER

Vol. 77 Tuesday,
No. 79 April 24, 2012

Pages 24341–24574

OFFICE OF THE FEDERAL REGISTER

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WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Federal Register
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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.

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2010–BT–TP–0021]

RIN 1904–AC08

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

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

ACTION: Final rule; correction.

SUMMARY: This final rule corrects the provisions for calculating the annual operating cost of residential clothes washers. In the final rule establishing new and amended test procedures for residential clothes washers, published in the **Federal Register** on March 7, 2012, and effective as of April 6, 2012, the U.S. Department of Energy (DOE) erroneously referenced the new test procedure, rather than the currently effective test procedure, in one section of the provisions for calculating annual operating cost.

DATES: This correction is effective April 24, 2012.

FOR FURTHER INFORMATION CONTACT:

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

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

SUPPLEMENTARY INFORMATION: DOE published new and amended test procedures for residential clothes washers on March 7, 2012. 77 FR 13888. The current test procedure is codified at appendix J1 in 10 CFR part 430 subpart B. The March 2012 final rule amended certain provisions in appendix J1, established new clothes washer test procedures codified in a new appendix J2 in 10 CFR part 430 subpart B, and amended the procedures for calculating the annual operating cost in 10 CFR 430.23(j). Residential clothes washer manufacturers may continue to use appendix J1 to determine compliance of their products with energy conservation standards until the compliance date of any amended standards.

In the preamble to the March 2012 final rule, DOE described its intention to amend the annual operating cost calculation in 10 CFR 430.23(j) to incorporate the cost of energy consumed in standby and off modes, and to reflect an updated number of annual use cycles, for clothes washers tested using the new appendix J2. DOE intended to maintain the annual operating cost calculation for clothes washers tested using the currently effective appendix J1, which applies to residential clothes washers currently on the market. In the March 2012 final rule, DOE erroneously referenced appendix J2 in the provisions at newly designated 10 CFR 430.23(j)(1)(i), which are intended to apply to clothes washers tested using appendix J1. The remainder of the text in paragraph (i) correctly refers to appendix J1. The provisions for calculating the annual operating cost of clothes washers tested using appendix J2 are found at the newly created 10 CFR 430.23(j)(1)(ii).

This final rule amends 10 CFR 430.23(j)(1)(i) to reference appendix J1 rather than appendix J2. This correction also applies to the parenthetical note in 430.23(j)(1)(i), which should reference the introductory note in appendix J1 rather than appendix J2.

For clarity and consistency between 430.23(j)(1)(i) and 430.23(j)(1)(ii), this final rule also amends 430.23(j)(1)(ii) to include a parenthetical note, analogous to the parenthetical note in 430.23(j)(1)(i), referencing the introductory note in appendix J2.

Procedural Issues and Regulatory Review

The regulatory reviews conducted for this rulemaking are those set forth in the March 2012 final rule that originally codified amendments to DOE's test procedures for residential clothes washers. The amendments in the March 2012 final rule became effective April 6, 2012.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), DOE has determined that notice and prior opportunity for comment on this rule are unnecessary and contrary to the public interest. The provisions in 10 CFR 430.23(j)(1)(i) are intended to apply to residential clothes washers currently on the market, as indicated by the remaining text of paragraph (i) that follows the erroneous reference to appendix J2. In addition, this correction is needed to ensure clarity regarding the annual energy cost calculated according to 430.23(j)(1)(i), which is required to be displayed on the Federal Trade Commission's current EnergyGuide Label for residential clothes washers as the primary indicator of product energy efficiency. (16 CFR 305.5(a)(6); 305.11(f)(5); (f)(8)) For these reasons, DOE has also determined that there is good cause to waive the 30-day delay in effective date.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

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

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, part 430 of title 10 of the Code of Federal Regulations is corrected by making the following correcting amendments:

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 430.23 is amended by revising paragraphs (j)(1)(i) introductory text and (ii) introductory text to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(j) * * *

(1) * * *

(i) When using appendix J1 (see the note at the beginning of appendix J1),

* * * * *

(ii) When using appendix J2 (see the note at the beginning of appendix J2),

* * * * *

[FR Doc. 2012–9841 Filed 4–23–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1325; Directorate Identifier 2010–NM–250–AD; Amendment 39–17014; AD 2012–07–08]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all EMBRAER Model ERJ 170 airplanes. That AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate new structural inspection requirements. Since we issued that AD, during full scale fatigue testing, cracks were found in certain structural components of the airplane. Analysis of these cracks resulted in the manufacturer modifying the ALS of EMBRAER 170 Maintenance Review Board Report (MRBR), to include new inspections tasks, or modifying the current tasks and their respective thresholds and intervals. This new AD requires revising the maintenance program to incorporate new or revised structural inspection requirements. We are issuing this AD to detect and correct fatigue cracking which could result in the loss of structural integrity of the airplane.

DATES: This AD becomes effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of July 6, 2010 (75 FR 30284, June 1, 2010).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2768; fax 425–227–1320.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 29, 2011 (76 FR 81894), and proposed to supersede AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During the airplane full scale fatigue test, cracks were found in some structural components of the airplane. Analysis of these cracks resulted in modifications on the Airworthiness Limitation Section (ALS) of Embraer ERJ 170 Maintenance Review Board Report (MRBR), to include new inspections tasks or modification of existing ones and its respective thresholds and intervals.

Failure to inspect these structural components, according to the new/revised tasks, thresholds and intervals, could prevent a timely detection of fatigue cracking. These cracks, if not properly addressed, could adversely affect the structural integrity of the airplane.

* * * * *

The required action is revising the maintenance program to incorporate new structural inspection requirements. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 81894, December 29, 2011) or on the determination of the cost to the public.

Explanation of Changes Made to This AD

We have revised certain headers throughout this AD. We have also redesignated Note 1 of the NPRM (76 FR 81894, December 29, 2011) as paragraph (c)(2) of this AD, and paragraph (c) of the NPRM as paragraph (c)(1) of this AD. These changes have not changed the intent of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 81894, December 29, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 81894, December 29, 2011).

Costs of Compliance

We estimate that this AD will affect about 166 products of U.S. registry.

The actions that are required by AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010), and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $14,110, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 81894, December 29, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010), and adding the following new AD:

2012–07–08 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–17014. Docket No. FAA–2011–1325; Directorate Identifier 2010–NM–250–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 29, 2012.

(b) Affected ADs

This AD supersedes AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010).

(c) Applicability

(1) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE., and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes; certificated in any category.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529–1A (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/list/AC%2025.1529-1A/$FILE/AC%2025.1529-1A.pdf*).

(d) Subject

Air Transport Association (ATA) of America Code 53: Fuselage; 57: Wings.

(e) Reason

This AD was prompted by cracks found in certain structural components during full scale fatigue testing of the airplane. Analysis of these cracks resulted in manufacturer modifications of the airworthiness limitations section (ALS) of EMBRAER 170 Maintenance Review Board Report (MRBR), which include new inspections tasks, or modification of the current tasks and their respective thresholds and intervals. We are issuing this AD to detect and correct fatigue cracking which could result in the loss of structural integrity of the airplane.

(f) Compliance

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

(g) Restatement of Requirements of AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010): Actions

(1) Within 90 days after July 6, 2010 (the effective date of AD 2010–11–13, Amendment 39–16318 (75 FR 30284, June 1, 2010)), revise the ALS of the Instructions for Continued Airworthiness (ICA) to incorporate the inspection tasks identified in the EMBRAER temporary revisions (TRs) to Appendix A—Part 2 of the EMBRAER 170 MRBR MRB–1621 listed in table 1 of this AD.

(2) The initial compliance times for the tasks start from the applicable threshold times specified in the temporary revisions (TRs) for the corresponding tasks of the maintenance review board report or within 500 flight cycles after July 6, 2010, whichever occurs later. For certain tasks, the compliance times depend on the pre-modification and post-modification status of the actions specified in the associated service bulletin, as specified in the ''Applicability'' column of the applicable TRs identified in table 1 of this AD.

(3) The threshold values stated in the TRs referenced in table 1 of this AD are total flight cycles on the airplane since the date of issuance of the original Brazilian airworthiness certificate or the date of issuance of the original Brazilian export certificate of airworthiness.

TABLE 1—INSPECTION TASKS

TR	Date	Subject	Task No.
TR 4–1	October 15, 2007	Ram air turbine compartment, support structure and cutout structure—internal.	53–10–012–0002
			53–10–012–0003
		Nose landing gear wheel well metallic structure	53–10–021–0005
			53–10–021–0006
TR 4–3	December 6, 2007	Wing stub spar 3 side fitting—internal	57–01–012–001
		Wing upper skin panels—external	57–10–010–0002
		Fixed trailing edge lower skin panel—external	57–50–002–0002
		Fixed trailing edge rib 4A—external	57–50–005–0003
		Fixed trailing edge rib 6—internal	57–50–005–0004
TR 4–4	January 18, 2008	Wing stub main box lower—internal	57–01–002–003

(h) No Alternative Inspections for Paragraph (g) of This AD

Except as required by paragraph (i) of this AD, after accomplishing the actions specified in paragraph (g) of this AD, no alternative inspections or inspection intervals may be used unless the inspection or inspection interval is approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent); or unless the inspection or interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(i) New Requirements of This AD: Revising the Maintenance Program

(1) Within 60 days after the effective date of this AD: Revise the maintenance program to incorporate the new or revised tasks specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010; and EMBRAER Temporary Revision (TR) 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR MRB–1621, Revision 7; with the initial compliance times and intervals specified in these documents.

(2) The initial compliance times for the tasks start from the date of issuance of the original Brazilian airworthiness certificate or the date of issuance of the original Brazilian export certificate of airworthiness of the applicable airplane at the applicable time specified in the tasks, or within 600 flight cycles after revising the maintenance program, whichever occurs later. For certain tasks, the compliance times depend on the pre-modification and post-modification status of the actions specified in the associated service bulletin, as specified in the ''Applicability'' column of Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010; and EMBRAER Temporary Revision 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Revision 7.

(3) For tasks identified in the documents identified in paragraph (i)(1) of this AD, doing the initial task required by this paragraph terminates the requirements of paragraph (g) of this AD for that task.

(j) No Alternative Actions Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After accomplishing the revisions required by paragraph (i) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used other than those specified in Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010; and EMBRAER Temporary Revision 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR MRB–1621, Revision 7, unless the actions, intervals, and/or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2768; fax 425–227–1320. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

Refer to MCAI Brazilian Airworthiness Directive 2011–04–01, dated May 5, 2011; and Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010; and EMBRAER Temporary Revision 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR MRB–1621, Revision 7; for related information.

(m) Material Incorporated by Reference

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

(2) The following service information was approved for IBR on May 29, 2012.

(i) Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations, of the EMBRAER 170 MRBR MRB–1621, Revision 7, dated November 11, 2010. *Only the title page of this document specifies the revision level of the document.

(ii) EMBRAER Temporary Revision 7–1, dated February 11, 2011, to Part 2—Airworthiness Limitation Inspection (ALI)—Structures, of Appendix A, Airworthiness Limitations of the EMBRAER 170 MRBR MRB–1621, Revision 7.

(3) The following service information was approved for IBR on July 6, 2010 (75 FR 30284, June 1, 2010):

(i) EMBRAER Temporary Revision 4–1, dated October 15, 2007, to Appendix A–Part 2 of the EMBRAER 170 Maintenance Review Board Report MRB–1621.

(ii) EMBRAER Temporary Revision 4–3, dated December 6, 2007, to Appendix A—Part 2 of the EMBRAER 170 Maintenance Review Board Report MRB–1621.

(iii) EMBRAER Temporary Revision 4–4, dated January 18, 2008, to Appendix A– Part 2 of the EMBRAER 170 Maintenance Review Board Report MRB–1621.

(4) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170–Putim–12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.*

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

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

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9500 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1069; Directorate Identifier 2011–NM–025–AD; Amendment 39–17025; AD 2012–08–08]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Learjet Inc., Model 45 airplanes. This AD was prompted by changes to the Airworthiness Limitations Section (ALS) of the maintenance manual, which adds life-limits, revises life-limits, or adds inspections not previously identified. This AD requires revising the maintenance program to include new or more restrictive life-limits and inspections. We are issuing this AD to limit exposure of flight critical components to corrosion, cracking, or failure due to life-limits, which if not corrected, could result in loss of roll control, fatigue cracking, or loss of structural components.

DATES: This AD is effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 29, 2012.

ADDRESSES: For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.*You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: 316–946–4116; fax: 316–946–4107; email: *William.E.Griffith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 19, 2011 (76 FR 64851). That NPRM proposed to require revising the maintenance program to include new or more restrictive life-limits and inspections.

Comments

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

Request To Revisit Interpretation of the Meaning of the Word ''Current''

Flight Concepts requested we revisit our interpretation of the word ''current'' so that the improper use of the airworthiness directive system would not be needed. This commenter justified its request by providing Webster's definition of the word ''current.''

We infer that the requested change is in reference to an FAA memorandum regarding the legal interpretation of section 91.409(f)(3) of the Federal Aviation Regulations (14 CFR 91.409) and is not specifically applicable to this AD.

We do not agree that the word ''current'' needs to be defined for this AD. The utilization of the word ''current'' is not within the textual body of this AD. This AD requires revising the maintenance program by incorporating certain tasks, which when performed, address unsafe conditions. Operators utilizing earlier versions of manual-specific maintenance programs may not be bound or obligated to follow newer releases or updates to these maintenance programs. The issue of the terminology of the word ''current'' and explanation of the requirement for FAA mandates to newer maintenance actions via the AD process is addressed in an FAA memorandum dated August 13, 2010, from the Office of the Chief Counsel. This AD ensures that those specific tasks covering the unsafe conditions are followed by all operators of this airplane model. We have not changed the AD in this regard.

Explanation of Additional Changes Made to This AD

We have redesignated Note 1 of the NPRM (76 FR 64851, October 19, 2011) as paragraph (c)(2) of this AD, paragraph (c) as paragraph (c)(1) of this AD, and Note 2 of the NPRM as Note 1 to paragraph (g) of this AD.

IRN # N3220105 was incorrectly included in table 1 of the NPRM (76 FR 64851, October 19, 2011). We have removed it from the final rule.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 64851, October 19, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 64851, October 19, 2011).

Costs of Compliance

We estimate that this AD affects 336 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Change ALS in maintenance manual	1 work-hour × $85 per hour = $85	$0	$85	$28,560

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–08 Learjet Inc.: Amendment 39–17025; Docket No. FAA–2011–1069; Directorate Identifier 2011–NM–025–AD.

(a) Effective Date

This AD is effective May 29, 2012.

(b) Affected ADs

None

(c) Applicability

(1) This AD applies to all Learjet Inc., Model 45 airplanes, certificated in any category.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g. inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these actions, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane. The FAA has provided guidance for this determination in FAA Advisory Circular (AC) 25.1529–1A, dated November 20, 2007. *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/list/AC%2025.1529-1A/$FILE/AC%2025.1529-1A.pdf.*

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 05, Periodic Inspections.

(e) Unsafe Condition

This AD was prompted by changes to the Airworthiness Limitations Section (ALS) of the maintenance manual (MM), which adds life-limits, revises life-limits, or adds inspections not previously identified. We are issuing this AD to limit exposure of flight critical components to corrosion, cracking, or failure due to life-limits, which if not corrected, could result in loss of roll control, fatigue cracking, or loss of structural components.

(f) Compliance

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

(g) Maintenance Program Revision

Within 90 days after the effective date of this AD, revise the maintenance program by incorporating the applicable inspection reference number (IRN) tasks identified in table 1 of this AD, as specified in Chapter 04, Airworthiness Limitations, of the Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable. The initial task compliance time is within 90 days after the effective date of this AD, or the applicable initial compliance time specified in table 1 of this AD, whichever is later.

Note 1 to paragraph (g) of this AD: IRN #R2710041 shown in table 1 of this AD is identified as IRN # N2710041 in prior revisions of Bombardier Learjet 45 Maintenance Manual MM–104, and Bombardier Learjet 40 Maintenance Manual MM–105.

TABLE 1—IRN TASK REVISION

Model—	IRN #—	Initial compliance time—	Chapter 04 of these documents—
Model 40, 45	R2710041	Within 10 years after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 10 years after the most recent replacement, whichever occurs later.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	Q5510091	Within 600 flight hours after the most recent inspection done in accordance with IRN # Q5510091.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	Q5530011	Before the accumulation of 9,600 total flight hours.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	P3220007	Within 48 months after the most recent inspection done in accordance with IRN # P3220007.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.

TABLE 1—IRN TASK REVISION—Continued

Model—	IRN #—	Initial compliance time—	Chapter 04 of these documents—
Model 40, 45	P3220146	Before the accumulation of 4,800 total landings.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	N3220012, N3220023, N3220035, N3220036, and N3220037.	Before the accumulation of 10,000 total landings on the component.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	N3220103, N3220104, and N3220106.	Before the accumulation of 17,000 total landings on the component.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 45	N5710147, N5710171, and N5710173.	Before the accumulation of 6,500 total flight hours.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011.
Model 45	N5710175	Before the accumulation of 6,900 total flight hours.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011.
Model 45	N5710177	Before the accumulation of 7,000 total flight hours.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011.

(h) No Alternative Intervals

After accomplishing the revisions required by paragraph (g) of this AD, no alternative IRN task or IRN task interval may be used unless the IRN task or IRN task interval is approved as an AMOC in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(j) Related Information

For more information about this AD, William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: 316–946–4116; fax: 316–946–4107; email: *William.E.Griffith@faa.gov.*

(k) Material Incorporated by Reference

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

(i) Chapter 04, Airworthiness Limitations, of the Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011. Only the title page and record of revisions pages of this document specify the revision level of the document.

(ii) Chapter 04, Airworthiness Limitations, of the Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011. Only the title page and record of revisions pages of this document specify the revision level of the document.

(2) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

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

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9393 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1223; Directorate Identifier 2011–NM–173–AD; Amendment 39–17027; AD 2012–08–10]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes. This AD was prompted by reports of the air driven generator (ADG) failing to power essential buses during functional tests, due to the low threshold setting of the circuit protection on the ADG's generator control unit (GCU) preventing the ADG from supplying power to the essential buses. This AD requires installing a new or serviceable ADG GCU. We are issuing this AD to prevent loss of power from the ADG to the essential buses which, in the event of an emergency, could prevent continued safe flight.

DATES: This AD becomes effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in this AD as of May 29, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 8, 2011 (76 FR 69155). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There have been several occurrences of the air driven generator (ADG) failure to power essential buses during functional tests of the ADG. It was found that the low threshold setting of the circuit protection on the ADG generator control unit (GCU) can prevent the supply of power from the ADG to the essential buses. In the event of an emergency, loss of power to the essential buses can prevent continued safe flight.
>
> This [TCCA] directive mandates the replacement of the ADG GCU.

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

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Remove Unaffected Airplane Models

Bombardier requested that we revise the proposed applicability to remove Model CL–601–3A and CL–601–3R airplanes.

We agree. We have removed these models from the Summary and paragraph (c) of this AD, since only the Model CL–604 variant is affected.

Explanation of Change to Costs of Compliance Section

The Costs of Compliance section has been updated to show a more accurate cost to operators. The work-hours quoted in Bombardier Service Bulletins 604–24–023 and 605–24–003, dated April 27, 2011, include only the labor time required for replacement, while Hamilton Sundstrand Service Bulletin ERPS10G–24–1, dated February 9, 2011, estimates 4 work-hours for replacing the printed wiring assemblies in the GCU and functional testing of the ADG. Because it may be necessary to do a non-destructive test (NDT) inspection on some airplanes, we have added an additional work-hour, for a total estimate of 6 work-hours.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 70 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $35,700, or $510 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 69155, November 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–10 Bombardier, Inc.: Amendment 39–17027. Docket No. FAA–2011–1223; Directorate Identifier 2011–NM–173–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes, certificated in any category, serial numbers 5408 through 5665 inclusive, and 5701 through 5856 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by reports of the air driven generator (ADG) failing to power essential buses during functional tests, due to the low threshold setting of the circuit protection on the ADG's generator control unit (GCU) preventing the ADG from supplying power to the essential buses. We are issuing this AD to prevent loss of power from the ADG to the essential buses which, in the event of an emergency, could prevent continued safe flight.

(f) Compliance

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

(g) Actions

Within 36 months after the effective date of this AD, remove the ADG GCU, Bombardier part number (P/N) 604–90800–7 (Hamilton Sundstrand P/N 761341A), and install a new or serviceable ADG GCU Bombardier P/N 604–90800–27 (Hamilton Sundstrand P/N 761341B), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 605–24–003, dated April 25, 2011 (for airplane serial numbers 5701 through 5856); or Bombardier Service Bulletin 604–24–023, dated April 25, 2011 (for airplane serial numbers 5408 through 5665).

Note 1 to paragraph (g) of this AD: Bombardier Service Bulletins 605–24–003 and 604–24–023, both dated April 25, 2011, refer to Hamilton Sundstrand Service Bulletin ERPS10G–24–1, dated February 9, 2011, as an additional source of guidance for modifying and testing the ADG GCU with new printed wiring assemblies, and re-identifying the GCU using a new part number.

(h) Parts Installation

As of the effective date of this AD, no person may install an ADG GCU, Bombardier P/N 604–90800–7 (Hamilton Sundstrand P/N 761341A), on any airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 10, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–25, dated July 25, 2011; Bombardier Service Bulletin 605–24–003, dated April 25, 2011; and Bombardier Service Bulletin 604–24–023, dated April 25, 2011; for related information.

(k) Material Incorporated by Reference

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

(i) Bombardier Service Bulletin 605–24–003, dated April 25, 2011.

(ii) Bombardier Service Bulletin 604–24–023, dated April 25, 2011.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on April 10, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9395 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1258; Directorate Identifier 2011–NM–184–AD; Amendment 39–17033; AD 2012–08–16]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Learjet Inc. Model 60 airplanes. This AD was prompted by two incidents of swapped fire extinguishing wires. This AD requires inspecting the electrical leads routed to the fire extinguishing containers for proper identification and missing labels, and to ensure the electrical leads are connected to the correct squibs; and corrective actions if necessary. We are issuing this AD to prevent the extinguishing agent of the fire extinguishing container from being delivered to the wrong engine in the event of an engine fire, and a consequent uncontrolled fire.

DATES: This AD is effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 29, 2012.

ADDRESSES: For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

James Galstad, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: 316–946–4135; fax: 316–946–4107; email: *james.galstad@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on November 30, 2011 (76 FR 74010). That NPRM proposed to require inspecting the electrical leads routed to the fire extinguishing containers for proper identification and missing labels, and to ensure the electrical leads are connected to the correct squibs; and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal (76 FR 74010, November 30, 2011) and the FAA's response.

Request To Revise Compliance Time

The single commenter, SpiritJets, LLC, stated that the wording of the compliance time in paragraph (g) of the NPRM (76 FR 74010, November 30, 2011) appears to be inaccurate because many of those airplanes do not have auxiliary power units (APU) installed. The compliance time in the NPRM is worded as follows: ''Within 300 flight hours after the effective date of this AD, or at the next auxiliary power unit (APU) removal, whichever occurs first * * *''

We infer that the commenter requests we remove the reference to the next APU removal from the compliance time. We find that clarification is necessary. Paragraph (g) of this AD applies to all airplanes identified in the applicability (i.e., paragraph (c) of this AD). Therefore, if an APU is not installed on an airplane that is identified in paragraph (c) of this AD, ''within 300 flight hours after the effective date of this AD'' is the appropriate compliance time for accomplishing the requirements of the AD on that airplane. For clarification purposes, we have revised paragraph (g) of this AD to add paragraphs (g)(1) and (g)(2), which more clearly specify the compliance times for airplanes with and without an APU.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 74010, November 30, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 74010, November 30, 2011).

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

Costs of Compliance

We estimate that this AD affects 232 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	3 work-hours × $85 per hour = $255	0	$255	$59,160

We estimate the following costs to do any necessary modification that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this modification:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Corrective actions	1 work-hour × $85 per hour = $85	$8	$93

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–16 Learjet Inc.: Amendment 39–17033; Docket No. FAA–2011–1258; Directorate Identifier 2011–NM–184–AD.

(a) Effective Date

This AD is effective May 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Learjet Inc. Model 60 airplanes, certificated in any category, serial numbers 60–002 through 60–366 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 2620, Extinguishing system.

(e) Unsafe Condition

This AD was prompted by two incidents of swapped fire extinguishing wires, which could cause the extinguishing agent of the fire extinguishing container to be delivered to the wrong engine in the event of an engine fire, and a consequent uncontrolled fire. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

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

(g) Inspection and Corrective Actions

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Inspect the electrical leads routed to the fire extinguishing containers for proper identification and missing labels, and to ensure the electrical leads are connected to the correct squibs, as specified in Bombardier Service Bulletin 60–26–4, dated May 2, 2011. Do the inspection in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 60–26–4, dated May 2, 2011. If any misidentification is found, or if any label is missing, or if the electrical leads are not connected to the correct squibs, as specified in Bombardier Service Bulletin 60–26–4, dated May 2, 2011: Before further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 60–26–4, dated May 2, 2011.

(1) For airplanes equipped with an APU: Within 300 flight hours after the effective date of this AD, or at the next auxiliary power unit (APU) removal, whichever occurs first.

(2) For airplanes not equipped with an APU: Within 300 flight hours after the effective date of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

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

(i) Related Information

For more information about this AD, contact James Galstad, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: 316–946–4135; fax: 316–946–4107; email: *james.galstad@faa.gov.*

(j) Material Incorporated by Reference

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

(i) Bombardier Service Bulletin 60–26–4, dated May 2, 2011.

(2) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; email *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on April 13, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9557 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0036; Directorate Identifier 2011–NM–142–AD; Amendment 39–17028; AD 2012–08–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by test reports that showed that failure of a retract port flexible hose of a main landing gear (MLG) retraction actuator could cause excessive hydraulic fluid leakage. This AD requires a detailed inspection for defects and damage of the retract port flexible hose on the left and right MLG retraction actuator and replacement of the flexible hose if needed. We are issuing this AD to detect and correct defects and damage of the retract port flexible hose which could lead to an undamped extension of the MLG and could result in MLG structural failure, leading to an unsafe asymmetric landing configuration.

DATES: This AD becomes effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 29, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York

Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 23, 2012 (77 FR 3189). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Testing has shown that in the event of a main landing gear (MLG) retraction actuator retract port flexible hose failure, in-flight vibrations may cause excessive hydraulic fluid leakage. This could potentially lead to an undamped extension of the MLG, which may result in MLG structural failure, leading to an unsafe asymmetric landing configuration.
>
> This [Transport Canada Civil Aviation (TCCA)] directive mandates the [detailed] inspection of the retract port flexible hose [for defects and damage] and its replacement [installing a new retract port flexible hose], when required, to prevent damage to the MLG caused by undamped gear extensions.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 3189, January 23, 2012), or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 81 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,885 or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 4 work-hours and require parts costing $0, for a cost of $340 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 3189, January 23, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–11 Bombardier, Inc.: Amendment 39–17028. Docket No. FAA–2012–0036; Directorate Identifier 2011–NM–142–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing Gear.

(e) Reason

This AD was prompted by test reports that showed that failure of a retract port flexible hose of a main landing gear (MLG) retraction actuator could cause excessive hydraulic fluid leakage. We are issuing this AD to detect and correct defects and damage of the retract port flexible hose which could lead to an undamped extension of the MLG and could result in MLG structural failure, leading to an unsafe asymmetric landing configuration.

(f) Compliance

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

(g) Actions

Within 600 flight hours after the effective date of this AD, do a detailed inspection for defects and damage of the retract port flexible hose of the left and right MLG retraction actuators, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–89, dated March 22, 2011. Repeat the inspection thereafter at intervals not to exceed 600 flight hours. If any defect or damage is found, before further flight, replace the retract port flexible hose with a new or serviceable retract port flexible hose in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–89, dated March 22, 2011.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to Attn: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–14, dated June 17, 2011; and Bombardier Service Bulletin 84–32–89, dated March 22, 2011; for related information.

(j) Material Incorporated by Reference

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

(i) Bombardier Service Bulletin 84–32–89, dated March 22, 2011.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on April 11, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9472 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1095; Directorate Identifier 2010–NM–241–AD; Amendment 39–17032; AD 2012–08–15]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes. This AD was prompted by multiple reports of short circuit events during pre-delivery inspections and test flights, one of which resulted in smoke in the cockpit. This AD requires replacing or relocating of certain circuit breaker panel (CBP) bus bars on certain airplanes, inspecting for any loose or improperly crimped lugs in certain electrical panel locations and replacement if necessary, and inspection for foreign object damage in certain areas and removal if necessary. We are issuing this AD to prevent arcing, damage to adjacent structure, smoke in the cockpit, or loss of system redundancies.

DATES: This AD becomes effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 29, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 26, 2011 (76 FR 66203). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During pre-delivery inspections and test flights, several short circuit events were reported, one of which resulted in smoke in the cockpit. There were no in-service incidents.
>
> Investigations have identified three conditions affecting the wiring of Circuit Breaker Panels 1, 2, 3 and 4 (CBP–1, CBP–2, CBP–3, and CBP–4) and Junction Boxes 17 and 18 (JB17 and JB18), which would lead to short circuiting:
>
> 1. In CBP–1, there may be low clearance between specific bus bars and the circuit breaker panel structure.
>
> 2. Some nickel-plated terminal lugs, size number 22–20 with a green insulating sleeve, may not have been manufactured to applicable standards. These terminal lugs may have been installed in CBP–1, CBP–2, CBP–3, CBP–4, JB17 and JB18. This manufacturing defect affects the mechanical hold of the wire in the crimped lug barrel.
>
> 3. In JB17, JB18 and the above-mentioned CBPs, foreign object debris (FOD) may be found.
>
> If not corrected, these conditions could result in arcing, damage to adjacent structure, smoke in the cockpit, or loss of system redundancies.
>
> This TCCA directive is issued to mandate the replacement or relocation of the specific CBP–1 bus bars, the [detailed] inspection, and rework if necessary, of any loose or improperly crimped lugs in CBP–1, CBP–2, CBP–3, CBP–4, JB17 and JB18, and to ensure there is no FOD in the affected areas [via a general visual inspection for FOD, and removal if necessary].

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

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Change Applicability

Bombardier, Inc. requested the applicability be revised to remove the CL–601–3A and CL–601–3R Variant airplanes, since only the CL–604 Variant is affected.

We agree because only the CL–604 Variant is affected. We have changed the preamble and paragraph (c) of this final rule to specify only the CL–604 Variant.

Conclusion

We reviewed the available data, including the comment received, and

determined that air safety and the public interest require adopting the AD with the change described previously and minor editorial changes to the paragraph identifier format. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 69 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $347 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $59,133, or $857 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 66203, October 26, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–15 Bombardier, Inc.: Amendment 39–17032. Docket No. FAA–2011–1095; Directorate Identifier 2010–NM–241–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B16 (CL–604 Variant) airplanes, certificated in any category, serial numbers 5701 through 5752 inclusive, 5754 through 5775 inclusive, 5777, 5779 through 5781 inclusive, 5783 through 5790 inclusive, 5792, 5794 through 5796 inclusive, 5798, 5801, and 5804.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by multiple reports of short circuit events during pre-delivery inspections and test flights, one of which resulted in smoke in the cockpit. We are issuing this AD to prevent arcing, damage to adjacent structure, smoke in the cockpit, or loss of system redundancies.

(f) Compliance

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

(g) Inspections, Bus Bar Actions, and Corrective Actions

For airplanes having serial numbers 5701 through 5752 inclusive, 5754 through 5775 inclusive, 5777, 5780 through 5781 inclusive, 5783 through 5790 inclusive, 5792, 5794 through 5796 inclusive, 5798, 5801, and 5804: Within 800 flight hours after the effective date of this AD, do the actions in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 605–24–004, dated January 18, 2010.

(1) Do a detailed inspection in circuit breaker panel (CBP) CBP–1 for loose lugs and for crimped lugs that have any of the conditions specified in step 2.B.(9)(d) of Bombardier Service Bulletin 605–24–004, dated January 18, 2010. Before further flight, replace all loose lugs and all crimped lugs in CBP–1 that have any of the conditions specified in Step 2.B.(9)(d) of Bombardier Service Bulletin 605–24–004, dated January 18, 2010.

(2) Relocate or replace the CBP–1 bus bars as applicable.

(3) Do a general visual inspection for foreign object damage (FOD). If any FOD is found: Before further flight, remove the FOD.

(h) Inspections and Corrective Actions

For airplanes having serial numbers 5701 through 5752 inclusive, 5754 through 5756 inclusive, 5758 through 5775 inclusive, 5779, 5781, 5788, 5789, 5792, 5795, 5798, 5801, and 5804: Within 800 flight hours after the effective date of this AD, do the actions in paragraph (h)(1) and (h)(2) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 605–24–002, dated December 7, 2009.

(1) Do a detailed inspection for loose lugs and for crimped lugs that have any of the conditions specified in step 2.B.(2)(d) of Bombardier Service Bulletin 605–24–002, dated December 7, 2009, in CBP–2, CBP–3, CBP–4, junction box (JB) JB17, and JB18. Before further flight, replace all loose lugs and all crimped lugs that have any of the conditions specified in step 2.B.(2)(d) of Bombardier Service Bulletin 605–24–002, dated December 7, 2009, in CBP–2, CBP–3, CBP–4, JB17, and JB18.

(2) Do a general visual inspection for FOD. If any FOD is found: Before further flight, remove the FOD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2010–25, dated August 3, 2010; Bombardier Service Bulletin 605–24–002, dated December 7, 2009; and Bombardier Service Bulletin 605–24–004, dated January 18, 2010; for related information.

(k) Material Incorporated by Reference

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

(i) Bombardier Service Bulletin 605–24–002, dated December 7, 2009.

(ii) Bombardier Service Bulletin 605–24–004, dated January 18, 2010.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; phone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on April 13, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9568 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0644; Directorate Identifier 2010–NM–265–AD; Amendment 39–17026; AD 2012–08–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes. This AD was prompted by reports of cracks found in the Web pockets of the wing center section (WCS) spanwise beams. This AD requires repetitive detailed inspections and high frequency eddy current inspections for cracks of the WCS spanwise beams, and repair if necessary. We are issuing this AD to detect and correct cracking in the WCS spanwise beams, which could result in reduced structural integrity of the wings.

DATES: This AD is effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 29, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; *email me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Sutherland, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6533; fax: 425–917–6590; email: *James.Sutherland@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 29, 2011 (76 FR 38072). That NPRM proposed to require repetitive detailed inspections and high frequency eddy current (HFEC) inspections for cracks of the WCS spanwise beams, and repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 38072, June 29, 2011) and the FAA's response to each comment.

Requests to Reference Service Bulletin Information Notice (IN) and Revised Service Bulletin

American Airlines (AAL) requested that we revise the NPRM (76 FR 38072, June 29, 2011) to refer to Boeing Service Bulletin Information Notice 777–57A0087 IN 01, dated March 24, 2011. AAL stated that this IN addresses information that is critical to the correct design and installation of repairs. If this IN is not incorporated, AAL asserted that the repairs could be designed and installed improperly.

Boeing and Continental Airlines requested that we revise the NPRM (76 FR 38072, June 29, 2011) to refer to Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011. They stated that without incorporating the latest issue of this service bulletin, the repairs provided in the original issue of this service bulletin could be installed

improperly because the original issue of this service bulletin contains minor deficiencies.

Since we issued the NPRM (76 FR 38072, June 29, 2011), Boeing has issued Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011, which incorporates the changes outlined in Boeing Service Bulletin Information Notice 777–57A0087 IN 01, dated March 24, 2011. Therefore, we agree to refer to Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011, not the earlier Boeing Service Bulletin Information Notice 777–57A0087 IN 01, dated March 24, 2011.

Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011, was revised to, among other things, clarify and provide additional repair information. We have changed paragraphs (c), (g), and (h) of this AD to refer to Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011. We have also added new paragraph (i) to this AD to give credit to operators for actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010, since accomplishment of that service bulletin adequately addresses the unsafe condition. We have re-identified subsequent paragraphs accordingly.

Request To Clarify Inspection Terminology

FedEx requested that we revise the NPRM (76 FR 38072, June 29, 2011) to refer to a detailed visual inspection, rather than a detailed inspection. The Accomplishment Instructions of Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011, calls out a ''detailed inspection.'' FedEx indicated that, while it is clear that the inspection is meant to be a visual inspection, the term ''visual'' is not used anywhere in the definition in either Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011, or in the NPRM.

We disagree. The term ''intensive'' in the definition of a detailed inspection indicates that the inspection demands a higher level of scrutiny than using only visual means to find unsatisfactory conditions that are more difficult to detect. The mention of ''elaborate procedures'' used in the definition of a detailed inspection raises the awareness that extraordinary means of gaining access by removing adjacent items, de-fueling tanks, etc., are necessary to perform the inspection, and hence, the inspection cannot be performed by visual means only. We have not changed the final rule in this regard.

Request To Provide Boeing With AMOC Authoring Authority

FedEx suggested that the FAA provide Boeing with AMOC authoring authority for the proposed rule NPRM (76 FR 38072, June 29, 2011) on an aircraft-by-aircraft basis.

We agree to clarify. Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which provides Boeing with AMOC authoring authority. We included paragraph (j)(3) in the NPRM to reflect Boeing's authorization. We have not changed the final rule in regard to this issue.

Additional Change Made to This AD

We have revised the wording of paragraph (i) of this AD; this change has not changed the intent of that paragraph.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 38072, June 29, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 38072, June 29, 2011).

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

Costs of Compliance

We estimate that this AD affects 160 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection and high frequency eddy current inspection of spanwise beam.	50 work-hours × $85 per hour = $4,250 per inspection cycle.	$0	$4,250 per inspection cycle.	$680,000 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repair actions specified in this AD. We have no way of determining the number of aircraft that might need these repairs.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–09 The Boeing Company: Amendment 39–17026; Docket No. FAA–2011–0644; Directorate Identifier 2010–NM–265–AD.

(a) Effective Date

This AD is effective May 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 57: Wings.

(e) Unsafe Condition

This AD was prompted by reports of cracks found in the web pockets of the wing center section (WCS) spanwise beams. We are issuing this AD to detect and correct cracking in the WCS spanwise beams, which could result in reduced structural integrity of the wings.

(f) Compliance

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

(g) Repetitive Inspections

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, do a detailed inspection and a high frequency eddy current inspection for cracks of the web pockets of the WCS spanwise beams numbers 1, 2, and 3; and a detailed inspection for cracks of any previously installed repairs; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011. Repeat the inspections thereafter at intervals not to exceed 8,000 flight cycles.

(1) Before the accumulation of 8,000 total flight cycles.

(2) Within 6,000 flight cycles, or 1,125 days, after the effective date of this AD, whichever occurs first.

(h) Corrective Actions

If any cracking is found during any inspection required by paragraph (g) of this AD, before further flight, repair the crack, including related investigative actions and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011; except where Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011, specifies to contact Boeing for repair instructions, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Actions Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 777–57A0087, dated November 11, 2010.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

For more information about this AD, contact James Sutherland, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6533; fax: 425–917–6590; email: *James.Sutherland@faa.gov.*

(l) Material Incorporated by Reference

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

(i) Boeing Service Bulletin 777–57A0087, Revision 1, dated August 24, 2011.

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

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

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

Issued in Renton, Washington, on April 11, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9398 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1165; Directorate Identifier 2011–NM–002–AD; Amendment 39–17030; AD 2012–08–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes. This AD was prompted by reports of two failures of the single-tabbed bracket on the rudder. This AD requires replacing certain single-tabbed bonding brackets in the airplane empennage with two-tabbed bonding brackets. This AD also requires, for certain airplanes, installing new bonding jumpers, and measuring the resistance of the modified installation to verify resistance is within specified limits. We are issuing this AD to prevent failure of the bonding jumper bracket, which could result in loss of lightning protection ground path, which could

lead to increased lightning-induced currents and subsequent damage to composite structures, hydraulic tubes, and actuator control electronics. In the event of a lightning strike, loss of lightning ground protection could result in the loss of control of the airplane.

DATES: This AD is effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 29, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6482; fax: (425) 917–6590; email: *georgios.roussos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on November 4, 2011 (76 FR 68366). That NPRM proposed to require replacing certain single-tabbed bonding brackets in the airplane empennage with two-tabbed bonding brackets. That NPRM also proposed to require, for certain airplanes, installing new bonding jumpers, and measuring the resistance of the modified installation to verify resistance is within specified limits.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 68366, November 4, 2011) and the FAA's response to each comment.

Support for the NPRM (76 FR 68366, November 4, 2011)

The Boeing Company and United Airlines both support the NPRM (76 FR 68366, November 4, 2011).

Request To Exclude a Requirement

American Airlines (AA) requested that we revise the NPRM (76 FR 68366, November 4, 2011) to exclude the requirement that states ''Put the airplane back to a serviceable condition,'' which is found in paragraph 3.B.7. of Boeing Service Bulletin 777–55A0014, Revision 1, dated April 1, 2010. AA explained that this requirement does not affect the condition which the proposed AD seeks to address. AA reasoned that, as most operators will accomplish the modifications required by the service information as part of a maintenance visit, returning the airplane to a serviceable condition will not be possible in the context of that statement, but will rather occur at a point in time well after the work is complete.

We disagree to exclude the requirement that states ''Put the airplane back to a serviceable condition'' in this final rule. The intent of this requirement is to ensure that all work that is performed as directed by the service information is verified to have been completed, and to ensure that modifications have been tested and are fully operational, prior to return to service. We are currently in the process of reviewing issues surrounding which actions in a service bulletin are necessary to be required in an AD in order to address the identified unsafe condition. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. We have not changed this AD in this regard.

Revised Heading

We have revised the heading for and the wording in paragraph (i) of this AD; this change has not changed the intent of that paragraph.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 68366, November 4, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 68366, November 4, 2011).

Costs of Compliance

We estimate that this AD affects 87 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	21 work-hours × $85 per hour = $1,785	$1,235	$3,020	$262,740

ESTIMATED COSTS FOR CONCURRENT ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	66 work-hours × $85 per hour = $5,610	$2,668	$8,278	$248,340

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–13 The Boeing Company: Amendment 39–17030; Docket No. FAA–2011–1165; Directorate Identifier 2011–NM–002–AD.

(a) Effective Date

This AD is effective May 29, 2012.

(b) Affected ADs

None.

(c) Applicability

The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 777–55A0014, Revision 1, dated April 1, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 55: Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of two failures of the single-tabbed bracket on the rudder. We are issuing this AD to prevent failure of the bonding jumper bracket, which could result in loss of lightning protection ground path, which could lead to increased lightning-induced currents and subsequent damage to composite structures, hydraulic tubes, and actuator control electronics. In the event of a lightning strike, loss of lightning ground protection could result in the loss of control of the airplane.

(f) Compliance

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

(g) Replacement

Within 48 months after the effective date of this AD, replace certain single-tabbed bonding brackets in the airplane empennage with two-tabbed bonding brackets, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–55A0014, Revision 1, dated April 1, 2010.

(h) Concurrent Requirements

For airplanes identified in Boeing Service Bulletin 777–55A0010, Revision 1, dated April 17, 2001: Prior to or concurrently with accomplishing the requirements of paragraph (g) of this AD, install new bonding jumpers, and do resistance measurements of the modified installation to verify resistance is within the limits specified in the Accomplishment Instructions of Boeing Service Bulletin 777–55A0010, Revision 1, dated April 17, 2001. Do the actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–55A0010, Revision 1, dated April 17, 2001.

(i) Credit for Previous Actions

(1) This paragraph provides credit for replacing certain single-tabbed bonding brackets with two-tabbed bonding brackets, as required by paragraph (g) of this AD, if the replacement was performed before the effective date of this AD using Boeing Alert Service Bulletin 777–55A0014, dated May 8, 2008.

(2) This paragraph provides credit for installing new bonding jumpers, and doing resistance measurements of the modified installation that verify the resistance is within the specified limits, as required by paragraph (h) of this AD, if the installation and measurements are performed before the effective date of this AD using Boeing Alert Service Bulletin 777–55A0010, dated October 26, 2000.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; Phone: (425) 917–6482; fax: (425) 917–6590; email: *georgios.roussos@faa.gov.*

(l) Material Incorporated by Reference

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

(i) Boeing Service Bulletin 777–55A0010, Revision 1, dated April 17, 2001.

(ii) Boeing Service Bulletin 777–55A0014, Revision 1, dated April 1, 2010.

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

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

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For

information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on April 12, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9476 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0334; Directorate Identifier 2012–NM–001–AD; Amendment 39–17024; AD 2012–08–07]

RIN 2120–AA64

Airworthiness Directives; Sicma Aero Seat Passenger Seat Assemblies, Installed on, But Not Limited to, ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Sicma Aero Seat Model 9401, 9402, 9404, 9505, 9406, 9407, 9408, and 9409 series passenger seat assemblies, installed on, but not limited to, ATR—GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. That AD currently requires repetitive detailed inspections for cracking of the central and lateral spreaders of the affected seats, and repair or replacement of the spreader if necessary. This AD was prompted by a determination that the existing AD included Model 9505 series passenger seat assemblies in the applicability instead of Model 9405 series passenger seat assemblies. We are issuing this AD to detect and correct cracking of the central and lateral spreaders, which could lead to further cracking of the seat spreaders, causing injury to passengers or crew members during heavy turbulence in flight or in the event of an emergency landing.

DATES: This AD becomes effective May 9, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 21, 2011 (76 FR 68304, November 4, 2011).

We must receive comments on this AD by June 8, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7170; email: *jeffrey.lee@faa.gov*.

SUPPLEMENTARY INFORMATION: On October 20, 2011, we issued AD 2011–23–06, Amendment 39–16857 (76 FR 68304, November 4, 2011). That AD required actions intended to address an unsafe condition on Sicma Aero Seat Model 9401, 9402, 9404, 9505, 9406, 9407, 9408, and 9409 series passenger seat assemblies, installed on, but not limited to, ATR—GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes.

Since we issued AD 2011–23–06, Amendment 39–16857 (76 FR 68304, November 4, 2011), we have determined that the applicability of that AD included Model 9505 series passenger seat assemblies in the applicability instead of Model 9405 series passenger seat assemblies. We have revised the applicability of this AD accordingly and added new paragraph (h) for Sicma Aero Seat Model 9405 series passenger seat assemblies.

Change to Existing AD

Since we issued AD 2011–23–06, Amendment 39–16857 (76 FR 68304, November 4, 2011), the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2011–23–06, Amendment 39–16857 (76 FR 68304, November 4, 2011)	Corresponding requirement in this AD
paragraph (c)	paragraph (c)(1)
Note 1	paragraph (c)(2)
paragraph (h)	paragraph (i)
paragraph (i)	paragraph (j)
paragraph (j)	paragraph (k)

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0334; Directorate Identifier 2012–NM–001–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may

amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–23–06, Amendment 39–16857 (76 FR 68304, November 4, 2011), and adding the following new AD:

2012–08–07 Sicma Aero Seat: Amendment 39–17024. Docket No. FAA–2012–0334; Directorate Identifier 2012–NM–001–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 9, 2012.

(b) Affected ADs

This AD supersedes AD 2011–23–06, Amendment 39–16857 (76 FR 68304, November 4, 2011).

(c) Applicability

(1) This AD applies to Sicma Aero Seat Model 9401, 9402, 9404, 9405, 9406, 9407, 9408, and 9409 series passenger seat assemblies, all part numbers, except front row and aft facing seats, and those modified to ''Amendment B'' standard. These passenger seat assemblies are installed on, but not limited to, ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes.

(2) This AD applies to Sicma Aero Seat passenger seat assemblies as installed on any airplane, regardless of whether the airplane has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

(d) Subject

Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

(e) Reason

This AD was prompted by reports of cracked central and lateral spreaders on passenger seats assemblies. We are issuing this AD to detect and correct cracking of the central and lateral spreaders, which could lead to further cracking of the seat spreaders, causing injury to passengers or crew members during heavy turbulence in flight or in the event of an emergency landing.

(f) Compliance

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

(g) Retained Repetitive Inspections, Repair, and Replacement

This paragraphs restates the actions required by paragraph (g) of AD 2011–23–06, Amendment 39–16857 (76 FR 68304, November 4, 2011). For Sicma Aero Seat Model 9401, 9402, 9404, 9406, 9407, 9408, and 9409 series passenger seat assemblies: Within 6 months after November 21, 2011 (the effective date of AD 2011–23–06), perform a detailed inspection for cracking of the central and lateral spreaders of the affected seats, in accordance with paragraph 2/A1., ''Checking procedures of lateral and central spreaders,'' of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–013, Issue 4, dated February 12, 2008.

(1) If no cracking is found on any central spreader, repeat the detailed inspection thereafter at intervals not to exceed 550 flight hours until the replacement specified in paragraph (i) of this AD is done.

(2) If no cracking or only cracks that are shorter than 8 millimeters (mm) (0.315 inch) are found on any lateral spreader, repeat the detailed inspection thereafter at intervals not to exceed 550 flight hours until the replacement specified in paragraph (i) of this AD is done.

(3) If all cracks found on any central spreader are shorter than 8 mm (0.315 inch), before further flight, repair the affected spreader, in accordance with paragraphs 2/A through C2. of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–011, Revision 3, dated June 30, 2008. Within 550 flight hours after doing the repair, do the detailed inspection specified in paragraph (g) of this AD, and repeat the inspection thereafter at intervals not to exceed 550 flight hours until the replacement specified in paragraph (i) of this AD is done.

(4) If one or more cracks are found that are 8 mm (0.315 inch) or longer on any lateral or central spreader, before further flight, replace the affected spreader, in accordance with paragraphs 2/A through D2. of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008.

(h) New Requirements: Repetitive Inspections, Repair, and Replacement for Model 9405 Series Passenger Seat Assemblies

For Sicma Aero Seat Model 9405 series passenger seat assemblies: Within 6 months after the effective date of this AD, perform a detailed inspection for cracking of the central and lateral spreaders of the affected seats, in accordance with paragraph 2/A1., ''Checking procedures of lateral and central spreaders,'' of the Accomplishment Instructions of Sicma

Aero Seat Service Bulletin 94–25–013, Issue 4, dated February 12, 2008.

(1) If no cracking is found on any central spreader, repeat the detailed inspection thereafter at intervals not to exceed 550 flight hours until the replacement specified in paragraph (i) of this AD is done.

(2) If no cracking or only cracks that are shorter than 8 mm (0.315 inch) are found on any lateral spreader, repeat the detailed inspection thereafter at intervals not to exceed 550 flight hours until the replacement specified in paragraph (i) of this AD is done.

(3) If all cracks found on any central spreader are shorter than 8 mm (0.315 inch), before further flight, repair the affected spreader, in accordance with paragraphs 2/A through C2. of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–011, Revision 3, dated June 30, 2008. Within 550 flight hours after doing the repair, do the detailed inspection specified in paragraph (h) of this AD, and repeat the inspection thereafter at intervals not to exceed 550 flight hours until the replacement specified in paragraph (i) of this AD is done.

(4) If one or more cracks are found that are 8 mm (0.315 inch) or longer on any lateral or central spreader, before further flight, replace the affected spreader, in accordance with paragraphs 2/A through D2. of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008.

(i) Optional Terminating Action

Replacing all central and lateral spreaders on an affected seat assembly (modifying to ''Amendment B'' standard), in accordance with paragraphs 2/A through D2. of the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008, terminates the inspections required by this AD for that seat assembly.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by this AD, if the actions were performed before the effective date of this AD using Sicma Aero Seat Service Bulletin 94–25–011, Issue 2, dated November 6, 2007; and Sicma Aero Seat Service Bulletin 94–25–012, dated September 25, 2007.

(k) Parts Installation

As of 6 months after the effective date of this AD, no person may install any passenger seat assembly identified in paragraph (c) of this AD, on any airplane, unless it has been modified to ''Amendment B'' standard in accordance with the Accomplishment Instructions of Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7170; email: *jeffrey.lee@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency AD 2008–0097, dated May 20, 2008; and the service information identified in paragraphs (m)(1), (m)(2), and (m)(3) of this AD; for related information.

(1) Sicma Aero Seat Service Bulletin 94–25–011, Revision 3, dated June 30, 2008.

(2) Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008.

(3) Sicma Aero Seat Service Bulletin 94–25–013, Issue 4, dated February 12, 2008.

(n) Contact Information

Contact Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7161; fax (781) 238–7170; *email: jeffrey.lee@faa.gov,* for more information about this AD.

(o) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use the service information specified in paragraph (o)(1)(ii) of this AD to perform those actions, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51 on November 21, 2011 (76 FR 68304, November 4, 2011):

(i) Sicma Aero Seat Service Bulletin 94–25–011, Revision 3, dated June 30, 2008.

(ii) Sicma Aero Seat Service Bulletin 94–25–012, Revision 1, dated June 26, 2008.

(iii) Sicma Aero Seat Service Bulletin 94–25–013, Issue 4, dated February 12, 2008.

(2) For service information identified in this AD, contact Sicma Aero Seat, 7 Rue Lucien Coupet, 36100 ISSOUDUN, France, telephone: +33 (0) 2 54 03 39 39; fax: +33 (0) 2 54 03 39 00; email: *Customerservices.sas@zodiacaerospace.com; Internet http://www.sicma.zodiacaerospace.com.*

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

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

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

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9790 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1224; Directorate Identifier 2011–NM–175–AD; Amendment 39–17021; AD 2012–08–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD was prompted by reports of the air driven generator (ADG) failing to power essential buses during functional tests, due to the low threshold setting of the circuit protection on the ADG's generator control unit (GCU) preventing the ADG from supplying power to the essential buses. This AD requires installing a new or serviceable ADG GCU. We are issuing this AD to prevent loss of power from the ADG to the essential buses which, in the event of an emergency, could prevent continued safe flight.

DATES: This AD becomes effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 29, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the

U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 8, 2011 (76 FR 69157). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There have been several occurrences of the air driven generator (ADG) failure to power essential buses during functional tests of the ADG. It was found that the low threshold setting of the circuit protection on the ADG generator control unit (GCU) can prevent the supply of power from the ADG to the essential buses. In the event of an emergency, loss of power to the essential buses can prevent continued safe flight.
> This [TCCA] directive mandates the replacement of the ADG GCU.

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

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Request To Shorten the Compliance Time

The Air Line Pilots Association, International (ALPA) requested the compliance time of ''24 months after the effective date of the AD'' be reduced because ALPA believes that the compliance time is too long to comply with the proposed AD (76 FR 69157, November 8, 2011) based on the importance of replacement.

We do not agree to shorten the compliance time. In developing the compliance time, we determined that the compliance time of 24 months is appropriate in considering the safety implications, the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods, and the availability of required replacement parts. In addition, our compliance time corresponds with the 24-month compliance time of the parallel AD issued by Transport Canada Civil Aviation (TCCA). We have not changed the AD in this regard.

Request To Reference Hamilton Sundstrand's Part Number

Comair, Inc. requested that we revise paragraphs (g) and (h) of the NPRM (76 FR 69157, November 8, 2011) to reference Hamilton Sundstrand's part number, in addition to the Bombardier part numbers for the ADG GCU, because by doing so, Comair believes the AD will make certain all suspect ADG GCUs are removed and replaced and will be congruent with the manufacturer's manual.

We agree with the request to reference Hamilton Sundstrand's part number for the ADG GCU that is affected, and not higher assembly part numbers. Bombardier Service Bulletin 601R–24–130, dated April 27, 2011, refers to Hamilton Sundstrand Service Bulletin ERPS10G–24–1, dated February 9, 2011, as an additional source of guidance for modifying and testing the ADG GCU with new printed wiring assemblies and re-identifying the GCU with a new part number. We have updated paragraphs (g) and (h) of this AD to include the Hamilton Sundstrand part number.

Request To Revise Costs of Compliance Section

Air Wisconsin requested that we revise the Costs of Compliance section of the NPRM (76 FR 69157, November 8, 2011) to show a more accurate cost to operators of 7 hours labor. While the task of replacing the ADG CGU requires 2 hours of labor, the commenter states that post-modification testing requires an additional 5 work-hours.

We partially agree. The work-hours quoted in Bombardier Service Bulletin 601R–24–130, dated April 28, 2011, include only the labor time required for replacement, while the Hamilton Sundstrand service information estimates 4 work-hours for replacement of the printed wiring assemblies from the GCU and functional testing of the ADG. Because it may be necessary to do a non-destructive test (NDT) inspection on some airplanes, we have added an additional work-hour. We have changed the labor time required to 6 work-hours in the Costs of Compliance section of this AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD affects 589 products of U.S. registry. We also estimate that it takes 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts cost $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $300,390, or $510 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 69157, November 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–04 Bombardier, Inc.: Amendment 39–17021. Docket No. FAA–2011–1224; Directorate Identifier 2011–NM–175–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7305 through 7990 inclusive, and 8000 through 8109 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by reports of the air driven generator (ADG) failing to power essential buses during functional tests, due to the low threshold setting of the circuit protection on the ADG's generator control unit (GCU) preventing the ADG from supplying power to the essential buses. We are issuing this AD to prevent loss of power from the ADG to the essential buses which, in the event of an emergency, could prevent continued safe flight.

(f) Compliance

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

(g) Actions

Within 24 months after the effective date of this AD, remove the ADG GCU, Bombardier part number (P/N) 604–90800–7 (Hamilton Sundstrand P/N 761341A), and install a new or serviceable ADG GCU, Bombardier P/N 604–90800–27 (Hamilton Sundstrand P/N 761341B), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–24–130, dated April 27, 2011.

(h) Parts Installation

As of the effective date of this AD, no person may install an ADG GCU, Bombardier P/N 604–90800–7 (Hamilton Sundstrand P/N 761341A) on any airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to Attn: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 10, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–26, dated July 25, 2011; and Bombardier Service Bulletin 601R–24–130, dated April 27, 2011; for related information.

(k) Material Incorporated by Reference

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

(i) Bombardier Service Bulletin 601R–24–130, dated April 27, 2011.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on April 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9199 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1228; Directorate Identifier 2011–NM–176–AD; Amendment 39–17022; AD 2012–08–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by reports of the air driven generator (ADG) failing to power essential buses during functional tests, due to the low threshold setting of the circuit protection on the ADG's generator control unit (GCU) preventing the ADG from supplying power to the essential buses. This AD requires installing a new

or serviceable ADG GCU. We are issuing this AD to prevent loss of power from the ADG to the essential buses which, in the event of an emergency, could prevent continued safe flight.

DATES: This AD becomes effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 29, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 8, 2011 (76 FR 69166). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> There have been several occurrences of the air driven generator (ADG) failure to power essential buses during functional tests of the ADG on aeroplane models CL–600–2B16 and CL–600–2B19. The aeroplane models CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 use the same ADG generator control unit (GCU) as models CL–600–2B16 and CL–600–2B19. However the aeroplane models CL–600–2C10, CL–600–2D15, CL–600–2D24, and CL–600–2E25 are installed with a different hydraulic pump and do not experience the same failure due to the low threshold setting of the circuit protection.
>
> However, it was found that the same ADG GCU transformer primary winding can break due to thermal fatigue. Broken transformer primary winding can prevent the supply of power from the ADG to the essential buses. In the event of an emergency, failure for the essential buses to remain powered can prevent continued safe flight.
>
> This [TCCA] directive mandates the replacement of the ADG GCU.

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

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Request To Shorten the Compliance Time

The Air Line Pilots Association, International (ALPA) requested the compliance time of ''10,000 flight hours or 60 months after the effective date of the AD'' be reduced, because ALPA believes that the compliance time is too long to comply with the proposed AD (76 FR 69166, November 8, 2011) based on the importance of replacement.

We do not agree to shorten the compliance time. In developing the compliance time, we determined that the compliance time of 10,000 flight hours or 60 months after the effective date of the AD (whichever is first), is appropriate when considering the safety implications, the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods, and the availability of required replacement parts. In addition, our compliance time corresponds with the 10,000-flight-hour or 60-month compliance time of the parallel AD issued by Transport Canada Civil Aviation (TCCA). We have not changed the AD in this regard.

Request To Reference Hamilton Sundstrand's Part Number

Comair, Inc. requested that we revise paragraphs (g) and (h) of the NPRM (76 FR 69166, November 8, 2011) to reference Hamilton Sundstrand's part number, in addition to the Bombardier part numbers for the ADG GCU, because by doing so, Comair believes the proposed AD will make certain all suspect ADG GCUs are removed and replaced and will be congruent with the manufacturer's manual.

We agree with the request to reference the Hamilton Sundstrand part number for the ADG GCU unit that is affected and not higher assembly part numbers. Bombardier Service Bulletin 670BA–24–031, dated May 30, 2011, refers to Hamilton Sundstrand Service Bulletin ERPS10G–24–1, dated February 9, 2011, as an additional source of guidance for modifying and testing the ADG GCU with new printed wiring assemblies and re-identifying the GCU with a new part number. We have updated paragraphs (g) and (h) of this AD to include the Hamilton Sundstrand part number.

Explanation of Change to Costs of Compliance Section

The Costs of Compliance section in this AD has been updated to show a more accurate cost to operators. The work-hours quoted in Bombardier Service Bulletin 670BA–24–031, dated May 30, 2011, include only the labor time required for replacement, while Hamilton Sundstrand Service Bulletin ERPS10G–24–1, dated February 9, 2011, estimates 4 work-hours for replacement of the printed wiring assemblies from the GCU and functional testing of the ADG. Because it may be necessary to do a non-destructive test (NDT) inspection on some airplanes, we have added an additional work-hour, resulting in a total labor time estimate of 6 work-hours in the Costs of Compliance section of this AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD affects 402 products of U.S. registry. We also estimate that it takes 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts cost $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on U.S. operators to be $205,020, or $510 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 69166, November 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–05 Bombardier, Inc.: Amendment 39–17022. Docket No. FAA–2011–1228; Directorate Identifier 2011–NM–176–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10319 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15260 inclusive.

(3) Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19012 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical Power.

(e) Reason

This AD was prompted by reports of the air driven generator (ADG) failing to power essential buses during functional tests, due to the low threshold setting of the circuit protection on the ADG's generator control unit (GCU) preventing the ADG from supplying power to the essential buses. We are issuing this AD to prevent loss of power from the ADG to the essential buses which, in the event of an emergency, could prevent continued safe flight.

(f) Compliance

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

(g) Actions

Within 10,000 flight hours or 60 months after the effective date of this AD, whichever occurs first, remove the ADG GCU, Bombardier part number (P/N) 604–90800–7 (Hamilton Sundstrand P/N 761341A) and install a new or serviceable ADG GCU, Bombardier P/N 604–90800–27 (Hamilton Sundstrand P/N 761341B), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–24–031, dated May 30, 2011.

(h) Parts Installation

As of the effective date of this AD, no person may install an ADG GCU, Bombardier P/N 604–90800–7 (Hamilton Sundstrand P/N 761341A) on any airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to Attn: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–27, dated July 25, 2011; and Bombardier Service Bulletin 670BA–24–031, dated May 30, 2011; for related information.

(k) Material Incorporated by Reference

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

(i) Bombardier Service Bulletin 670BA–24–031, dated May 30, 2011.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on April 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9194 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1225; Directorate Identifier 2010–NM–269–AD; Amendment 39–17019; AD 2012–08–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310 series airplanes. This AD was prompted by reports of cracking in the forward lug wing of the aft bearing at rib 5 of the main landing gear (MLG). This AD requires installing new bushes with increased interference fit in the forward lug wing of the aft bearing at rib 5 of the MLG on the right-hand (RH) and left-hand (LH) wing. We are issuing this AD to prevent cracking of the forward lug wing of the aft bearing at rib 5 of the MLG, which could adversely affect the structural integrity of the MLG attachment, and could result in the collapse of the MLG.

DATES: This AD becomes effective May 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 29, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 8, 2011 (76 FR 69168). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a routine visual inspection on two A310 in-service aeroplanes, cracks were found in the wing MLG rib 5 aft bearing forward lug. Laboratory examination of the cracked ribs confirmed that the cracks were the result of pitting corrosion in the forward lug hole. Also on both aeroplanes, medium to heavy corrosion was found in the forward lugs on the opposite wing after removal of the bushes. Similarly to A310 aeroplanes, although there have been no reports of crack findings on any A300, A300–600 or A300–600ST aeroplanes, the differences in MLG rib 5 design compared to A310 aeroplanes does not allow the exclusion of the possibility of cracks. This situation, if not corrected, could affect the structural integrity of the MLG attachment [which could result in the collapse of the MLG].

In order to ensure the detection of any crack at an early stage in the forward lug of the RH and LH MLG rib 5 aft bearing forward lug, Airbus developed inspection programs which were rendered mandatory, initially by EASA AD 2006–0372–E [which corresponds with FAA AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007)] and now by [EASA] AD 2010–0250 applicable to A300B4/C4/F4 and A300–600 aeroplanes and [EASA] AD 2007–0195 [which corresponds with FAA AD 2008–17–02, Amendment 39–15640 (73 FR 47032, August 13, 2008)] applicable to A310 aeroplanes.

More recently, it has been determined that the installation of new bushes with increased interference fit adequately corrects the unsafe condition and ensures the structural integrity of the MLG attachment. Installation of these bushes constitutes terminating action for the repetitive inspection requirements of the existing EASA AD 2010–0250 for A300B4/C4/F4 and A300–600 aeroplanes, and [EASA] AD 2007–0195 for A310 aeroplanes.

For the reasons described above, this new [EASA] AD requires installation of bushes with increased interference fit in the gear rib 5 aft bearing forward lug.

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

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. FedEx commented on the NPRM (76 FR 69168, November 8, 2011), and noted the compliance thresholds fit within their scheduled maintenance checks.

Paragraph Reference Clarification

We revised paragraphs (h) and (i) of this AD to refer to paragraph (g) of this AD for the installation. We had inadvertently referred to paragraph (h) of the NPRM (76 FR 69168, November 8, 2011) for the installation.

Revised Service Information

Since we issued the NPRM (76 FR 69168, November 8, 2011), we have reviewed the following new service information:

- Airbus Mandatory Service Bulletin A300–57–0249, Revision 03, dated January 18, 2012 (for Model A300 B4–2C, B4–103, and B4–203 airplanes).
- Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012 (for Model A300–600 series airplanes).
- Airbus Mandatory Service Bulletin A310–57–2090, Revision 03, dated January 23, 2012 (for Airbus Model A310 series airplanes).

We have revised paragraph (g) of this AD to refer to the revised service information, revised paragraph (j) of this AD to give credit for earlier revisions of the service bulletin, and re-identified subsequent paragraphs accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 69168, November 8, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 69168, November 8, 2011).

Costs of Compliance

We estimate that this AD will affect 215 products of U.S. registry. We also estimate that it will take about 38 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $4,590 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,681,300, or $7,820 per product.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 69168, November 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–08–03 Airbus: Amendment 39–17019. Docket No. FAA–2011–1225; Directorate Identifier 2010–NM–269–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 29, 2012.

(b) Affected ADs

This AD affects AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007); and AD 2008–17–02, Amendment 39–15640 (73 FR 47032, August 13, 2008).

(c) Applicability

This AD applies to airplanes, certified in any category, as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airbus Model A300 B4–2C, B4–103, and B4–203 airplanes; all serial numbers; except airplanes where the main landing gear (MLG) rib 5 forward lugs of the left-hand (LH) and right-hand (RH) wings have been repaired by installation of oversized interference fit bushes specified in Airbus Repair Instruction R57240221, or those where the LH and RH wings have had Airbus Mandatory Service Bulletin A300–57–0249 embodied in service.

(2) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Airbus Model A300 B4–605R and B4–622R airplanes; Airbus Model A300 F4–605R and F4–622R airplanes; and Airbus Model A300 C4–605R Variant F airplanes; all serial numbers; except airplanes where the MLG rib 5 forward lugs of the LH and RH wing have been repaired by installation of oversized interference fit bushes specified in Airbus Repair Instruction R57240221, or those where the LH and RH wing have had Airbus Service Bulletin A300–57–6106 embodied in service.

(3) Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; all serial numbers; except airplanes where the MLG rib 5 forward lugs of the LH and RH wing have been repaired by installation of oversized interference fit bushes specified in Airbus Repair Instruction R57249121, or those where the LH and RH wing have had Airbus Mandatory Service Bulletin A310–57–2090 embodied in service.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracking in the forward lug wing of the aft bearing at rib 5 of the main landing gear (MLG). We are issuing this AD to prevent cracking of the forward lug wing of the aft bearing at rib 5 of the MLG, which could adversely affect the structural integrity of the MLG attachment, and could result in the collapse of the MLG.

(f) Compliance

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

(g) Installation

Within 30 months after the effective date of this AD, install new bushes with increased interference fit in the gear rib 5 aft bearing forward lug on the RH and LH wing, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD; except as specified in paragraph (h) of this AD.

(1) Airbus Mandatory Service Bulletin A300–57–0249, Revision 03, dated January 18, 2012 (for Model A300 B4–2C, B4–103, and B4–203 airplanes).

(2) Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012 (for Model A300–600 series airplanes).

(3) Airbus Mandatory Service Bulletin A310–57–2090, Revision 03, dated January 23, 2012 (for Model A310 series airplanes).

(h) Exception

If one wing had rib 5 forward lugs of the MLG repaired by installing oversized interference fit bushes as specified in Airbus Repair Instruction R57240221 or Airbus Repair Instruction R57249121, as applicable to the airplane model, then installing new bushes with increased interference fit in the aft bearing forward lug of the gear rib, as specified in paragraph (g) of this AD, is required for the opposite wing only.

(i) Terminating Action for Certain Inspections

Installation of new bushes, as specified in paragraph (g) of this AD, is terminating action for the repetitive inspections required by AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007); and AD 2008–17–02, Amendment 39–15640 (73 FR 47032, dated August 13, 2008).

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using an applicable service bulletin specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Airbus Service Bulletin A300–57–0249, dated May 22, 2007; Airbus Service Bulletin A300–57–0249, Revision 01, dated December 19, 2007; or Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300 B4–2C, B4–103, and B4–203 airplanes).

(2) Airbus Service Bulletin A300–57–6106, May 22, 2007; Airbus Service Bulletin A300–57–6106, Revision 01, January 28, 2008; or Airbus Service Bulletin A300–57–6106, Revision 02, dated June 18, 2010 (for Model A300–600 series airplanes).

(3) Airbus Service Bulletin A310–57–2090, dated May 22, 2007; Airbus Service Bulletin A310–57–2090, Revision 01, dated December 19, 2007; or Airbus Service Bulletin A310–57–2090, Revision 02, dated June 18, 2010 (for Model A310 series airplanes).

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-16-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0251, dated November 29, 2010, and the service information specified in paragraphs (l)(1) through (l)(3) this AD, for related information.

(1) Airbus Mandatory Service Bulletin A300–57–0249, Revision 03, dated January 18, 2012.

(2) Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012.

(3) Airbus Mandatory Service Bulletin A310–57–2090, Revision 03, dated January 23, 2012.

(m) Material Incorporated by Reference

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

(i) Airbus Mandatory Service Bulletin A300–57–0249, Revision 03, dated January 18, 2012.

(ii) Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012.

(iii) Airbus Mandatory Service Bulletin A310–57–2090, Revision 03, dated January 23, 2012.

(2) For Airbus service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on April 5, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9185 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30837; Amdt. No. 3474]

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 24, 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 24, 2012.

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

For Examination—

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

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

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

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

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

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

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

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

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

8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on April 13, 2012.

Ray Towles,

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 31 MAY 2012

Marshall, AK, Marshall Don Hunter SR, BIBNE THREE Graphic DP
Napa, CA, Napa County, ILS OR LOC RWY 36L, Orig
Napa, CA, Napa County, LOC RWY 36L, Amdt 2D, CANCELLED
Oroville, CA, Oroville Muni, GPS RWY 1, Orig-A, CANCELLED
Oroville, CA, Oroville Muni, RNAV (GPS) RWY 1, Orig
Oroville, CA, Oroville Muni, VOR–A, Amdt 7
Washington, DC, Ronald Reagan Washington National, COPTER ILS OR LOC/DME RWY 1, Amdt 1
Washington, DC, Ronald Reagan Washington National, ILS OR LOC/DME RWY 1, ILS RWY 1 (SA CAT I), ILS RWY 1 (CAT II), Amdt 41
Washington, DC, Ronald Reagan Washington National, RNAV (RNP) RWY 1, Amdt 1
Washington, DC, Ronald Reagan Washington National, VOR/DME RWY 1, Amdt 14
Dunnellon, FL, Marion County, Takeoff Minimums and Obstacle DP, Amdt 1
Punta Gorda, FL, Punta Gorda, RNAV (GPS) RWY 4, Amdt 1
Punta Gorda, FL, Punta Gorda, RNAV (GPS) RWY 15, Orig-A
Punta Gorda, FL, Punta Gorda, RNAV (GPS) RWY 22, Orig-A
Punta Gorda, FL, Punta Gorda, RNAV (GPS) RWY 33, Orig-A
Punta Gorda, FL, Punta Gorda, Takeoff Minimums and Obstacle DP, Amdt 2
Punta Gorda, FL, Punta Gorda, VOR RWY 4, Amdt 1B
Punta Gorda, FL, Punta Gorda, VOR RWY 22, Amdt 4A
Madison, GA, Madison Muni, VOR/DME–A, Amdt 8
Forest City, IA, Forest City Muni, RNAV (GPS) RWY 15, Orig
Pocatello, ID, Pocatello Rgnl, VOR RWY 3, Amdt 17
Savanna, IL, Tri-Township, GPS RWY 13, Orig, CANCELLED
Savanna, IL, Tri-Township, RNAV (GPS) RWY 13, Orig
Savanna, IL, Tri-Township, Takeoff Minimums and Obstacle DP, Orig
Vandalia, IL, Vandalia Muni, Takeoff Minimums and Obstacle DP, Orig
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 18, Amdt 1
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 36, Amdt 1
Jeffersonville, IN, Clark Rgnl, RNAV (GPS) RWY 18, Orig
Jeffersonville, IN, Clark Rgnl, VOR RWY 18, Amdt 4
Monticello, IN, White County, GPS RWY 18, Orig, CANCELLED
Monticello, IN, White County, GPS RWY 36, Orig, CANCELLED
Monticello, IN, White County, RNAV (GPS) RWY 18, Orig
Monticello, IN, White County, RNAV (GPS) RWY 36, Orig
Anthony, KS, Anthony Muni, RNAV (GPS) RWY 18, Orig
Anthony, KS, Anthony Muni, RNAV (GPS) RWY 36, Orig
Anthony, KS, Anthony Muni, Takeoff Minimums and Obstacle DP, Orig
Anthony, KS, Anthony Muni, VOR–A, Amdt 2
Atwood, KS, Atwood-Rawlins County City-County, NDB RWY 16, Amdt 2, CANCELLED
Hartford, KY, Ohio County, GPS RWY 3, Orig, CANCELLED
Hartford, KY, Ohio County, GPS RWY 21, Orig, CANCELLED
Hartford, KY, Ohio County, RNAV (GPS) RWY 3, Orig
Hartford, KY, Ohio County, RNAV (GPS) RWY 21, Orig
Hartford, KY, Ohio County, Takeoff Minimums and Obstacle DP, Amdt 1
Louisville, KY, Louisville Intl-Standiford Field, ILS OR LOC RWY 17L, Amdt 4

Louisville, KY, Louisville Intl-Standiford Field, ILS OR LOC RWY 17R, Amdt 2
Louisville, KY, Louisville Intl-Standiford Field, ILS OR LOC RWY 35L, ILS RWY 35L (SA CAT I), ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), Amdt 3
Louisville, KY, Louisville Intl-Standiford Field, ILS OR LOC RWY 35R, ILS RWY 35R (SA CAT I), ILS RWY 35R (CAT II), ILS RWY 35R (CAT III), Amdt 4
Louisville, KY, Louisville Intl-Standiford Field, RNAV (GPS) Y RWY 17L, Amdt 1
Louisville, KY, Louisville Intl-Standiford Field, RNAV (GPS) Y RWY 17R, Amdt 1
Louisville, KY, Louisville Intl-Standiford Field, RNAV (GPS) Y RWY 35L, Amdt 1
Louisville, KY, Louisville Intl-Standiford Field, RNAV (GPS) Y RWY 35R, Amdt 1
Jonesboro, LA, Jonesboro, NDB OR GPS RWY 35, Amdt 1, CANCELLED
Jonesboro, LA, Jonesboro, RNAV (GPS) RWY 18, Orig
Jonesboro, LA, Jonesboro, RNAV (GPS) RWY 36, Orig
Jonesboro, LA, Jonesboro, Takeoff Minimums and Obstacle DP, Orig
Lake Charles, LA, Chennault Intl, RADAR 1, Amdt 1B
Lake Charles, LA, Chennault Intl, VOR RWY 33, Amdt 4, CANCELLED
Monroe, LA, Monroe Rgnl, RNAV (GPS) RWY 32, Orig
New Orleans, LA, Louis Armstrong New Orleans Intl, ILS OR LOC RWY 1, Amdt 17
New Orleans, LA, Louis Armstrong New Orleans Intl, ILS OR LOC RWY 28, Amdt 9
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) RWY 1, Amdt 1
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) Y RWY 28, Amdt 3
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (RNP) Z RWY 28, Amdt 1
New Bedford, MA, New Bedford Rgnl, RNAV (GPS) RWY 14, Orig
New Bedford, MA, New Bedford Rgnl, RNAV (GPS) RWY 32, Orig
Southbridge, MA, Southbridge Muni, VOR/DME–B, Amdt 9
Millinocket, ME, Millinocket Muni, RNAV (GPS) RWY 11, Orig
Millinocket, ME, Millinocket Muni, RNAV (GPS) RWY 29, Amdt 1
Alma, MI, Gratiot Community, RNAV (GPS) RWY 9, Amdt 1
Alma, MI, Gratiot Community, RNAV (GPS) RWY 27, Amdt 1
Escanaba, MI, Delta County, RNAV (GPS) RWY 27, Amdt 1
Rochester, MN, Rochester Intl, RNAV (GPS) RWY 2, Amdt 3
Rochester, MN, Rochester Intl, RNAV (GPS) RWY 20, Amdt 2
Rochester, MN, Rochester Intl, RNAV (GPS) RWY 31, Amdt 1
Staples, MN, Staples Muni, NDB RWY 14, Amdt 3
Staples, MN, Staples Muni, RNAV (GPS) RWY 14, Orig
Staples, MN, Staples Muni, RNAV (GPS) RWY 32, Orig
Staples, MN, Staples Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Bozeman, MT, Bozeman Yellowstone Intl, ILS OR LOC RWY 12, Amdt 9
Beaufort, NC, Michael J. Smith Field, Takeoff Minimums and Obstacle DP, Amdt 3
Mount Airy, NC, Mount Airy/Surry County, Takeoff Minimums and Obstacle DP, Amdt 2
Raleigh/Durham, NC, Raleigh-Durham Intl, ILS OR LOC RWY 5R, ILS RWY 5R (SA CAT I), ILS RWY 5R (SA CAT II), Amdt 28
Raleigh/Durham, NC, Raleigh-Durham Intl, RNAV (GPS) Y RWY 5R, Amdt 2
Blair, NE, Blair Muni, RNAV (GPS) RWY 13, Orig-A
Blair, NE, Blair Muni, RNAV (GPS) RWY 31, Orig-A
Manchester, NH, Manchester, Takeoff Minimums and Obstacle DP, Amdt 10
Belmar/Farmingdale, NJ, Monmouth Executive, GPS RWY 14, Orig, CANCELLED
Belmar/Farmingdale, NJ, Monmouth Executive, RNAV (GPS) RWY 14, Orig
Belmar/Farmingdale, NJ, Monmouth Executive, RNAV (GPS) RWY 32, Orig
Belmar/Farmingdale, NJ, Monmouth Executive, Takeoff Minimums and Obstacle DP, Amdt 2
Belmar/Farmingdale, NJ, Monmouth Executive, VOR–A, Amdt 3
Caldwell, NJ, Essex County, LOC RWY 22, Amdt 3
Endicott, NY, Tri-Cities, RNAV (GPS) RWY 3, Orig-A
Endicott, NY, Tri-Cities, RNAV (GPS) RWY 21, Orig-A
Endicott, NY, Tri-Cities, VOR–A, Amdt 5A
Montgomery, NY, Orange County, NDB RWY 3, Amdt 4A, CANCELLED
Rochester, NY, Greater Rochester Intl, RNAV (GPS) RWY 10, Orig-A
Rome, NY, Griffiss Intl, RNAV (GPS) RWY 15, Amdt 1A
Barnesville, OH, Barnesville-Bradfield, GPS RWY 27, Orig, CANCELLED
Barnesville, OH, Barnesville-Bradfield, RNAV (GPS) RWY 27, Orig
Bryan, OH, Williams County, NDB–A, Amdt 7, CANCELLED
Bryan, OH, Williams County, RNAV (GPS) RWY 7, Amdt 1
Bryan, OH, Williams County, RNAV (GPS) RWY 25, Amdt 1
Chillicothe, OH, Ross County, RNAV (GPS) RWY 23, Amdt 1
Kent, OH, Kent State Univ, Takeoff Minimums and Obstacle DP, Orig
Mansfield, OH, Mansfield Lahm Rgnl, RNAV (GPS) RWY 14, Amdt 1
Mansfield, OH, Mansfield Lahm Rgnl, RNAV (GPS) RWY 32, Orig-B
Mansfield, OH, Mansfield Lahm Rgnl, VOR RWY 14, Amdt 15
Oxford, OH, Miami University, NDB RWY 5, Amdt 11
Oxford, OH, Miami University, RNAV (GPS) RWY 5, Orig
Oxford, OH, Miami University, RNAV (GPS) RWY 23, Orig
Oxford, OH, Miami University, Takeoff Minimums and Obstacle DP, Amdt 2
State College, PA, University Park, ILS OR LOC RWY 24, Amdt 9A
State College, PA, University Park, RNAV (GPS) RWY 6, Amdt 1A
State College, PA, University Park, RNAV (GPS) RWY 24, Orig-A
Aiken, SC, Aiken Muni, RNAV (GPS) RWY 25, Amdt 1A
Jackson, TN, Mc Kellar-Sipes Rgnl, ILS OR LOC RWY 2, Amdt 8A
Nashville, TN, John C Tune, ILS OR LOC/DME RWY 20, Amdt 1
Nashville, TN, John C Tune, RNAV (GPS) RWY 2, Amdt 1
Nashville, TN, John C Tune, RNAV (GPS) RWY 20, Amdt 1
Tullahoma, TN, Tullahoma Rgnl Arpt/WM Northern Field, NDB RWY 18, Amdt 3
Tullahoma, TN, Tullahoma Rgnl Arpt/WM Northern Field, VOR RWY 6, Amdt 1
Union City, TN, Everett-Stewart Rgnl, ILS OR LOC RWY 1, Amdt 1
Union City, TN, Everett-Stewart Rgnl, RNAV (GPS) RWY 1, Amdt 2
Union City, TN, Everett-Stewart Rgnl, RNAV (GPS) RWY 19, Amdt 1
Union City, TN, Everett-Stewart Rgnl, VOR/DME–A, Amdt 9
San Antonio, TX, Boerne Stage Field, RNAV (GPS) RWY 17, Amdt 1
San Antonio, TX, Boerne Stage Field, RNAV (GPS) RWY 35, Amdt 1
Sherman/Dension, TX, North Texas Rgnl/Perrin Field, ILS OR LOC RWY 17L, Amdt 1
Sherman/Dension, TX, North Texas Rgnl/Perrin Field, NDB RWY 17L, Amdt 10
Sherman/Dension, TX, North Texas Rgnl/Perrin Field, RNAV (GPS) RWY 17L, Orig
Sherman/Dension, TX, North Texas Rgnl/Perrin Field, RNAV (GPS) RWY 35R, Orig
Sherman/Dension, TX, North Texas Rgnl/Perrin Field, VOR/DME–A, Amdt 1
Sherman/Dension, TX, North Texas Rgnl/Perrin Field, VOR/DME RNAV RWY 35R, Orig-D, CANCELLED
St George, UT, St George Muni, RNAV (GPS) RWY 1, Orig-A
Bennington, VT, William H. Morse State, Takeoff Minimums and Obstacle DP, Amdt 3
Wenatchee, WA, Pangborn Memorial, Takeoff Minimums and Obstacle DP, Amdt 4
Madison, WI, Blackhawk Airfield, Takeoff Minimums and Obstacle DP, Amdt 1
Parkersburg, WV, Mid-Ohio Valley Rgnl, ILS OR LOC RWY 3, Amdt 14
Parkersburg, WV, Mid-Ohio Valley Rgnl, RNAV (GPS) RWY 3, Amdt 2
Parkersburg, WV, Mid-Ohio Valley Rgnl, RNAV (GPS) RWY 10, Orig
Parkersburg, WV, Mid-Ohio Valley Rgnl, RNAV (GPS) RWY 21, Amdt 2
Parkersburg, WV, Mid-Ohio Valley Rgnl, RNAV (GPS) RWY 28, Orig

[FR Doc. 2012–9736 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30838; Amdt. No. 3475]

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 24, 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 24, 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 April 13, 2012.

Ray Towles,

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.

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

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

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
31–May–12	KS	Manhattan	Manhattan Rgnl	1/9111	4/10/12	Takeoff Minimums and Obstacle DP, Amdt 7.
31–May–12	GA	Atlanta	Fulton County Airport-Brown Field.	2/0683	4/10/12	VOR A, Orig-A.
31–May–12	GA	Atlanta	Fulton County Airport-Brown Field.	2/0684	4/10/12	ILS OR LOC RWY 8, Amdt 16A.
31–May–12	GA	Atlanta	Fulton County Airport-Brown Field.	2/0685	4/10/12	RNAV (GPS) RWY 26, Orig-A.
31–May–12	GA	Atlanta	Fulton County Airport-Brown Field.	2/0686	4/10/12	RNAV (GPS) Y RWY 8, Orig-A.
31–May–12	NC	Charlotte	Charlotte/Douglas Intl	2/0925	4/10/12	ILS OR LOC RWY 18R, ILS RWY 18R (CAT II), ILS RWY 18R (CAT III), Orig-A.
31–May–12	NC	Charlotte	Charlotte/Douglas Intl	2/0926	4/10/12	ILS OR LOC RWY 36L, ILS RWY 36L (CAT II), ILS RWY 36L (CAT III), Orig-A.
31–May–12	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	2/1044	4/10/12	VOR RWY 31L, Orig.
31–May–12	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	2/1048	4/10/12	VOR RWY 13R, Amdt 1.
31–May–12	TN	Covington	Covington Muni	2/1215	4/10/12	RNAV (GPS) RWY 1, Orig.
31–May–12	IN	Indianapolis	Indianapolis Intl	2/7773	4/10/12	ILS OR LOC RWY 5L, ILS RWY 5L (CAT II), ILS RWY 5L (CAT III), Amdt 3C.
31–May–12	IN	Indianapolis	Indianapolis Intl	2/7774	4/10/12	ILS OR LOC RWY 5R, ILS RWY 5R (CAT II), ILS RWY 5R (CAT III), Amdt 5B.

[FR Doc. 2012–9738 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Parts 801, 806, and 807

[Docket No. 111012619–2230–03]

RIN 0691–AA81

International Services Surveys and Direct Investment Surveys Reporting

AGENCY: Bureau of Economic Analysis.

ACTION: Final rule.

SUMMARY: The Bureau of Economic Analysis (BEA) revises its rules to establish general guidelines for how BEA will collect data on international trade in services and direct investment surveys, which are provided for by the International Investment and Trade in Services Survey Act (the Act). In addition to the Act, the Omnibus Trade and Competitiveness Act of 1988 authorizes BEA to conduct international trade in services surveys. Currently, international trade in services and direct investment surveys are promulgated through separate rulemaking actions. This final rule modifies BEA's regulations to allow BEA to issue surveys through notices rather than through notice and comment rulemaking. It also provides a more general framework for how BEA collects data on these surveys that are required, or provided for, by the statutes. This rule will simplify and generalize existing regulations governing the procurement of information on international trade in services and direct investment.

DATES: The final rule is effective on May 24, 2012.

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; email *David.Galler@bea.gov* or phone (202) 606–9835.

SUPPLEMENTARY INFORMATION: On January 6, 2012, BEA published a notice of proposed rulemaking to amend 15 CFR parts 801, 806, and 807 to set forth general guidelines for reporting on international trade in services and direct investment surveys provided for by the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, (the Act)), 77 FR 772. For surveys that are conducted on an ongoing basis—quarterly, annually, quinqenially—BEA proposed to issue specific reporting information regarding individual surveys through notices rather than through notice and comment rulemaking.

This rule implements the proposed rule. Under this rule, notices of specific surveys pertaining to international investment and trade in services and direct investment, including applicable report forms and instructions, will be separately published in the **Federal Register**. Only respondents notified of these surveys are required to respond to BEA surveys.

BEA received no comments on the proposed rule, and adopts the proposed rule without change. Accordingly, now surveys on international trade in services and on direct investment will be issued by a notice in the **Federal Register**, and will also be sent to individual respondents. Entities that do not receive a notice of the survey from BEA are not required to complete the survey.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small

entities. The rule affects only BEA's internal procedures regarding how it conducts surveys of international trade in services and direct investment. None of the changes will have a direct effect on any businesses, large or small. Those subject to these surveys will still be required to respond to BEA's requests for information, but the requests themselves will not be subject to notice and comment rulemaking. Therefore, the effect of this final rule is to simplify and generalize existing regulations governing the procurement of information on the international trade in services and direct investment under the Act. Because there will be no impact to small entities as a result of this change to the regulations, the Chief Counsel certified that this final rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis is required, and none has been prepared.

Paperwork Reduction Act

This rule contains no information collection requests as defined in the Paperwork Reduction Act (44 USC 3501–3521). However, as necessary the individual notices of surveys will include a description of the paperwork burden associated with completing the survey, and provide the control number from the Office of Management and Budget (OMB) for any survey issued pursuant to this rule. No one is required to answer any request by the government for information that does not contain an approved OMB control number.

List of Subjects

15 CFR Part 801

Cross-border transactions, Credit card, Debit card, Economic statistics, Foreign investment in the United States, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements, Travel expenses, United States investment abroad.

15 CFR Part 806

Economic statistics, Foreign investments in United States, Reporting and recordkeeping requirements, United States investments abroad.

15 CFR Part 807

Libraries.

Dated: April 15, 2012.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons discussed in the preamble, 15 CFR chapter VIII is amended as follows:

■ 1. Part 801 is revised to read as follows:

PART 801—SURVEYS OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

Sec.
801.1 Purpose.
801.2 Definitions.
801.3 Reporting requirements.
801.4 Recordkeeping requirements.
801.5 Confidentiality.
801.6 Penalties specified by law.

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

§ 801.1 Purpose.

The purpose of this part is to provide general information on international trade in services and direct investment data collection programs and analyses under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, as amended) (the Act). The purpose of the Act is to provide for the collection of comprehensive and reliable information pertaining to international investment, including international trade in services and direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort.

§ 801.2 Definitions.

For purposes of the Act and for reporting requirements under this part:

(a) *United States,* when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign,* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *United States person* means any person resident in the United States or subject to the jurisdiction of the United States.

(e) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(f) *Business enterprise* means any organization, association, branch, or venture which exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

(g) *Services* are economic activities whose outputs are other than tangible goods. This term includes, but is not limited to, banking, other financial services, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care.

(h) *International investment* means:

(1) The ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person; and

(2) The ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person.

(i) *Direct investment* means the ownership or control, directly or indirectly, by one person of 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

§ 801.3 Reporting requirements.

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the **Federal Register** prior to the implementation of a survey.

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

§ 801.4 Recordingkeeping requirements.

In accordance with section 3104(b)(1) of title 22 of the United States Code, persons subject to the jurisdiction of the United States shall maintain any information which is essential for carrying out the surveys and studies provided for by the Act.

§ 801.5 Confidentiality.

Information collected pursuant to 3104(c) of title 22 of the United States Code is confidential.

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

§ 801.6 Penalties.

(a) Civil penalties. Whoever fails to furnish any information required by the Act or to comply with any rule, regulation, order or instruction promulgated under the Act shall be subject to a civil penalty of not less than $2,500, and not more than $25,000, and to injunctive relief commanding such person to comply, or both (see 22 U.S.C. 3105(a) and (b)). These civil penalties are subject to inflationary adjustments (15 CFR 6.4.).

(b) Criminal penalties. Whoever willfully fails to submit any information required by the Act or willfully violates any rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both (see 22 U.S.C. 3105(c)).

PART 806—[REMOVED AND RESERVED]

■ 2. Under the authority of 5 U.S.C. 301, part 806 is removed and reserved.

PART 807—[REMOVED AND RESERVED]

■ 3. Under the authority of 5 U.S.C. 301, part 806 is removed and reserved.

[FR Doc. 2012–9849 Filed 4–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 133 and 151

[USCBP–2012–0011; CBP Dec. 12–10]

RIN 1515–AD87

Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends, on an interim basis, the U.S. Customs and Border Protection (CBP) regulations pertaining to importations of merchandise bearing recorded trademarks or recorded trade names. The interim amendments, effective upon publication in the **Federal Register**, allow CBP, subject to limitations, to disclose to an intellectual property right holder information appearing on merchandise or its retail packaging that may comprise information otherwise protected by the Trade Secrets Act, for the purpose of assisting CBP in determining whether the merchandise bears a counterfeit mark. Such information will be provided to the right holder in the form of photographs or a sample of the goods and/or their retail packaging in their condition as presented to CBP for examination and alphanumeric codes appearing on the goods. The information will include, but not be limited to, serial numbers, universal product codes, and stock keeping unit (SKU) numbers appearing on the imported merchandise and its retail packaging, whether in alphanumeric or other formats. These changes provide a pre-seizure procedure for disclosing information about imported merchandise suspected of bearing a counterfeit mark for the limited purpose of obtaining the right holder's assistance in determining whether the mark is counterfeit or not.

DATES: Effective April 24, 2012; comments must be received on or before June 25, 2012.

ADDRESSES: You may submit comments, identified by docket number, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP 2012–0011.
- *Mail:* Trade and Commercial Regulations Branch, Office of International Trade, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street NW. (Mint Annex), Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this interim rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. 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.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of International Trade, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Paul Pizzeck, Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, (202) 325–0020.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by

submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. If appropriate to a specific comment, the commenter should reference the specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

Purpose of the Interim Amendments

CBP is responsible for border enforcement of intellectual property rights laws and regulations. One of the primary purposes of CBP's efforts to interdict counterfeit imported goods is to protect the public from unsafe and substandard products, which, in some cases, can be a threat to public health and safety, and also a threat to the national security. In particular, counterfeit integrated circuits and electronic components can find their way into critical manufacturing, military, infrastructure, and consumer product applications. In fact, inquiries conducted by Congress and the Department of Defense (DoD) have revealed that counterfeit electronic components, including counterfeit integrated circuits, have entered military and government supply chains, posing a serious threat to our military and government personnel and infrastructure.

Due to the development of sophisticated techniques of some counterfeiters and the highly technical nature of some imported goods, it has become increasingly difficult for CBP to determine whether some goods suspected of bearing counterfeit marks in fact bear counterfeit marks. The current regulation pertaining to goods bearing counterfeit marks does not provide a procedure for disclosing information to right holders to assist CBP in its efforts to identify goods bearing infringing marks, prior to CBP's making a determination to seize.

In this document, CBP is making several changes to subpart C of part 133 of the CBP regulations (19 CFR part 133) regarding the detention of suspect merchandise and the disclosure of information to right holders during detention of goods bearing potentially counterfeit marks and after seizure of goods bearing counterfeit marks. These changes, made on an interim basis and effective on the date of their publication in the **Federal Register**, include a clarifying revision of the current regulation's definition of ''counterfeit trademark'' and an addition of a 30-day detention period relative to goods suspected of bearing counterfeit marks. These changes will enhance CBP's enforcement capability against increasingly sophisticated counterfeit products that threaten the public health and safety and national security.

The Trade Secrets Act and Disclosure Under the Current Regulation

The Trade Secrets Act (18 U.S.C. 1905) bars the unauthorized disclosure by government officials of any information received in the course of their employment or official duties when such information (also referred to collectively as ''protected information'') ''concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association.'' Case law interpreting the statute states that the Act ''appears to cover practically any commercial or financial data collected by any Federal employee from any source'' and that the ''comprehensive catalogue of items'' listed in the Act ''accomplishes essentially the same thing as if it had simply referred to 'all officially collected commercial information' or 'all business and financial data received.' '' *See CNA Fin. Corp.* v. *Donovan,* 830 F.2d 1132, 1140 (D.C. Cir. 1987).

Specifically, the Trade Secrets Act protects those required to furnish commercial or financial information to the government by shielding them from the competitive disadvantage that could result from disclosure of that information by the government. In turn, this protection encourages those providing information to the government to furnish accurate and reliable information that is useful to the government.

The protection afforded by the Trade Secrets Act, however, must be balanced against the important and legitimate interests of government. The Trade Secrets Act permits those covered by the Act to disclose confidential information when the disclosure is otherwise ''authorized by law,'' which includes both statutes expressly authorizing disclosure and properly promulgated substantive agency regulations authorizing disclosure based on a valid statutory interpretation. *See Chrysler* v. *Brown,* 441 U.S. 281, 294–316 (1979).

The National Defense Authorization Act for Fiscal Year 2012

Section 818(g) of the National Defense Authorization Act for Fiscal Year 2012 (NDAA) (Pub. L. 112–81) provides:

> If United States Customs and Border Protection suspects a product of being imported in violation of section 42 of the Lanham Act, and subject to any applicable bonding requirements, the Secretary of the Treasury may share information appearing on, and unredacted samples of, products and their packaging and labels, or photographs of such products, packaging, and labels, with the rightholders of the trademarks suspected of being copied or simulated for purposes of determining whether the products are prohibited from importation pursuant to such section.

The NDAA enhances CBP's capability to enforce laws protecting marks by authorizing the agency to disclose certain information to right holders to assist CBP officers in determining whether suspect merchandise bears counterfeit marks.

Further Statutory Analysis Concerning Disclosure of Commercial Information

Under the NDAA, CBP is authorized by law to make certain disclosures. One reading of the language of the NDAA, however, is that disclosure is limited to trademarks and does not include other marks noted under the Lanham Act (certification, collective, and service marks). Moreover, some have suggested that the legislative history of the Act indicates that certain legislators intended that the exception to the Trade Secrets Act created by the NDAA is to apply only to military sales.

Consequently, CBP, in publishing this interim rule, is exercising regulatory authority to remove any ambiguity about CBP's authority to disclose information with regard to certification, collective, and service marks, as well as trademarks, and to further clarify that the disclosure authority extends to all imports and not just those associated with military sales.

As noted above, the Secretary of the Treasury (the Secretary) has authority to disclose information otherwise protected under the Trade Secrets Act when such disclosures are authorized by law. Disclosures meeting the ''authorized by law'' standard of the Trade Secrets Act include those made under regulations that are (1) in compliance with the provisions of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and (2) based on a valid statute. Regarding CBP's statutory authority to disclose certain importation information to right holders, various provisions in titles 15 and 19 of the United States Code (U.S.C.) authorize

CBP to promulgate regulations to enforce prohibitions against the importation of merchandise that infringes intellectual property rights.

Section 42 of the Lanham Act (15 U.S.C. 1124) prohibits the importation of merchandise bearing a mark which copies or simulates a registered mark. In order to aid CBP in enforcing this prohibition, section 42 provides for the recordation of registered marks under such regulations as the Secretary of the Treasury shall prescribe. Sections 526(e) and 595a(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1526(e), and 19 U.S.C. 1595a(c)), prohibit the importation of merchandise bearing a counterfeit mark and the introduction or attempted introduction into the United States of merchandise or packaging in which, inter alia, trademark or trade name protection violations are involved, including, but not limited to violations of sections 1124, 1125 and 1127 of Title 15 (sections 42, 32 and 45 of the Lanham Act). Moreover, section 526(e) of the Tariff Act of 1930, as amended, (19 U.S.C. 1526(e)) requires CBP to notify the owner of the trademark when merchandise bearing a counterfeit mark within the meaning of section 1127 of Title 15 and imported in violation of section 1124 of Title 15 is seized. Section 624 of the Tariff Act of 1930, as amended (19 U.S.C. 1624), authorizes the Secretary of the Treasury to promulgate regulations to carry out the provisions of the Tariff Act of 1930, as amended. Collectively, these statutes authorize the Secretary of the Treasury, in instances where identification of suspected violative merchandise requires the assistance of right holders for the specific and limited purpose of determining whether imported merchandise bears a counterfeit mark, to provide for the disclosure of certain information to right holders upon importation.

The interim rule is intended to support the statutory enforcement scheme discussed above and to allow CBP officers, without violating the Trade Secrets Act, to disclose information that might reveal otherwise confidential commercial or financial information in order to assist CBP in identifying merchandise bearing counterfeit marks at the time of detention.

Notice Provision To Prevent Economic Harm to Legitimate Importers

In addition, CBP is putting in place a procedure that provides the importer the opportunity to demonstrate to CBP, within seven (7) days (exclusive of weekends and holidays) of a notice of detention, that the article in question does not bear a counterfeit mark, before releasing information to the right holder. Only absent such a demonstration by the importer will information, images, or samples be shared with the right holder. This procedural safeguard is intended to achieve the policy goals of the NDAA in a manner consistent with maintaining the flow of information to the government, fostering competition, keeping prices low, and maintaining consumer choice.

Information that is covered by the Trade Secrets Act and obtained from an importer, including the importer's name and place of business, manufacturer's identity, supply chain, and other confidential commercial or financial information, if disclosed, could provide insights into the importer's business operations, processes, style of work, and income, all inuring to the importer's competitive disadvantage. For example, product coding, such as serial numbers, and SKUs often incorporates information about where and when a product was manufactured, as well as other information that could allow one to identify information about the manufacture of the product. It is likewise possible that such information could directly or indirectly reveal the identity of wholesalers, exporters, or other parties in the importer's supply chain and the timing and pricing of the transactions involving those entities. Such confidential commercial or financial information, if not properly protected, could be used by competitors to an importer's economic disadvantage, potentially resulting in reduced competition and consumer choice with attendant increases in prices.

Interim Amendments Concerning Pre-Seizure Disclosure of Information

This document is amending the CBP regulations to allow CBP to provide right holders, for the limited purpose of assisting CBP in making infringement determinations, with any information appearing on merchandise and/or its retail packaging, or a sample of the merchandise including its retail packaging, when CBP reasonably suspects that such merchandise and/or packaging may bear a counterfeit mark (see § 133.21(b)(1) of this rule). This disclosure of information, which includes images (photographs) or samples, as appropriate, could potentially disclose confidential commercial or financial information otherwise protected under the Trade Secrets Act. The interim regulation also includes a procedure that allows an importer, prior to release of the information, the opportunity to establish, within seven (7) days (excluding weekends and holidays) of a notice of detention, that the marks are not counterfeit. Only absent such a demonstration by the importer will the disclosure be made to the right holder.

In conjunction with the interim rule's procedure outlined above, CBP is adding to the regulation a 30-day period (and an extension, if requested by the importer for good cause) to commence upon presentation of the goods for examination, within which a determination with respect to admissibility will be made (see § 133.21(b) of this rule). Under the interim regulation, CBP will issue the notice of detention within five days of its detention decision, starting the seven-day period within which the importer may demonstrate that the goods do not bear a counterfeit mark. Only if such demonstration is untimely or insufficient will CBP release information to the right holder.

In brief summation, this change to the regulations concerning counterfeit marks, in principal part, allows CBP, prior to seizure, to release to right holders information appearing on goods (and/or their retail packaging), and on images and samples, that are not redacted, i.e., images showing the merchandise (and/or its retail packaging) in its condition as presented for examination and samples (and/or its retail packaging) in their condition as so presented. This allows the right holder to assist CBP in its enforcement effort to prevent the entry of goods bearing counterfeit marks. However, in certain circumstances, DHS criminal investigators may provide right holders such information or samples without notifying the importer, for example to obtain from the right holder evidence that will assist the investigators in demonstrating probable cause when they seek a judicial order in the course of a criminal or national security investigation.

Other Interim Amendments To Clarify and Maintain Consistency With the Current Regulations

As mentioned previously, CBP is also making a clarifying amendment to the definition of ''counterfeit trademark.'' The amended definition of ''counterfeit mark'' uses the term ''mark'' instead of ''trademark'' (see § 133.21(a) of this rule).

In addition, CBP is amending the regulations pertaining to goods bearing copying or simulating marks and restricted gray market goods to correct an inconsistency in the regulatory scheme for such goods (19 CFR 133.22(f)

and 133.23(f), respectively). The 30-day detention period for these goods is set forth in § 133.25 of the CBP regulations, and this procedure provides for extension of the detention period applicable to these goods upon good cause shown. Therefore, CBP is removing from §§ 133.22(f) and 133.23(f) inconsistent language that appears to restrict the respective detention periods to only 30 days.

Lastly, CBP is amending the provisions of 19 CFR 151.16(a) regarding detention of merchandise to make them consistent with the interim regulations in this rulemaking. The regulations pertaining to detention of merchandise exclude from their applicability imported articles suspected of being infringing copies or phonorecords, imported goods bearing marks which are confusingly similar to recorded trademarks, and imported restricted gray market merchandise. The interim amendment to section 151.16(a) excludes imports of goods suspected of bearing counterfeit marks from the applicability of the regulations pertaining to detention of merchandise.

Inapplicability of Notice and Delayed Effective Date Requirements

As explained previously in this document (*see* ''Purpose of the Interim Amendments'' subsection in the *Background* section), CBP is responsible for enforcement of intellectual property rights laws and regulations at the border. An important goal of CBP efforts to interdict counterfeit imported goods is to protect the public from unsafe and substandard counterfeit products. In addition, counterfeit goods present a threat to national security and our critical infrastructure. Counterfeit integrated circuits and electronic components can be used in critical manufacturing, military, infrastructure, and consumer product applications. Inquiries conducted by Congress and the DoD have revealed that counterfeit electronic components, including counterfeit integrated circuits, have entered military and government supply chains, posing a serious threat to our military and government personnel and infrastructure. Moreover, interdiction of counterfeit goods has been made increasingly difficult due to the development of sophisticated techniques used by some counterfeiters and the highly technical nature of some imported goods.

Because this rule addresses an immediate need to address without delay vulnerabilities in our military and government procurement processes, as well as an immediate need to interdict goods bearing counterfeit marks that pose health and safety risks to the American public, CBP has determined that it would be contrary to the public interest to delay the effective date of this rule. Therefore, CBP has determined that in accordance with the sections 553(b)(B) and 553(c) of the Administrative Procedure Act (5 U.S.C 553), good cause exists to dispense with the prior comment requirement and delayed effective date requirement. Subsection 818(g) of the NDAA was effective upon enactment, but the authority it provides the Secretary is discretionary and not mandatory. Accordingly, although some may interpret the statute to allow the Secretary to exercise his discretionary authority without amending CBP's existing regulations, CBP believes that amending the existing, more restrictive regulations is consistent with the requirements of the Administrative Procedure Act and will eliminate any legal ambiguity. The interim regulations also promote transparency and provide an important opportunity to gather feedback and input from stakeholders regarding implementation of § 818(g) of the NDAA.

Executive Orders 12866 and 13563

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

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required under section 553(b)(3)(B) of the APA for the reasons described in the *Inapplicability of Notice and Delayed Effective Date Requirements* section of this document, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this interim rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Signing Authority

This rulemaking is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations concerning trademark enforcement.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information for this document are included in an existing collection for Notices of Detention (OMB control number 1651–0073). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The burden hours related to the Notices of Detention for OMB control number 1651–0073 are as follows:

Number of Respondents: 1,350.
Number of Responses: 1,350.
Time per Response: 2 hours.
Total Annual Burden Hours: 2,700.

There is no change in burden hours under this collection with this rule.

List of Subjects

19 CFR Part 133

Copying or simulating trademarks, Copyrights, Counterfeit trademarks, Customs duties and inspection, Detentions, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names.

19 CFR Part 151

Customs duties and inspection, Examination, Imports, Penalties, Reporting and recordkeeping requirements, Sampling and testing.

Amendments to the CBP Regulations

For the reasons stated above in the preamble, CBP is amending parts 133 and 151 of title 19 of the Code of Federal Regulations (19 CFR parts 133 and 151) to read as follows:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

■ 1. The general authority citation for part 133 and the specific authority citation for § 133.21 through 133.25 are revised, to read as follows:

Authority: 15 U.S.C. 1124, 1125, 1127; 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1202, 1499, 1526, 1624; 31 U.S.C. 9701;

* * * * *

Sections 133.21 through 133.25 also issued under 18 U.S.C. 1905; Sec. 818(g), Pub. L. 112–81.

* * * * *

■ 2. The heading for subpart C is revised to read as follows:

Subpart C—Importations Bearing Recorded Marks or Trade Names

■ 3. Section 133.21 is revised to read as follows:

§ 133.21 Articles suspected of bearing counterfeit marks.

(a) *Counterfeit mark defined.* A ''counterfeit mark'' is a spurious mark that is identical with, or substantially indistinguishable from, a mark registered on the Principal Register of the U.S. Patent and Trademark Office.

(b) *Detention.* CBP may detain any article of domestic or foreign manufacture imported into the United States that bears a mark suspected of being a counterfeit version of a mark that is registered with the U.S. Patent and Trademark Office and is recorded with CBP pursuant to subpart A of this part. The detention will be for a period of up to thirty days from the date on which the merchandise is presented for examination. The 30-day time period may be extended for up to an additional thirty days for good cause shown by the importer. In accordance with 19 U.S.C. 1499, if after the detention period and any authorized extensions the article is not released the article will be deemed excluded for the purposes of 19 U.S.C. 1514(a)(4).

(1) *Notice to importer of detention and possible disclosure.* Within five days (excluding weekends and holidays) from the date of a decision to detain, CBP will notify the importer in writing of the detention. The notice will inform the importer that a disclosure of information concerning the detained merchandise may be made to the owner of the mark to assist CBP in determining whether any marks are counterfeit, unless the importer presents information within seven days of the notification (excluding weekends and holidays) establishing to CBP's satisfaction that the detained merchandise does not bear a counterfeit mark. CBP may disclose information appearing on the merchandise and/or its retail packaging, images (including photographs) of the merchandise and/or its retail packaging in its condition as presented for examination, or a sample of the merchandise and/or its retail packaging in its condition as presented for examination. The release (disclosure) of a sample is subject to the bond and return requirements of paragraph (c) of this section. Where the importer does not timely provide information or the information provided is insufficient for CBP to determine that the merchandise does not bear a counterfeit mark, CBP may proceed with the disclosure to the owner of the mark, and will so notify the importer. Disclosure under this section may include any serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, or other identifying marks appearing on the merchandise or its retail packaging, in alphanumeric or other formats.

(2) *Notice to owner of the mark and disclosure of information.* From the time merchandise is presented for examination until the time a notice of detention is issued, CBP may disclose to the owner of the mark any of the following information in order to obtain assistance in determining whether an imported article bears a counterfeit mark. Once a notice of detention is issued, CBP will disclose to the owner of the mark the following information, if available, within thirty days (excluding weekends and holidays) from the date of detention:

(i) The date of importation;

(ii) The port of entry;

(iii) The description of the merchandise from the entry;

(iv) The quantity involved; and

(v) The country of origin of the merchandise.

(3) *Redacted images and samples made available to the owner of the mark.* Notwithstanding the notice and seven-day response procedure of paragraph (b)(1) of this section, CBP may, at any time after presentation of the merchandise for examination, provide to the owner of the mark images or a sample of the detained merchandise or its retail packaging, provided that identifying information has been removed, obliterated, or otherwise obscured. Identifying information includes, but is not limited to, serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, the name or address of the manufacturer, exporter, or importer of the merchandise, or any mark that could reveal the name or address of the manufacturer, exporter, or importer of the merchandise, in alphanumeric or other formats. CBP will release to the owner of the mark a sample under this paragraph when the owner furnishes CBP a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage to the sample resulting from the furnishing of a sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner of the mark must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the mark, the owner must, in lieu of return of the sample, certify to CBP that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.21(b)(3) was (damaged/destroyed/lost) during examination, testing, or other use.''

(c) *Unredacted samples made available to the owner of the mark prior to seizure.* A sample of the imported merchandise may be released prior to seizure to the owner of the mark in accordance with paragraph (b)(1) of this section. CBP will release to the owner of the mark a sample under this paragraph when the owner furnishes CBP a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage to the sample resulting from the furnishing of a sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner of the mark must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the mark, the owner must, in lieu of return of the sample, certify to CBP that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.21(c) was (damaged/destroyed/lost) during examination, testing, or other use.''

(d) *Seizure.* Upon a determination by CBP, made any time after the merchandise has been presented for examination, that an article of domestic or foreign manufacture imported into the United States bears a counterfeit mark, CBP will seize such merchandise and, in the absence of the written consent of the owner of the mark, forfeit the seized merchandise in accordance with the customs laws. When merchandise is seized under this section, CBP will disclose to the owner of the mark the following information, if available, within thirty days (excluding weekends and holidays) from the date of the notice of seizure:

(1) The date of importation;

(2) The port of entry;

(3) The description of the merchandise from the entry;

(4) The quantity involved;

(5) The name and address of the manufacturer;

(6) The country of origin of the merchandise;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(e) *Samples made available to the owner of the mark after seizure.* At any time following a seizure of merchandise bearing a counterfeit mark under this section, CBP may provide a sample and its retail packaging, in its condition as presented for examination, to the owner of the mark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this paragraph, the owner of the mark must furnish CBP a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage to the sample resulting from the furnishing of a sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner of the mark must return the sample to CBP upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the mark, the owner must, in lieu of return of the sample, certify to CBP that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.21(e) was (damaged/destroyed/lost) during examination, testing, or other use.''

(f) *Consent of the mark owner; failure to make appropriate disposition.* The owner of the mark, within thirty days from notification of seizure, may provide written consent to the importer allowing the importation of the seized merchandise in its condition as imported or its exportation, entry after obliteration of the mark, or other appropriate disposition. Otherwise, the merchandise will be disposed of in accordance with § 133.52 of this part, subject to the importer's right to petition for relief from forfeiture under the provisions of part 171 of this chapter.

§ 133.22 [Amended]

■ 4. Section 133.22(f), first sentence, is amended by removing the words ''within the 30-day period of detention'' and adding in their place the words ''within the period of detention as provided in § 133.25 of this subpart''.

§ 133.23 [Amended]

■ 5. Section 133.23(f), first sentence, is amended by removing the words ''within the 30-day period of detention'' and adding in their place the words ''within the period of detention as provided in § 133.25 of this subpart''.

§ 133.26 [Amended]

■ 6. Section 133.26 is amended by removing from the first sentence the words ''subject to the restrictions of § 133.22 or § 133.23 of this subpart'' and adding in their place the words ''subject to the restrictions of § 133.21, § 133.22 or § 133.23 of this subpart''.

PART 151—EXAMINATION, SAMPLING AND TESTING OF MERCHANDISE

■ 7. The general authority citation for part 151 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States (HTSUS), 1624;

* * * * *

■ 8. Section 151.16(a) is revised to read as follows:

§ 151.16 Detention of merchandise.

(a) *Exemptions from applicability.* The provisions of this section are not applicable to detentions effected by CBP on behalf of other agencies of the U.S. Government in whom the determination of admissibility is vested and to detentions arising from possibly piratical copies (see part 133, subpart E, of this Chapter), imports of articles bearing counterfeit marks or suspected counterfeit marks, goods bearing marks which are confusingly similar to recorded trademarks, or restricted gray market merchandise (see part 133, subpart C, of this chapter.)

* * * * *

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: April 18, 2012.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2012–9762 Filed 4–23–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9585]

RIN 1545–BI41

Treatment of Gain Recognized With Respect to Stock in Certain Foreign Corporations Upon Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the characterization of gain recognized with respect to stock in certain foreign corporations upon distributions. The regulations finalize proposed regulations and remove temporary regulations that characterize gain recognized with respect to stock in foreign corporations upon distributions as a deemed dividend in certain situations. The regulations affect certain persons that recognize gain with respect to stock in connection with the receipt of a distribution of property from a foreign corporation.

DATES: *Effective Date:* These regulations are effective on April 24, 2012.

Applicability Date: These regulations apply to distributions occurring on or after February 10, 2009.

FOR FURTHER INFORMATION CONTACT: Ryan A. Bowen, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 11, 2009, the IRS and the Department of the Treasury (the Treasury Department) published temporary and proposed regulations in the **Federal Register** (REG–147636–08, 74 FR 6824; TD 9444, 2009–1 CB 603) (the temporary or proposed regulations, as applicable, and collectively, the 2009 regulations). The 2009 regulations, in part, provide that for purposes of section 1248(a), gain recognized under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated as gain from the sale or exchange of the stock of such foreign corporation (2009 section 1248 regulations).

The 2009 regulations also addressed the application of section 367 to certain related party stock transactions that are recharacterized under section 304. As described in Notice 2012–15 (2012–9 IRB 495 (February 27, 2012)) (see § 601.601(d)(2)(ii)(*b*) of this chapter), the IRS and the Treasury Department intend to amend the regulations under section 367 to provide that the section 351 exchange that is deemed to occur in a section 304 transaction is subject to section 367(a) and (b), as applicable. Accordingly, this Treasury decision does not finalize the portions of the 2009 regulations that address the interaction of sections 304 and 367. Those portions of the 2009 regulations will be withdrawn in separate published guidance (REG–104400–12).

No public hearing on the 2009 section 1248 regulations was requested or held and no written comments were received. This Treasury decision adopts the 2009 section 1248 regulations, with one modification to remove a deadwood provision, as final regulations under section 1248(a). This Treasury decision also removes the temporary regulations under section 1248(a).

Explanation of Provisions

The final regulations provide that gain recognized under section 301(c)(3) on the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated for purposes of section 1248(a) as gain from the sale or exchange of the stock of such corporation. For purposes of section 1248(a), a sale or exchange also includes a distribution that gives rise to gain with respect to stock under section 302(a) or 331(a). The final regulations ensure that the earnings and profits of lower-tier foreign subsidiaries described in section 1248(c)(2) are taken into account when gain is recognized with respect to stock of a controlled foreign corporation.

The 2009 section 1248 regulations incorporated a provision from the prior final regulations under section 1248 providing that section 1248(a) applies to gain recognized with respect to stock under section 331(a)(2) by reason of a partial liquidation of a corporation. The final regulations remove the reference to partial liquidations under section 331(a)(2) in order to reflect amendments made in 1982 by the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248, 96 Stat. 324 (1982)), which repealed section 331(a)(2) and provided new rules regarding redemptions in partial liquidation under section 302. See section 302(b)(4) and (e).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that 5 U.S.C. 553(b) and (d) do not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. These regulations primarily will affect large domestic corporations. Thus, the number of affected small entities will not be substantial. 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 comments on its impact on small business.

Drafting Information

The principal author of these regulations is Ryan A. Bowen of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their 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 as follows:

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

■ **Par. 2.** Section 1.1248–1 is amended by:

■ 1. Revising paragraphs (b) and (g)(2).

■ 2. Removing paragraph (h).

The revisions read as follows.

§ 1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

* * * * *

(b) *Sale or exchange.* For purposes of section 1248(a), the term sale or exchange includes the receipt of a distribution which is treated as in exchange for stock under section 302(a) (relating to distributions in redemption of stock) or section 331(a) (relating to distributions in complete liquidation of a corporation). For purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with a distribution of property by a corporation with respect to its stock shall be treated as gain from the sale or exchange of stock of such corporation.

* * * * *

(g) * * *

(2) Paragraph (b) of this section applies to distributions that occur on or after February 10, 2009.

§ 1.1248–1T [Removed]

■ **Par. 3.** Section 1.1248–1T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: April 13, 2012.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2012–9760 Filed 4–23–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1159]

RIN 1625–AA87

Security Zone; Passenger Vessel SAFARI EXPLORER Arrival/Departure, Kaunakakai Harbor, Molokai, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; reopening of comment period.

SUMMARY: The Coast Guard is reopening the comment period for the temporary interim rule that established a temporary security zone for Kaunakakai Harbor, including the entrance channel and offshore area adjacent to the channel's entrance during the arrival and departure of the Passenger Vessel Safari Explorer in Kaunakakai Harbor, Molokai, Hawaii. The effective period for this temporary security zone began on January 19, 2012 and ends on May 15, 2012. The Coast Guard held informal public meetings regarding the interim rule. Following the public meetings, the Coast Guard prepared a written synopsis of the public comments received at the public meetings. This synopsis may be viewed at *http://www.regulations.gov* under docket number USCG–2011–1159. During this additional comment period, the Coast Guard invites comments on how the temporary interim rule can be improved.

DATES: The Coast Guard will consider all comments that we receive on or before May 7, 2012.

ADDRESSES: You may submit written comments identified by docket number USCG–2011–1159 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. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2011–1159.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the proposed rule, please call or email Lieutenant Commander Scott Whaley, U.S. Coast Guard; telephone 808–522–8264, email *Scott.O.Whaley@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: On January 13, 2012, we published in the **Federal Register** (77 FR 2019), a temporary interim rule that established a temporary security zone for Kaunakakai Harbor, including the entrance channel and offshore area adjacent to the channel's entrance during the arrival and departure of the Passenger Vessel Safari Explorer in Kaunakakai Harbor, Molokai, Hawaii. Comments on the interim rule were required to be received on or before February 3, 2012. We are reopening the comment period on Docket No. 2011–1159. This action will allow interested persons additional time to review and submit comments on the synopsis of comments that the Coast Guard prepared based on the comments received during public meetings. We will consider comments received on or before May 7, 2012.

Dated: April 6, 2012.

J.M. Nunan,

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

[FR Doc. 2012–9718 Filed 4–23–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0140(b); FRL–9662–3]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Annual Emissions Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a portion of a state implementation plan (SIP) revision submitted on January 31, 2008, by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), to meet the emissions statements requirement for Charlotte, North Carolina. EPA is approving the addition of Cabarrus, Lincoln, Rowan, and Union Counties in their entireties and Davidson Township and Coddle Creek Township in Iredell County to the annual emissions reporting requirement into the North Carolina SIP. This action is being taken pursuant to section 110 and section 182 of the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective June 25, 2012 without further notice, unless EPA receives adverse comment by May 24, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number, ''EPA–R04–OAR–2009–0140,'' 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–2009–0140,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID Number, ''EPA–R04–OAR–2009–0140.'' 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: Ms. Sara Waterson of the Regulatory Development Section, in the 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) 562–9061. Ms. Sara Waterson can be reached via electronic mail at *waterson.sara@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the background for EPA's action?
II. What is EPA's analysis of the emissions statements for North Carolina?
III. Final Action
IV. Statutory and Executive Order Reviews

I. What is the background for EPA's action?

On July 18, 1997, EPA promulgated a revised NAAQS for ozone, setting the standard at 0.08 parts per million (ppm) averaged over an 8-hour timeframe. This revised standard was established based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was promulgated (62 FR 38855).[1]

On April 30, 2004, EPA published designations and classifications for the revised 1997 8-hour ozone standard (69 FR 23858). These actions became effective on June 15, 2004. North Carolina was required to develop nonattainment SIP revisions addressing the CAA requirements for its nonattainment areas. Among other things, North Carolina was required to address the emissions statements requirement pursuant to CAA section 182(a)(3)(B).

Section 182(a)(3)(B) of the CAA, requires states with areas designated nonattainment for the ozone NAAQS (under subpart 2 of the Act) to submit a SIP revision to require emissions statements to be submitted to the state by sources within that nonattainment area. Specifically, CAA section 182(a)(3)(B) reads:

(i) Within 2 years after November 15, 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first statement shall be submitted within 3 years after November 15, 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraph (1) or (3)(A), provides an inventory of emissions from such class or category of sources based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

In a March 14, 2006,[2] memorandum from Thomas C. Curran, Director Air Quality Assessment Division to EPA Regional Air Division Directors (Curran Memo), EPA clarified that the emissions statements requirement under the CAA section 182(a)(3)(B), is applicable to all areas designated nonattainment for the 1997 8-hour ozone NAAQS and classified marginal or higher under subpart 2, part D, title I of the CAA. Consistent with EPA's interpretation of the submission period for other subpart 2 obligations, the Curran Memo states that the 2-year submission period for the emissions statements rule for the 1997 8-hour ozone standard will run from the date an area was designated nonattainment and classified under subpart 2 for the 8-hour standard. Thus, states were required to submit their emissions statements rule by June 15, 2006, and the rule is required to provide that sources submit their first emissions statements to the state by no later than June 15, 2007 (for the 2006 calendar year). The Curran Memo further states that if an area has a previously approved emissions statements rule for the 1-hour standard that covers all portions of the designated 1997 8-hour ozone nonattainment area, such rule should be sufficient for purposes of the emissions statements requirement for the 1997 8-hour standard.

North Carolina's annual emissions reporting requirement was approved into the SIP on August 1, 1997. *See* 64 FR 41277. The counties included in the August 1, 1997, approval included Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, and Wake County, the Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to the Yadkin River. On January 31, 2008, North Carolina submitted additional counties to be included in the annual emissions reporting requirements to be consistent with the requirements of the CAA as a result of EPA's designation boundary for the 1997 8-hour ozone standard. In today's action, EPA is approving the addition of Cabarrus, Lincoln, Rowan, and Union Counties in their entireties and Davidson Township and Coddle Creek Township in Iredell County to the annual emissions reporting portion of the SIP revision submitted by the State of North Carolina on January 31, 2008, as required by section 182(a)(3)(B). EPA will take action on the remaining portions of North Carolina's January 31, 2008, SIP revision in a separate action.[3]

II. What is EPA's analysis of the Emissions Statements for North Carolina?

North Carolina's SIP revision updates its regulation at 15A North Carolina Administrative Code (NCAC) 02Q .0207, to include Cabarrus, Lincoln, Rowan, and Union Counties in their entireties and Davidson Township and Coddle Creek Township in Iredell County and requires all owners or operators of stationary sources located in these areas with actual emissions of 25 tons per year or more of volatile organic compounds or nitrogen oxides, to submit a statement of actual emissions by June 30th of each year. EPA has evaluated North Carolina's January 31, 2008, SIP revision as it relates to the emissions statements and has made the determination that it meets the requirements of CAA section 182(a)(3)(B).

III. Final Action

EPA is taking direct final action to approve a portion of a SIP revision, submitted on January 31, 2008, by the State of North Carolina, through the NCDAQ, to meet the emissions statements requirement for the 1997 8-hour ozone NAAQS. This action is being taken pursuant to section 110 and section 182 of the CAA.

[1] EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). The designation and implementation process for that standard is underway and does not relate to this action.

[2] The March 14, 2006, Curran Memo can be found at *http://www.epa.gov/ttnchie1/eidocs/eiguid/8hourozone_naaqs_031406.pdf*.

[3] The January 31, 2008, SIP submittal includes amendments to North Carolina Rules 15A NCAC 02D .0902, .0909, .1402, .1403, and 02Q .0207. This action is approving the amendments to NCAC 02Q .0207.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on June 25, 2012 without further notice unless the Agency receives adverse comment by May 24, 2012. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on June 25, 2012 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final 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 25, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 4, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(c) Table 1, is amended under Subchapter 2Q, section .0200 by revising the entry for ''Sect .0207'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * *	*	*	*	*
Subchapter 2Q Air Quality Permits				
* * *	*	*	*	*
Section .0200 Permit Fees				
Sect .0207	Annual Emissions Reporting	7/1/07	4/24/2012 [Insert citation of publication].	
* * *	*	*	*	*

* * * * *

[FR Doc. 2012–9618 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–1043; A–1–FRL–9652–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Maine State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. It was submitted by the Maine Department of Environmental Protection (Maine DEP) on December 9, 2010, with supplemental submittals on September 14, 2011, and November 9, 2011. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I Areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program'').

DATES: *Effective Date:* This rule is effective on May 24, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2010–1043. All documents in the docket are listed on the *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 through *www.regulations.gov* or in hard copy at the 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

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

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: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Response to Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background and Purpose

On November 29, 2011, EPA published a Notice of Proposed Rulemaking (NPR) for the State of Maine. See 76 FR 73956. The NPR proposed approval of the Maine State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. It was submitted by the Maine DEP on December 9, 2010, with supplemental submittals on September 14, 2011, and November 9, 2011. Specifically, EPA proposed to approve Maine's December 9, 2010 SIP revision, and its supplements, as meeting the applicable implementing regulations found in 40 CFR 51.308. EPA also proposed to approve Maine's Best Achievable Retrofit Technology (BART) determinations for several sources and to incorporate the license conditions that implement those determinations into the SIP. In addition, EPA proposed to approve Maine's low sulfur fuel oil legislation, 38 MRSA § 603–A, sub-§ 2(A), and to incorporate this legislation into the Maine SIP. Furthermore, EPA is also proposed to approve the following Maine state regulation and incorporate it into the SIP: Maine Chapter 150, Control of Emissions from Outdoor Wood Boilers.

A detailed explanation of the requirements for regional haze SIPs, as well as EPA's analysis of Maine's Regional Haze SIP submittal was provided in the NPR and is not restated here.

II. Response to Comments

EPA received a number of comments on our proposal to approve Maine's Regional Haze SIP submittal. Comments were received from the citizen's group Credo Action and the National Park Service (NPS). A joint letter from the National Parks Conservation Association (NPCA), the Appalachian Mountain Club (AMC), the Conservation

Law Foundation (CLF), and the Natural Resources Council of Maine (collectively ''NPCA'') was also submitted. Many of the NPCA comments echoed comments submitted by NPS. The U.S Forest Service reiterated previous comments submitted on Maine's proposed rulemaking and acknowledge the work that the State of Maine has accomplished and encouraged the State of Maine to continue to reduce regional haze. The following discussion summarizes and responds to the relevant comments received on EPA's proposed approval of Maine's Regional Haze SIP.

Comment: NPCA commented that in light of the $/ton limits accepted by other States (e.g., $7,300/ton in Oregon, $5,000/ton in Colorado, and $7,000–$10,000/ton in Wisconsin), Maine lacks a State cost effectiveness threshold in its Best Available Retrofit Technology (BART) determinations.[1]

Response: While States have the option to develop a cost effectiveness threshold, the Regional Haze Rule does not require States to set a bright line threshold for cost effectiveness. Pursuant to Section 51.308(e)(A), the State is required to consider five factors when determining the appropriate level of BART control: The cost of compliance; the energy and non-air quality environmental impacts; any pollution control equipment in use at the source; the remaining useful life of the source; and the degree of improvement which may be reasonably anticipated to result from the use of such technology. Even though the cited States adopted a dollar per ton threshold, controls with costs below the established cost threshold were sometimes rejected when considered in conjunction with the other factors. In Oregon, only one BART-eligible source was subject to BART: The PGE Boardman coal-fired EGU. Although the technology option of new Low NO_X Burners with modified over-fire air (NLNB/MOFA) plus selective non-catalytic reduction (SNCR) could be considered cost effective ($1,816/ton) for the PGE Boardman, the Oregon Department of Environmental Quality (ODEQ) rejected this technology option because adding SNCR only provided an additional 0.18 deciview (dv) of visibility improvement over NLNB/MOFA at the Mt. Hood Wilderness Area and because ODEQ was concerned with the potential for excess ammonia emissions from the SNCR (commonly referred to as ammonia slip) which could result in increased rates of secondary particulate matter (ammonium sulfate). In addition, ODEQ rejected Semi-dry Flue Gas Desulfurization (SDFGD) at a cost of $5,535/ton SO_2 removed ($7,200/ton incremental cost) in favor for Dry Sorbent Injection (DSI) at $3,370/ton SO_2 removed. See 76 FR 12651. The State of Colorado also rejected BART controls with a cost of control less than $5,000/ton (e.g., DSI at a cost of $2,482/ton SO_2 removed) due to minimal expected visibility improvement. In the case of Wisconsin, the State only has one non-EGU subject to BART. The BART level of control selected by the State for this source is $1,580/ton SO_2 removed and $1,868/ton NO_X removed with a combined visibility improvement of 2.68 dv at the highest impacted Class I Area and 5.03 dv visibility improvement across all four Class I Areas impacted by this BART source. See 77 FR 11928 (February 28, 2012). In addition, all three of the States cited by NPCA applied a 0.5 dv minimum visibility impact threshold for determining what BART-eligible sources would be subject to BART. Maine instead decided that all BART-eligible sources, regardless of their impact on Class I Areas, would be subject to BART. Therefore, the cost effectiveness thresholds cited by NPCA are not comparable to Maine's determinations. The Regional Haze Rule does not require States to use a set threshold in evaluating cost effectiveness and the lack of a cost effectiveness threshold does not render Maine's BART determinations unreasonable.

Comment: NPS commented that the analysis of lower sulfur fuel oil for Verso Androscoggin Power Boilers 1 and 2 is incomplete, inaccurate, and does not follow BART Guidelines or the MANE–VU recommendations. NPS suggested that EPA should at least evaluate the lower sulfur residual oils for the Verso Androscoggin Power Boilers.

Response: According to Appendix Y to Part 51—Guidelines for BART Determinations under the Regional Haze Rule (BART Guidelines), ''[F]or sources other than 750 MW power plants, however, States retain the discretion to adopt approaches that differ from the guidelines.'' See 70 FR 39156 (July 6, 2005). Verso Androscoggin is a pulp and paper plant and Maine's analysis is therefore not required to follow the BART Guidelines. Maine has flexibility in addressing the five factors of the BART analysis.

The MANE–VU recommended level of control for industrial boilers is the use of 0.5% sulfur in fuel #6 oil. Maine's BART limit for Verso Androscoggin Power Boilers 1 and 2 requires the reduction from 1.8% sulfur in fuel oil to the use of 0.7% sulfur in fuel oil by January 1, 2013. The source will, however, be subject to the MANE–VU recommended 0.5% sulfur in fuel limit by no later than January 1, 2018, pursuant to Maine's low sulfur fuel oil legislation, 38 MRSA § 603–A, sub-§ 2(A)[2] which will become federally enforceable under today's action. Therefore these boilers will be required to meet the MANE–VU recommended level of control during the first planning period as part of the long term strategy.

Comment: NPS commented that in its analysis of the switching to natural gas, Verso Androscoggin assumed $9.43 per thousand cubic feet (MCF) which is more than double the current price. NPS claimed that EPA must reevaluate the costs of switching to natural gas using current cost information.

Response: The Verso Androscoggin analysis of switching to natural gas assumed $9.43/MCF based on 2009 data. The most recent data from U.S. Energy Information Administration indicates an increase in the 2010 annual industrial price of natural gas to $11.23/MCF[3] and monthly industrial prices are in the range of $8.61 to $12.08/MCF for the second half of 2011.[4] Therefore, the use of $9.43/MCF is acceptable.

Comment: NPS commented that Maine DEP improperly dismissed application of FGR (Flue Gas Recirculation) at Verso Androscoggin from further evaluation on the premise that it would result in minimal reductions in NO_X emissions. NPS commented that FGR was determined to be technically feasible by Verso Androscoggin and must be fully evaluated if SNCR is not selected as BART.

Response: The State of Maine has flexibility as to how the factors of the BART analysis are weighed and is not required to conduct an analysis that conforms to the requirements of BART Guidelines because Verso Androscoggin is not a 750 MW power plant. The State determined that the installation of flue gas recirculation at Verso Androscoggin would require the enlargement of the burner openings in both boilers. When combined with the existing Low NO_X burners, the FGR is only expected to result in a maximum of seven percent reduction in NO_X emissions which would not be expected to provide

[1] NPS also compared Maine's determinations of cost effectiveness to the determinations made by these States.

[2] *www.mainelegislature.org/legis/statutes/38/title38sec603-A.html.*

[3] *www.eia.gov/dnav/ng/ng_pri_sum_dcu_SME_a.htm.*

[4] *www.eia.gov/dnav/ng/ng_pri_sum_dcu_SME_m.htm.*

substantial visibility improvement.[5] EPA finds that Maine reasonably rejected the installation of FGR.

Comment: NPS commented that Verso Androscoggin did not follow the EPA's Cost Control Manual (CCM) method for evaluating add-on controls and Verso Androscoggin's capital recovery factor is inflated. NPS recalculated the cost effectiveness of the SNCR using a capital recovery factor using 7% interest over a 20-year life as opposed to 12.4% interest over a 10-year life used by the State. NPS found the revised cost to be $5,553/ton NO_X removed instead of the Maine DEP value of $5,973/ton NO_X removed. However, due to the assumption of low utilization, NPS suggested that the cost-effectiveness be reevaluated should boiler utilization increase.

Response: The Regional Haze Rule does not require States to use EPA's CCM to evaluate the costs of control technologies, though it represents a good reference tool. See 70 FR 39104, 39127 (July 6, 2005). The analysis provided by NPS, which used the CCM procedure for coal-fired EGUs (including a lower capital recovery factor than the State used) and EPA's IPM model, was only $420/ton less than Maine's cost determination, supporting the reasonableness of Maine's evaluation. EPA does not believe that this relatively small difference calculated in cost effectiveness calls into question the reasonableness of the State's analysis.[6]

States must determine BART eligibility and controls only during this first planning period and therefore Maine is not required to reevaluate its BART determination if utilization of the boiler increases. The Regional Haze Rule however makes clear that after a BART determination is made, the source is subject to the core requirements of 40 CFR 51.308(d). Therefore, consistent with the Regional Haze Rule, Maine may in subsequent planning periods reevaluate the controls and visibility impact of Verso Androscoggin as part of the State's long term strategy. EPA finds that Maine reasonably concluded that based on the current boiler 20% utilization, SNCR is not a cost effective control for Power Boilers 1 and 2 at Verso Androscoggin.

Comment: NPS commented that if EPA uses incremental cost to override an average cost-effectiveness value (which was at a level found to be reasonable in the Four Corners BART proposal), it must show how the incremental costs of switching to lower sulfur fuels at the Verso Androscoggin mill are higher than other incremental costs that have been accepted.

Response: The Regional Haze Rule grants States the authority to make the initial determination of what constitutes BART. EPA reviews that determination to ensure the appropriate factors were considered and that the determination is reasonable. The Four Corners BART proposal cited by NPS was an EPA proposal for a federal implementation plan (FIP), where EPA has the role of initially determining BART, and is therefore not comparable to EPA's role in approving Maine's SIP. For the Verso Androscoggin Power Boilers, EPA did not rely on the incremental cost in making its determination. Rather, EPA evaluated Maine's determination that with minimal visibility improvement beyond what would be achieved with 0.7% sulfur #6 fuel oil, the conversion to #2 fuel oil or natural gas was not justified. In addition, as noted above, the Power Boilers at Verso Androscoggin will be subject to a 0.5% sulfur limit no later than January 1, 2018, as part of Maine's long term strategy. EPA finds Maine's determination that 0.7% sulfur fuel oil represents BART for Verso Androscoggin to be reasonable.

Comment: NPS commented that the average cost effectiveness of selective catalytic reduction (SCR) for the Verso Androscoggin WFI is about $4,200/ton, which is much lower than EPA determined to be acceptable at Four Corners, and is lower than the benchmark $/ton values used by New York, Colorado, Oregon, and Wisconsin. NPS commented that Maine DEP/US EPA are essentially relying upon the cost of controls versus the resulting visibility improvement in reaching their conclusion. NPS claimed to have shown that the cost/dv for SCR on the Verso Androscoggin Waste Fuel Incinerator (WFI) falls well below the nationwide average, is reasonable, and should constitute BART for the Verso Androscoggin WFI.

Response: The limited usefulness of the thresholds for Colorado, Oregon, and Wisconsin is discussed above. EPA has not yet proposed action on the New York submittal. Verso Androscoggin is a pulp and paper facility. The BART Guidelines do not include a presumptive level of control for this type of facility and Maine is not required to follow the BART Guidelines for setting BART for this unit. Four Corners is a 2,040 MW coal-fired EGU. The presumptive level of control for this type of facility is outlined in the BART Guidelines. The BART Guidelines do not include a presumptive level of control for pulp and paper facilities like Verso Androscoggin. The greatest visibility impact at any Class I Area due to NO_X from Four Corners is 5.95 dv,[7] whereas, the highest visibility impact from the WFI at Verso Androscoggin is 0.4 dv. The highest visibility impact from the WFI at Verso Androscoggin is less than the threshold for applying BART to BART-eligible sources established by many States, including Colorado, Oregon, and Wisconsin which use a 0.5 dv threshold. EPA estimates that the cost of installation of SCR for Units 1 through 5 at Four Corners ranges from $2,515/ton–$3,163/ton.[8] NPS estimated a cost of control for the Four Corners units on the order of $1,326/ton–$1,882/ton NO_X removed, with an expected visibility improvement of 2.43 dv at the highest impacted Class I Area.[9] The determination of BART for Four Corners is not directly comparable to EPA's approval of Maine's determinations because of the much greater expected visibility improvement and, as noted above, the fact that the Four Corners proposal is a FIP. EPA finds that Maine reasonably determined that for an expected visibility improvement of 0.4 dv (SCR) or 0.1 dv (SNCR), the installation of SCR at a cost of $4,200/ton or SNCR at a cost of $4,950/ton on the 48 MW WFI at Verso Androscoggin is cost prohibitive.

Comment: NPS commented that based on recalculated visibility benefits at several of the nearest Class I Areas on the highest impacting visibility days, NPS determined that lower sulfur (0.5% & 0.3%) fuels at Wyman Station Units #3 and #4 would improve cumulative visibility by a total of 2.0–3.4 dv. This results in a cumulative cost-effectiveness value of $0.8–$2.1 million/dv, which NPS claimed is relatively inexpensive compared to the average $18 million/dv that they are seeing accepted by States and sources that are proposing reductions under BART. NPS claimed that because neither Maine DEP nor EPA had presented any benchmark

[5] If FGR were installed at the facility without the already installed Low NO_X burners it would achieve the maximum 15% reduction in NO_X. However, when combined with the already installed Low NO_X burners, the FGR only achieves a further reduction of 7% from the already lower NO_X levels generated by the Low NO_X burners.

[6] EPA rejected a similar argument in regards to the PGE Boardman coal-fired EGU in Oregon. In that case, use of the CCM lead to a cost $725/ton less than that used by Oregon. We similarly rejected that difference in cost effectiveness as inconsequential to the State's final decision. See 76 FR 38997, 39000 (July 5, 2011).

[7] 75 FR 64230, October 19, 2010—EPA's Proposed Source Specific Federal Implementation Plan for Implementing Best Available Retrofit Technology for Four Corners Power Plant: Navajo Nation.

[8] *Id.*

[9] *Id.*

against which to compare their cost/dv estimates, EPA must agree that BART for Wyman boilers #3 and #4 is the use of 0.3% sulfur residual oil. In addition, NPS claimed that EPA should require the use of 0.3% sulfur fuel oil to meet the 90% reduction in the MANE–VU ''Ask''.

Response: The Maine BART limit for Wyman Station requires the reduction from 2.0% sulfur in fuel oil in boiler #3 to the use of 0.7% sulfur in fuel oil and the continued use of 0.7% sulfur in fuel in boiler #4 by January 1, 2013. In addition, as part of Maine's long term strategy, both boilers, along with the two other boilers on site, will be required to meet a further reduction to 0.5% sulfur limit by January 1, 2018, pursuant to 38 MRSA § 603–A, sub-§ 2(A), which will become federally enforceable under today's final action. This reduced sulfur limit will result in at least the additional 2.0 dv cumulative visibility improvement indicated in the NPS comments.

While it is helpful additional information in some cases, the BART Guidelines do not require the use of cumulative visibility impact when addressing the visibility factor. NPS calculated that the reduction from 0.5% sulfur to 0.3% sulfur fuel oil would only result in 0.37 dv visibility improvement at the highest impacted area from boiler #3 and 0.41 dv visibility improvement from boiler #4, incurring an annual fuel cost increase of at least $886,844 and $4,103,863, respectively.[10] However, NPS's calculations improperly compare the implementation cost based on lower utilization (most recent two years) with visibility benefits calculated using a higher utilization, suggesting that the true cost effectiveness values at lower utilization values may be higher than those calculated by NPS. Maine reasonably determined that 0.7% sulfur is BART for Wyman Station Units #3 and #4.[11]

Comment: NPS recommends that emission controls for two Maine sources, Dragon Cement, a Portland cement manufacturing facility, and SD Warren Company (SAPPI), an integrated pulp and paper mill, be evaluated under the reasonable progress provisions of the Regional Haze Rule. Initial BART modeling for these two sources demonstrated that they cause or contribute to visibility impairment at Acadia National Park. These two sources were subsequently found not to be subject to BART. NPS contends that, consistent with EPA Region 6's partial disapproval of Arkansas' Regional Haze SIP (Docket ID: EPA–R06–OAR–2008–0727), these Maine sources must be considered in Maine's reasonable progress analysis.

Response: Under EPA's Guidance for Setting Reasonable Progress Goals under the Regional Haze Program (''Reasonable Progress Guidance''), States may identify key pollutants and source categories for the first planning period.[12] MANE–VU and Maine determined that the key pollutant which contributes to visibility impairment in the Maine Class I Areas is SO_2. Therefore, in accordance with EPA's guidance,[13] Maine and MANE–VU focused on SO_2 for the first planning period. As a result of the four factor analysis for reasonable progress, MANE–VU and Maine agreed to pursue the following emission reductions strategies to ensure reasonable progress for the first planning period: Timely implementation of BART; 90% reduction in SO_2 emissions from the 167 highest visibility impacting electrical generating units; a reduction in the sulfur in fuel content of distillate and residual oil; and continued evaluation of other emission reduction strategies. These reduction strategies (the MANE–VU Ask) represent individual reasonable progress goals, to be expressed in deciviews, which MANE–VU States committed to achieving (i.e., each State modeled what reductions would be achieved with these strategies and then converted those reductions into visibility improvement to set their reasonable progress goals). Each State is responsible for crafting a long term strategy that is intended to meet these reasonable progress goals. The SAPPI Power Boiler #1 is subject to control under Maine's long term strategy under the State's low sulfur fuel oil legislation, 38 MRSA § 603–A, sub-§ 2(A). This law limits the SAPPI Power Boiler #1 to burning 0.5% sulfur fuel oil no later than January 1, 2018.

EPA's partial disapproval of the Arkansas SIP was due to a lack of four factor analyses for reasonable progress. However, a full four factor analysis was undertaken at a regional level as part of Maine's role in MANE–VU; this resulted in the MANE–VU Ask discussed above. See 76 FR 73956. The approval of Maine's SIP is therefore not inconsistent with the partial disapproval of Arkansas' SIP. Consistent with the Regional Haze Rule and EPA's Reasonable Progress Guidance, Maine was not required to evaluate additional controls for Dragon Products and SAPPI during this first planning period in setting its reasonable progress goals.

Comment: NPS commented that while Power Boiler #1 at SAPPI is not BART-eligible, MANE–VU modeling across the four Class I Areas modeled in and near Maine shows that Power Boiler #1 has a cumulative impact of 1.8 dv, with 1.4 dv attributable to sulfates. The greatest impact (0.8 dv) occurs at Acadia National Park. With respect to SAPPI Power Boiler #1, NPS suggested that EPA should evaluate additional emission reductions as required by the reasonable progress provisions of the Regional Haze Rule.

Response: Under Maine's long term strategy, Power Boiler #1 at SAPPI will be required to reduce the current sulfur content of the residual oil from 2.0% to 0.5% by January 1, 2018, pursuant to 38 MRSA § 603–A, sub-§ 2(A) which will become federally enforceable in today's action. When developing the emission projection for modeling future visibility conditions resulting from the various control strategies, Maine had originally projected that BART control on Power Boiler #1 would result in an emission reduction of 1,442 tons per year. Maine clarified that the expected reductions from the application of BART are still being met via operation changes. This projection is separate from the additional reductions which will be achieved by the application of the low sulfur fuel oil requirements of Maine's long term strategy. As noted above, Maine's decision to not include controls in addition to the MANE–VU Ask on the SAPPI Power Boiler #1 during this first planning period is consistent with the Regional Haze Rule and EPA's Reasonable Progress Guidance.

Comment: NPS commented that while they agree that Dragon (kiln) is a reconstructed source, they believe that the reasonable progress provisions of the Regional Haze Rule require that Dragon reduce NO_X emissions by 45% as expeditiously as possible.

Response: As noted above, Maine conducted a full four factor analysis to set its reasonable progress goals, resulting in the MANE–VU Ask. The long term strategy provision establishes enforceable limits that the State will

[10] Appendix W to the NPS comment.

[11] NPS also claimed that analysis of Wyman must be conducted on the same basis as the analysis conducted at Verso Androscoggin. However, as discussed more fully below, States have discretion in determining the baseline period so long as it represents a reasonable determination of anticipated emissions from the source.

[12] Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, p. 3–1 (2007), *www.epa.gov/ttn/caaa/t1/memoranda/reasonable_progress_guid071307.pdf.*

[13] ''In deciding what amount of emission reductions is appropriate in setting the RPG, you (the State) should take into account that the long-term goal of no manmade impairment encompasses several planning periods. It is reasonable for you to defer reductions to later planning periods in order to maintain a consistent glidepath toward the long-term goal.'', *Id.* p. 1–4.

undertake to meet the reasonable progress goals. We are interpreting NPS's comment as requesting that EPA require Maine to evaluate additional reductions from Dragon Products as part of its long term strategy.

Dragon Products currently operates selective non-catalytic reduction to reduce NO_X emissions from the kiln. The estimated efficiency of the current system is 18%–22% NO_X emission reductions. EPA agrees that the kiln is a candidate for future emission reductions as part of Maine's long term strategy during subsequent planning periods. However, consistent with the Regional Haze Rule and EPA's Reasonable Progress Guidance, during this first planning period Maine is reducing the visibility impacts from SO_2, which is the greatest visibility impacting pollutant at its Class I Areas. The major pollutant of concern from Dragon Products is NO_X. In subsequent planning periods, Maine will once again determine the pollutant(s) with the greatest impact on visibility and implement appropriate emission reduction measures as part of Maine's long term strategy for future planning periods. Maine was not required to include emissions reductions from Dragon Products during this first planning period.

Comment: NPCA commented that the Dragon Products kiln was not considered subject to the New Source Performance Standards (NSPS) at the time of its modifications. NPCA claims that Dragon Products was appropriately classified as a BART-eligible source and should be subject to the BART determination reached by Maine in its earlier regional haze submittal.

Response: As noted in the proposal, in a letter dated September 14, 2011, Maine DEP informed EPA that it had determined that Dragon Products was a reconstructed source and not obliged to meet BART.[14] EPA's BART Guidelines state that ''any emission unit for which reconstruction 'commenced' after August 7, 1977, is not BART-eligible.'' See 70 FR 39104, 39160 (July 6, 2005). However, as noted above, the BART Guidelines are only mandatory for 750 MW power plants. Therefore, Maine has discretion to follow the BART Guidelines interpretation of BART-eligible or to choose a different, reasonable interpretation. Maine's decision that, as a source that was reconstructed after August 7, 1977, Dragon Products is not BART-eligible is reasonable and not inconsistent with the Regional Haze Rule or the CAA.

That Dragon Products may not have been subject to the NSPS at the time of reconstruction is irrelevant for this purpose. Dragon Products was undisputedly subject to the more stringent Maximum Achievable Control Technology (MACT) standard, and therefore was exempt from the substantive requirements of the NSPS.[15] This does not affect the reasonableness of Maine's determination that Dragon Products is not BART-eligible.

Comment: NPCA commented that Maine's determinations must be judged as to their cost effectiveness in the context of other determinations; they cannot be deemed ''not cost effective'' without such comparison. NPCA states that the proposed determinations do not include any comparison to a State threshold, cost effectiveness determination from other States, or other comparative metric to justify rejection of reasonable costs. NPCA also notes that it is precisely because of the comparative nature of a cost effectiveness determination that the values must be calculated by the same method, as well as calibrated to the same period (present day value).

Response: BART determinations are developed based on the five factor analysis, of which cost effectiveness is only one factor. For sources other than 750 MW power plants, States retain the discretion to adopt approaches that differ from the guidelines. See earlier response on cost thresholds.

Comment: NPCA commented that in several of the BART determinations, cost effectiveness determinations relied heavily on significantly lower usage (~20%) of the source in question (e.g., Verso Androscoggin Power Boilers, FPL Wyman), claiming that this results in much higher cost effectiveness values than otherwise would have occurred. NPCA commented that if these capacities are relied upon in BART or reasonable progress determinations, they must be made enforceable, with permit conditions limiting the hours of operation or automatically requiring additional controls in the event that specific annual usage is exceeded.

Response: According to the BART Guidelines, when calculating the average cost of control, ''The baseline emission rate should represent a realistic depiction of anticipated annual emissions for the source. In general, for the existing sources subject to BART, you will estimate the anticipated annual emissions from a baseline period. In the absence of enforceable emission limitations, you calculate baseline emissions based upon continuation of past practices.'' On the other hand, the BART Guidelines require enforceable limitations if the utilization or other parameters used to determine future emissions *differ* from past practice. BART Guidelines Section D. Step 4.d. See 70 FR 39156, 39167. The reduced utilization of Wyman Station is based on past practice and is consistent with the Regional Haze Rule.[16]

Comment: EPA received a comment letter signed by 911 members of Credo Action stating ''As a Maine resident, I urge you to greatly reduce haze pollution at Maine's national parks. Unfortunately, the plan EPA is currently considering doesn't go far enough. To protect the health of children, communities and our parks, Maine and EPA must do more to hold polluters in the state accountable and require adequate emission reductions.'' In addition to the comment letter, 122 signators provided additional comments. Twenty-eight people requested that we protect Maine's air quality, and an additional thirty-eight specifically mentioned Acadia National Park. Twenty-seven people cited health concerns in regards to the current air quality, twenty-three people expressed a need to reduce air pollution, and twenty-one people stated that we need stronger rules to reduce air pollution.

Response: EPA agrees that it is important to reduce the visibility and health impacts from man-made pollution at the Federal Class I Areas, such as Acadia National Park. EPA's approval of Maine's SIP will result in significant reductions in emissions and improvement in visibility. This represents only the first step towards meeting the national goal of natural conditions in federal Class I Areas.

III. Final Action

EPA is approving Maine's December 9, 2010 SIP revision as meeting the applicable implementing regulations found in 40 CFR 51.308. EPA is also approving the following license conditions and incorporating them into the SIP: Conditions (16) A, B, G, and H of license amendment A–406–77–3–M

[14] Maine DEP's letter refers both the concepts of BART ''eligibility'' and being ''subject to BART,'' which are slightly different concepts under 40 CFR 51.308(e)(1). The letter focuses primarily on BART eligibility, and, as explained in this response, Maine had discretion to determine that Dragon Products is not BART-eligible.

[15] ''If an affected facility subject to this subpart has a different emission limit or requirement for the same pollutant under another regulation in title 40 of this chapter, the owner or operator of the affected facility must comply with the most stringent emission limit or requirement and is exempt from the less stringent requirement.'' 40 CFR 63.1356(a).

[16] As EPA noted in our proposal, for Verso Androscoggin we are not relying on the reduced utilization rate as part of our analysis of Maine's SIP.

for Katahdin Paper Company issued on July 8, 2009; license amendment A–214–77–9–M for Rumford Paper Company issued on January 8, 2010; license amendment A–22–77–5–M for Verso Bucksport, LLC issued November 2, 2010; license amendment A–214–77–2–M for Woodland Pulp, LLC (formerly Domtar) issued November 2, 2010; license amendment A–388–77–2–M for FPL Energy Wyman, LLC & Wyman IV, LLC issued November 2, 2010; license amendment A–19–77–5–M for S. D. Warren Company issued November 2, 2010; license amendment A–203–77–11–M for Verso Androscoggin LLC issued November 2, 2010; and license amendment A–180–77–1–A for Red Shield Environmental LLC issued November 29, 2007.

In addition, EPA is approving Maine's low sulfur fuel oil legislation, 38 MRSA § 603–A, sub-§ 2(A), and incorporating this legislation into the Maine SIP. Furthermore, EPA is approving the following Maine state regulation and incorporating it into the SIP: Maine Chapter 150, Control of Emissions from Outdoor Wood Boilers.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, 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 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 25, 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 14, 2012.

Signed:

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1.

PART 52—[AMENDED]

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

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

Subpart U—Maine

■ 2. Section 52.1020 is amended by:

■ a. Adding an entry for ''Chapter 150'' in numerical order to the table in paragraph (c);

■ b. Adding an entry for ''38 MRSA § 603–A sub § 2(A)'' at the end of the table in paragraph (c);

■ c. Adding eight entries at the end of the table in paragraph (d); and

■ d. Adding an entry at the end of the table in paragraph (e).

The additions read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) *EPA-approved regulations.*

EPA-APPROVED MAINE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
*	*	*	*	*
Chapter 150	Control of Emissions from Outdoor Wood Boilers.	4/11/2010	4/24/2012 [Insert **Federal Register** page number where the document begins].	

EPA-APPROVED MAINE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
*	*	*	*	*
38 MRSA § 603–A sub § 2(A).	"An Act To Improve Maine's Air Quality and Reduce Regional Haze at Acadia National Park and Other Federally Designated Class I Areas".	9/12/2009	4/24/2012 [Insert **Federal Register** page number where the document begins].	Only approving Sec. 1. 38 MRSA § 603–A, sub-§ 2, (2) Prohibitions.

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(d) *EPA-approved State Source specific requirements.*

EPA-APPROVED MAINE SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date and citation [2]	Explanations
*	*	*	*	*
Katahdin Paper Company.	A–406–77–3–M	7/8/2009	4/24/2012 [Insert **Federal Register** page number where the document begins].	Approving license conditions (16) A, B, G, and H.
Rumford Paper Company.	A–214–77–9–M	1/8/2010	4/24/2012 [Insert **Federal Register** page number where the document begins].	
Verso Bucksport, LLC.	A–22–77–5–M	11/2/2010	4/24/2012 [Insert **Federal Register** page number where the document begins].	
Woodland Pulp, LLC.	A–214–77–2–M	11/2/2010	4/24/2012 [Insert **Federal Register** page number where the document begins].	
FPL Energy Wyman, LLC & Wyman IV, LLC.	A–388–77–2–M	11/2/2010	4/24/2012 [Insert **Federal Register** page number where the document begins].	
S. D. Warren Company.	A–19–77–5–M	11/2/2010	4/24/2012 [Insert **Federal Register** page number where the document begins].	
Verso Androscoggin, LLC.	A–203–77–11–M	11/2/2010	4/24/2012 [Insert **Federal Register** page number where the document begins].	
Red Shield Environmental, LLC.	A–180–77–1–A	11/29/2007	4/24/2012 [Insert **Federal Register** page number where the document begins].	

[2] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

(e) *Non-regulatory.*

MAINE NON-REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date and citation [3]	Explanations
*	*	*	*	*
Maine Regional Haze SIP and its supplements.	Statewide	12/9/2010; supplements submitted 9/14/2011 11/9/2011.	4/24/2012 [Insert **Federal Register** page number where the document begins].	

[3] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2012–9719 Filed 4–23–12; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0786; FRL–9663–6]

Approval and Promulgation of Implementation Plans; Tennessee; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and a limited disapproval of a revision to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee, through the Tennessee Department Environment and Conservation (TDEC), on April 4, 2008. EPA is taking final action on the entire SIP revision except for the Best Available Retrofit Technology (BART) determination for Eastman Chemical Company (Eastman). EPA is not taking any action on the Eastman BART determination at this time. Tennessee's April 4, 2008, SIP revision addresses regional haze for the first implementation period. Specifically, this SIP revision addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is finalizing a limited approval of Tennessee's April 4, 2008, SIP revision, except for the Eastman BART determination, to implement the regional haze requirements for Tennessee on the basis that this SIP revision, as a whole, strengthens the Tennessee SIP. Also in this action, EPA is finalizing a limited disapproval of this same SIP revision because of the deficiencies in the State's regional haze SIP revision arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR).

DATES: *Effective Date:* This rule will be effective May 24, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0786. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through *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 for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, 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. Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is the background for this final action?

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia and volatile organic compounds. Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' See 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On April 4, 2008, TDEC submitted a revision to Tennessee's SIP to address regional haze in the State's and other states' Class I areas. On June 9, 2011, EPA published an action proposing a limited approval and a limited disapproval of Tennessee's April 4, 2008, SIP revision (including the BART determination for Eastman) to address the first implementation period for regional haze. *See* 76 FR 33662. EPA proposed a limited approval of Tennessee's April 4, 2008, SIP revision

to implement the regional haze requirements for Tennessee on the basis that this revision, as a whole, strengthens the Tennessee SIP. Also in that action, EPA proposed a limited disapproval of this same SIP revision because of the deficiencies in the State's regional haze SIP revision arising from the remand of CAIR to EPA by the D.C. Circuit.

On July 26, 2011, EPA reopened the comment period for EPA's proposed actions related to Tennessee's April 4, 2008, SIP revision. *See* 76 FR 44534. See section II of this rulemaking for a summary of the comments received on the proposed actions and EPA's responses to these comments. Also, detailed background information and EPA's rationale for the proposed actions is provided in EPA's June 9, 2011, proposed rulemaking. *See* 76 FR 33662.

Following the remand of CAIR, EPA recently issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule (CSAPR)). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. *See* 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not yet taken final action on that rule.

Also on December 30, 2011, the D.C. Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule. In that order, the DC Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

II. What is EPA's response to comments received on this action?

EPA received six sets of comments on the June 9, 2011, rulemaking proposing a limited approval and limited disapproval of Tennessee's April 4, 2008, regional haze SIP revision. Specifically, the comments were received from the American Coalition for Clean Coal Electricity, Eastman, TDEC, the National Park Service, and the Tennessee Valley Authority. Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as ''the Commenter'') are provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Comment 1: The Commenter urges EPA to move expeditiously to assess, through modeling, whether the emissions reductions that will be achieved under the Transport Rule will be sufficient to satisfy BART requirements for electric generating units (EGUs) under the regional haze program.

Response 1: This comment does not directly address the proposed action in the June 9, 2011, proposed rulemaking. Rather, the comment urges EPA to act more expeditiously in evaluating the impacts of the Transport Rule on regional haze. EPA appreciates the Commenter's interest in the proposed rule and notes that the Agency has performed modeling analyses to determine the visibility improvement expected from the implementation of the Transport Rule and compared the results to the improvements expected from BART. On December 30, 2011 (76 FR 82219), EPA proposed its determination that the Transport Rule achieves greater reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas (including Tennessee's two areas) than source-specific BART (*i.e.,* that the Transport Rule is ''better than BART''). Based on this proposed action, EPA believes that the Transport Rule will satisfy BART requirements for SO_2 and NO_X for EGUs in Tennessee. The final action in that rulemaking will determine whether the Transport Rule may satisfy BART requirements for Tennessee's EGUs.

Comment 2: The Commenter requests that EPA delay final action on the June 9, 2011, proposed rulemaking related to Tennessee's regional SIP revision so that the BART requirements are harmonized with other pending federal air quality regulatory actions that affect Eastman's Tennessee facility (*e.g.,* 1-hour SO_2 National Ambient Air Quality Standard (NAAQS), the maximum achievable control technology (MACT) rule for industrial boilers (Industrial Boiler MACT), and the Transport Rule). The Commenter asserts that this delay will provide Eastman with an opportunity to meet all of the requirements of these programs at one time and will allow the Company to comply with all pending requirements in an efficient and cost-effective manner.

Response 2: Under section 110(k)(2) of the CAA, EPA is required to act within specified timeframes to approve or disapprove SIP revisions. Tennessee submitted its regional haze SIP revision for EPA review on April 4, 2008, and because EPA did not approve or disapprove the SIP within 12 months as required by section 110(k)(2), the National Parks Conservation Association and other interested parties (Plaintiffs) sued EPA to take action. As a result of that lawsuit, EPA is now operating under a consent decree to finalize approval or disapproval of Tennessee's regional haze SIP. The proposed consent decree originally required EPA to finalize an approval or disapproval action on Tennessee's entire regional haze SIP by March 15, 2012. After publication of EPA's proposed limited approval and limited disapproval action on Tennessee's SIP, the State and Eastman entered into discussions with the Plaintiffs regarding the BART determination for Eastman. The Eastman facility is considering a conversion to natural gas in one or two of its powerhouses in lieu of continuing to use coal and retrofitting its facility pursuant to the facility's BART determination to reduce its SO_2 emissions. Based on these discussions and a March 14, 2012, agreement between Tennessee and Eastman regarding possible control options to satisfy BART, the Plaintiffs agreed to extend the date in the consent decree for EPA to take final action on the BART determination for Eastman. Accordingly, EPA is taking no action on this BART determination at this time since EPA expects Tennessee to submit a revised BART determination for Eastman in the near future. EPA will take action on Eastman BART in a separate rulemaking. A copy of the March 14, 2012, agreement between Eastman and Tennessee is included in the docket for this action.

Comment 3: The Commenter indicates that it is fundamentally inequitable to set the BART compliance deadline earlier for non-EGUs (in reference to the Eastman facility) than for EGUs and to require non-EGUs to make necessary investments earlier than EGUs. Further, the Commenter asserts that this step is not required to ensure reasonable progress in visibility improvement in Class I areas.

Response 3: It is not clear what compliance dates the Commenter is referring to. Pursuant to 40 CFR 51.308(e), Tennessee submitted a regional haze SIP containing BART determinations for each BART-eligible source that may reasonably be anticipated to cause or contribute to any

impairment of visibility in any Class I area and schedules for compliance with BART for each of these sources. Tennessee's April 4, 2008, regional haze SIP also contains a requirement, based on the provisions of 40 CFR 51.308(e)(1)(iv), that each source subject to BART be required to install and operate BART as expeditiously as practicable, but in no event later than five years after approval of the SIP revision. Therefore, the latest BART compliance date under the Tennessee regional haze SIP for the State's subject-to-BART sources (excluding Eastman for the reasons discussed below and in Response 2) is in 2017, five years after final action on this rulemaking. Under the aforementioned March 14, 2012, agreement between Tennessee and Eastman, the BART compliance date for Eastman is the same compliance date that Eastman would have received had EPA taken final action on the Eastman BART determination on March 15, 2012, if Eastman does not convert its BART subject unit to natural gas. Additionally, under the RHR, states may opt to implement an alternative measure to source-specific BART that must achieve greater reasonable progress than would be achieved by implementation of BART. 40 CFR 51.308(e)(2). For any BART alternative measure, all emissions reductions must take place during the period of the first long-term strategy (LTS). 40 CFR 51.308(e)(2)(iii).

In addition, the Utility Boiler MACT and the Industrial Boiler MACT require compliance with their respective standards by 2015 as does the Transport Rule, a rule that applies only to EGUs. It is therefore possible that an EGU relying on the Transport Rule to satisfy BART will be required to implement BART (via the Transport Rule) before a non-EGU. The SO_2 and ozone NAAQS processes have not progressed sufficiently to establish any independent requirements for industrial or utility boilers.

Comment 4: The Commenter questions EPA's authority to issue a limited approval of Tennessee's SIP revision. Further, the Commenter states that EPA should reach full resolution of the issue of what constitutes BART and reasonable progress for EGUs before approving any portion of Tennessee's regional haze SIP.

Response 4: EPA has the authority to issue a limited approval and believes that it is appropriate and necessary to promulgate a limited approval and limited disapproval of Tennessee's regional haze SIP at this time. This action results in an approval of the entire regional haze submission and all of its elements, preserving the visibility benefits offered by the SIP while providing EPA with the opportunity to demonstrate that the Transport Rule is better than BART. As noted above, EPA has already published a proposed rule reflecting this demonstration. EPA cannot fully approve regional haze SIP revisions that rely on CAIR for emissions reduction measures for the reasons discussed in section IV of the June 9, 2011, proposed rulemaking (see 76 FR 33662) and therefore proposed to grant limited approval and limited disapproval of the Tennessee regional haze SIP. It is not necessary to reach full resolution on whether the Transport Rule is better than BART for EPA to issue a limited approval. Granting full approval at a later date would only delay realization of the SIP's visibility benefits whereas the SIP is strengthened now by acting through the limited approval.

Comment 5: The Commenter asserts that the 1-hour SO_2 NAAQS is very restrictive and may result in fuel switching from coal to natural gas. In addition, the Commenter mentions that sources upgrading their facilities may be faced with possible greenhouse gas best available control technology determinations that would drive repowering from coal to natural gas. Further, the Commenter mentions that sources must also consider what controls may be required by the Transport Rule and the Industrial Boiler MACT. The Commenter concludes with a request that EPA time the final approval of the Tennessee Regional Haze SIP to allow BART sources to have a reasonable amount of time to plan for the implementation of the four above-listed regulatory programs, and mentions that the burden of meshing all of the planning and construction of equipment to meet these programs is too much to ask of industries that are trying to stay competitive and to keep citizens employed.

Response 5: See response to Comment 2.

Comment 6: The Commenter states that EPA should have considered updated information in evaluating the BART determination for Alcoa Tennessee's (Alcoa's) primary aluminum smelter. In the Commenter's opinion, based on this information, Alcoa should have: (1) Conducted a full five-step analysis of sodium-based scrubbing for potline SO_2 emissions; (2) used EPA's *Air Pollution Control Cost Manual* (EPA's ''Cost Manual'') to estimate costs, or better document and justify costs that deviate from EPA's Cost Manual approach; (3) justified the need for a redundant scrubbing module (absorber), or revised the facility's estimates to eliminate it; (4) provided modeling results consistent with established modeling procedures for all Class I areas within 300 kilometers for the base case as well as the 95 percent potline SO_2 removal case; and (5) explained how the facility objectively evaluated the resulting visibility benefits to all Class I areas within 300 kilometers of the facility. The Commenter states that Alcoa also appears to have overestimated costs for limestone slurry forced oxidation scrubbing. The Commenter asserts that wet scrubbing of potline emissions is BART at Alcoa.

Response 6: In December 2007, the Commenter submitted comments to Tennessee on the State's regional haze SIP, based on the information available to both EPA and the State at that time, and raised no substantive issues regarding Tennessee's BART determination for Alcoa. EPA does not believe that the Commenter's expressed concerns regarding Alcoa's BART analysis (in response to the June 9, 2011, proposed rulemaking) justify reconsideration of Tennessee's BART determination.

Tennessee considered the degree of improvement in visibility reasonably anticipated to result from the implementation of the evaluated control technologies and determined that, for the two Class I areas that modeled an impact from Alcoa of greater than 0.5 deciview, the highest 98th percentile visibility improvement from wet scrubbing potline emissions at Alcoa's BART-eligible source was 0.72 deciview at Great Smoky Mountains National Park, the Class I area receiving the greatest impact from Alcoa's SO_2 emissions. The visibility improvement at the Joyce Kilmer-Slickrock Wilderness Area, Tennessee's other Class I area, was 0.27 deciview. While the Commenter questioned the modeled visibility improvements, the Commenter presented no alternative assessment. Hence, the best available estimate of visibility improvement from the Commenter's suggested BART determination remains as it is presented in the SIP. EPA also notes that both of Tennessee's Class I areas are projected to meet or exceed the uniform rate of progress with the State's BART determination for Alcoa.

The degree of visibility improvement reasonably anticipated from each evaluated BART control technology is one of the five statutory factors that a state must consider in making a BART determination, and the weight and significance to be assigned to each factor by a state will vary depending on the particular circumstances in each

determination. *See* 70 FR 39170. In the SIP, the State weighed the projected improvements in visibility against the cost effectiveness calculation as well as the projected capital and annual control costs. Tennessee also considered the energy and non-air quality environmental impacts of compliance associated with wet scrubbers in evaluating possible BART controls. The State determined that the capital costs and control costs for the wet scrubbers were approximately $200,000,000 and $39,000,000, respectively, and that the scrubbers would require 180 million gallons per year of makeup water, generate 17,600 tons per year of solid waste requiring off-site disposal, and increase $PM_{2.5}$ emissions by 438 tons per year. Considering all of these factors, Tennessee determined that wet scrubbers were not appropriate as BART. The cost effectiveness would remain substantially higher than the values that Tennessee considered reasonable for any other BART source even with the Commenter's suggested changes to the cost of compliance factor in the BART determination.

When considering all of the BART factors, including the limited visibility improvement projected in Tennessee's Class I areas, EPA believes that the State's BART determination is reasonable using either the cost effectiveness values calculated by Tennessee or the values presented by the Commenter. EPA reviewed Tennessee's BART analysis for Alcoa and concludes it was conducted in a manner that is consistent with the approach set forth in EPA's BART Guidelines and reflects a reasonable application of EPA's guidance to this particular source.

Comment 7: The Commenter recommends that EPA grant full, not limited, approval of the Tennessee SIP for regional haze, and mentions that such full approval should not be delayed pending EPA's analysis to confirm that the Transport Rule would provide sufficient reductions to satisfy BART requirements. Rather, in the Commenter's opinion, EPA must grant full approval but reserve the option of having the SIP reopened in the unlikely event that its analysis indicates that emissions reductions beyond the Transport Rule are necessary in Tennessee to meet the national visibility goals.

Response 7: See response to Comment 4.

Comment 8: The Commenter asserts that EPA should give full, not limited, approval to Tennessee's regional haze SIP because CAIR and 40 CFR 51.308(e)(4) remain in effect. Further, the Commenter states that EPA could not have a basis to propose or promulgate disapproval or limited disapproval of a regional haze SIP due to its reliance on CAIR and on 40 CFR 51.308(e)(4) unless EPA had first determined, based on a thorough and defensible analysis, that: (a) The emissions reductions and associated visibility-improvement benefits that are likely to result from the final Transport Rule will not be at least comparable to those achieved under CAIR; and (b) for that reason, the Transport Rule (i) will not satisfy the CAA's BART alternative requirements for NO_X and SO_2 emissions from affected EGUs and (ii) cannot be used, in at least the same measure as CAIR was used, to help meet reasonable progress requirements for regional haze. The Commenter opines that because the Agency has not made and cannot make such a determination at this time, there is no basis for EPA to do anything other than to give full approval to Tennessee's SIP. The Commenter concludes by stating that EPA should recognize that full approval of the SIP is required because, in the Commenter's opinion, ''the SIP is fully compliant with relevant EPA regulations—which are as binding on EPA as they are on the state and sources—as those regulations existed at the time of the SIP's development and submission and as they exist today.''

Response 8: See response to Comment 4.

III. What is the effect of this final action?

Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP revision, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at: *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.* Today, EPA is finalizing a limited approval of Tennessee's April 4, 2008, regional haze SIP revision, except for the Eastman BART determination. This limited approval results in approval of Tennessee's entire regional haze submission and all its elements except for the Eastman BART determination. EPA is taking this approach because Tennessee's SIP will be stronger and more protective of the environment with the implementation of those measures by the State and having federal approval and enforceability than it would without those measures being included in the SIP.

In this action, EPA is also finalizing a limited disapproval of Tennessee's April 4, 2008, regional haze SIP revision insofar as this SIP revision relies on CAIR to address the impact of emissions from the State's own EGUs. As explained in the 1992 Calcagni Memorandum, ''[t]hrough a limited approval, EPA [will] concurrently, or within a reasonable period of time thereafter, disapprove the rule * * * for not meeting all of the applicable requirements of the Act. * * * [T]he limited disapproval is a rulemaking action, and it is subject to notice and comment.'' Final limited disapproval of a SIP submittal does not affect the federal enforceability of the measures in the subject SIP revision nor prevent state implementation of these measures. The legal effect of the final limited disapproval for Tennessee's April 4, 2008, SIP revision is to provide EPA the authority to issue a federal implementation plan at any time, and to obligate the Agency to take such action no more than two years after the effective date of EPA's final action. As explained in the 1992 Calcagni Memorandum, ''[t]hrough a limited approval, EPA [will] concurrently, or within a reasonable period of time thereafter, disapprove the rule * * * for not meeting all of the applicable requirements of the Act. * * * [T]he limited disapproval is a rulemaking action, and it is subject to notice and comment.''

IV. Final Action

EPA is finalizing a limited approval and a limited disapproval of a revision to the Tennessee SIP submitted by the State of Tennessee on April 4, 2008, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308. As discussed above, EPA is not taking final action on the BART determination for Eastman at this time.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

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

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

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

D. Unfunded Mandates Reform Act (UMRA)

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

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

E. Executive Order 13132, Federalism

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

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

F. Executive Order 13175, Coordination With Indian Tribal Governments

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

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

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the NTTAA of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's

action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

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

K. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 25, 2012.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 11, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220, the table in paragraph (e) is amended by adding an entry for Regional Haze Plan at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
Regional Haze Plan (excluding Eastman Chemical Company BART determination).	Statewide	April 4, 2008	4/24/2012 [Insert citation of publication].	BART emissions limits are listed in Section 7.5.3.

■ 3. Section 52.2234 is added to read as follows:

§ 52.2234 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable measures for meeting the requirements of 40 CFR 51.308 for protection of visibility in mandatory Class I federal areas.

(b) No action has been taken on the BART determination for Eastman Chemical Company.

[FR Doc. 2012–9697 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0136–201162; FRL–9662–8]

Approval and Promulgation of Implementation Plans: Georgia; Approval of Substitution for Transportation Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is making an administrative change to update the Code of Federal Regulations (CFR) to reflect a change made to the Georgia State Implementation Plan (SIP) on November 5, 2009, as a result of EPA's concurrence on a substitute transportation control measure (TCM) for the Atlanta portion of the Georgia SIP. On February 5, 2010, the State of Georgia, through the Environmental Protection Division (EPD), submitted a revision to the Georgia SIP requesting that EPA update its SIP to reflect a substitution of a TCM. The substitution was made pursuant to the TCM substitution provisions contained in Clean Air Act (CAA). EPA concurred on this substitution on November 5, 2009. In this administrative action, EPA is updating the non-regulatory provisions of the Georgia SIP to reflect the substitution. In summary, the substitution that EPA concurred on was a conversion of high occupancy vehicle (HOV) lanes to high occupancy toll lanes (HOT). EPA has determined that this action falls under the ''good cause'' exemption in the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA).

DATES: This action is effective April 24, 2012.

ADDRESSES: SIP materials which are incorporated by reference into 40 Code of Federal Regulations (CFR) part 52 are available for inspection at the following location: Environmental Protection

Agency, Region 4, 61 Forsyth Street SW., Atlanta, GA 30303. Publicly available 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: Ms. Dianna B. Smith at the above Region 4 address or at (404) 562–9207. Ms. Smith may also be contacted via electronic mail at: *smith.dianna@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 5, 2009, EPA issued a concurrence letter to Georgia stating that the substitution of a HOT lane TCM for an existing HOV lane TCM met the CAA section 176(c)(8) requirements for substituting TCMs in an area's approved SIP. *See also* EPA's Guidance for Implementing the CAA section 176(c)(8) Transportation Control Measure Substitution and Addition Provision contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users which was signed into law on August 10, 2005, dated January 2009. This substitution was an update to TCMs previously approved on March 18, 1999, and April 26, 1999. As a part of the concurrence process, the public was provided an opportunity to comment on proposed TCM substitution. Public notice and comment was provided by the Atlanta metropolitan planning organization, Atlanta Regional Commission (ARC), during the revision to the transportation improvement program to incorporate the HOT lane substitution project. The public notice was published in the Daily Report and on the ARC Web page at: *www.atlantaregional.com.* Through this concurrence process, EPA determined that the requirements of CAA section 176(c)(8) were met, including the requirement that the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced. Upon EPA's concurrence, the HOT lane substitution took effect as a matter of federal law. A copy of EPA's concurrence letter is included in the Docket for this action. This letter can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0136. In accordance with the requirements for TCM substitution, on February 5, 2010, EPD submitted a request for EPA to update the Atlanta portion of the Georgia SIP to reflect EPA's previous approval of the TCM substitution of the HOV lane with the HOT lane conversion TCM in its SIP (the subject of this administrative change). Today, EPA is taking administrative action to update the non-regulatory provisions of the Georgia SIP in 40 CFR 52.570(e) to reflect EPA's concurrence on the substitution of a TCM for the conversion of HOV lanes to HOT lanes:

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date
1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316 High Occupancy Toll (HOT) lane on I–85 from Chamblee-Tucker Road to State Road 316.	Atlanta Metropolitan Area	11/15/93 and amended on 6/17/96 and 2/5/10.

EPA has determined that today's action falls under the ''good cause'' exemption in the section 553(b)(3)(B) of the APA which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs.

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' because the substitution was made through the process included in CAA section 176(c)(8) and because the public already had an opportunity to comment on this substitution during the public comment period prior to approval of the substitution. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated Georgia SIP Compilation and ''Identification of Plan'' portion of the **Federal Register**.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this administrative action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This administrative action also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This administrative action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This administrative action does not involve technical standards; thus the requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The administrative action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This administrative action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's administrative action simply codifies a provision which is already in effect as a matter of law in Federal and approved state programs. 5 U.S.C. 808(2). These announced actions were effective upon EPA's concurrence. 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 this action in the **Federal Register.** This update to Georgia's SIP Compilation is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 29, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570(e), is amended by revising the first entry ''1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316. High Occupancy Toll (HOT) lane on I–85 from Chamblee-Tucker Road to State Road 316.	Atlanta Metropolitan Area	11/15/93 and amended on 6/17/96 and 2/5/10.	3/18/99, 4/26/99 and 11/5/09.
* *	*	* *	* *

[FR Doc. 2012–9814 Filed 4–23–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0021(a); FRL–9662–1]

Approval and Promulgation of Implementation Plans; Georgia; Atlanta; Ozone 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the ozone 2002 base year emissions inventory, portion of the state implementation plan (SIP) revision submitted by the State of Georgia on October 21, 2009. The emissions inventory is part of the Atlanta, Georgia (hereafter referred to as ''the Atlanta Area'' or ''Area''), ozone attainment demonstration that was submitted for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The Atlanta Area is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties. This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective June 25, 2012 without further notice, unless EPA receives adverse comment by May 24, 2012. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0021, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: benjamin.lynorae@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2010–0021,'' 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–2010–0021. 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: Sara Waterson, 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) 562–9061. Ms. Waterson can be reached via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm). Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered) (69 FR 23857, April 30, 2004).[1] Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in 40 CFR part 50, appendix I.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Atlanta Area was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004) using 2001–2003 ambient air quality data (69 FR 23857, April 30, 2004). At the time of designation the Atlanta Area was classified as a marginal nonattainment area for the 1997 8-hour ozone NAAQS. In the April 30, 2004, Phase I Ozone Implementation Rule, EPA established ozone nonattainment area attainment dates based on Table 1 of Section 181(a) of the CAA. This established an attainment date 3 years after the June 15, 2004, effective date for areas classified as marginal areas for the 1997 8-hour ozone nonattainment designations. Therefore, the Atlanta Area's original attainment date was June 15, 2007. *See* 69 FR 23951, April 30, 2004.

The Atlanta Area failed to attain the 1997 8-hour ozone NAAQS by June 15, 2007 (the applicable attainment date for marginal nonattainment areas), and did not qualify for any extension of the attainment date as a marginal area. As a consequence of this failure, on March 6, 2008, EPA published a rulemaking determining that the Atlanta Area failed to attain and, consistent with section 181(b)(2) of the CAA, the Atlanta Area was reclassified by operation of law to the next highest classification, or ''moderate'' nonattainment. *See* 73 FR 12013, March 6, 2008. When an area is reclassified, a new attainment date for the reclassified area must be established. Section 181 of the CAA explains that the attainment date for moderate nonattainment areas shall be as expeditiously as practicable, but no later than six years after designation, or June 15, 2010. EPA further required that Georgia submit the SIP revisions meeting the new moderate area requirements as expeditiously as practicable, but no later than December 31, 2008.

Under certain circumstances, the CAA allows for extensions of the attainment dates prescribed at the time of the original nonattainment designation. In accordance with CAA section 181(a)(5), EPA may grant up to 2 one-year extensions of the attainment date under specified conditions. On November 30, 2010, EPA determined that Georgia met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. *See* 75 FR 73969. As a result, EPA extended the Atlanta Area's attainment date from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS.

On October 21, 2009, Georgia submitted an attainment demonstration and associated reasonably available control measures (RACM), reasonable available control technology (RACT), contingency measures, a 2002 base-year emissions inventory and other planning SIP revisions related to attainment of the 1997 8-hour ozone NAAQS in the Atlanta Area (hereafter referred to as ''the Atlanta Area's attainment demonstration submission.'') The reasonable further progress (RFP) plan was also submitted on October 21, 2009,

[1] EPA issued a revised 8-hour ozone NAAQS in 2008. The current proposed action, however, is being taken with regard to the 1997 8-hour ozone NAAQS. Requirements for the Atlanta Area for the 2010 8-hour ozone NAAQS will be addressed in the future.

under separate cover letter. Subsequently, on June 23, 2011 (76 FR 36873), EPA determined that the Atlanta Area attained the 1997 8-hour ozone NAAQS. The determination of attaining data was based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 period, showing that the Area had monitored attainment of the 1997 8-hour ozone NAAQS. The requirements for the Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to attainment of the 1997 8-hour ozone NAAQS were suspended as a result of the determination of attainment, so long as the Area continues to attain the 1997 8-hour ozone NAAQS. *See* 40 CFR 52.582(d).

On February 16, 2012, Georgia withdrew the Atlanta Area's attainment demonstration (except RACT and the emissions inventory) as allowed by 40 CFR 51.918; however, such withdrawal does not suspend the emissions inventory requirement found in CAA section 182(a)(1). Section 182(a)(1) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. EPA is now approving the emissions inventory portion of the Atlanta Area's attainment demonstration SIP revision submitted by the State of Georgia on October 21, 2009, as required by section 182(a)(1). EPA will take action on the RACT portion of Georgia's October 21, 2009, SIP revision, and on the RFP SIP revision in a separate action.

II. Analysis of State's Submittal

As discussed above, section 182(a)(1) of the CAA requires areas to submit a comprehensive, accurate and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area. Georgia selected 2002 as base year for the emissions inventory per 40 CFR 51.915. Emissions contained in the Atlanta attainment plan cover the general source categories of stationary point and area sources, non-road and on-road mobile sources, and biogenic sources. A detailed discussion of the emissions inventory development can be found in Appendix K of the Georgia submittal; a summary is provided below. Table 3–4 in the October 29, 2009, submittal lists electric generating unit (EGU) point sources in and near the Atlanta nonattainment area and the average daily ozone season nitrogen oxides (NO_X) emissions. Table 3–5 in the October 29, 2009, submittal lists non-EGU point sources in the Atlanta nonattainment counties with NO_X emissions larger than 100 tons/year.

The tables below provide a summary of the annual 2002 emissions of NO_X and volatile organic compounds (VOC).

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

[Tons per year]

County	Point		Area		On-road		Non-road	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Barrow	0.06	0.02	0.45	3.74	5.69	4.30	1.41	0.75
Bartow	69.92	1.31	1.30	8.05	15.76	10.56	3.89	2.54
Carroll	0.06	0.85	1.30	9.54	10.91	8.10	2.39	1.87
Cherokee	0.20	0.13	0.72	6.30	10.25	5.17	3.59	5.30
Clayton	0.30	1.29	1.08	9.53	19.96	9.90	19.21	3.83
Cobb	12.62	0.89	4.12	28.18	50.66	26.84	12.67	18.82
Coweta	23.08	0.62	0.89	3.94	7.86	3.75	3.30	2.49
DeKalb	0.49	4.66	4.06	44.67	63.33	31.21	9.98	16.76
Douglas	0.06	0.08	0.48	3.93	9.70	4.54	1.87	1.26
Fayette	.....	.....	0.77	4.69	5.20	2.84	2.18	1.91
Forsyth	0.12	0.48	0.84	4.82	8.41	4.28	3.11	5.36
Fulton	5.46	5.42	6.59	49.47	91.42	46.10	20.02	17.19
Gwinnett	0.09	0.13	4.55	32.02	49.26	25.20	15.36	23.85
Hall	0.29	0.69	2.79	13.69	15.12	11.59	3.80	6.47
Henry	6.44	1.34	0.60	5.26	13.40	6.40	4.68	2.75
Newton	0.00	2.01	0.79	5.21	6.72	4.95	1.95	1.29
Paulding	.....	.....	0.26	3.51	4.76	2.57	2.66	1.43
Rockdale	0.08	0.44	1.00	4.28	5.70	2.88	1.59	1.42
Spalding	0.00	0.18	0.79	5.95	5.25	4.14	0.87	1.21
Walton	0.01	0.32	0.47	4.92	5.72	4.66	1.70	1.53

The 182(a)(1) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule for all source categories (i.e., point, area, non-road mobile and on-road mobile). This inventory often forms the basis of data that are updated with more recent information and data that also is used in their attainment demonstration modeling inventory. Such was the case in the development of the 2002 emissions inventory that was submitted in the State's attainment demonstration SIP for this Area. The 2002 emissions inventory was based on data developed with the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) contractors and submitted by the States to the 2002 National Emissions Inventory. Several iterations of the 2002 inventories were developed for the different emissions source categories resulting from revisions and updates to the data. This resulted in the use of version G2 of the updated data to represent the point sources' emissions. Data from many databases, studies and models (e.g., Vehicle Miles Traveled, fuel programs, the NONROAD 2002 model data for commercial marine vessels, locomotives and Clean Air Market Division, etc.) resulted in the inventory submitted in this SIP. The data were developed according to current EPA emissions inventory guidance ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (August 2005) and a

quality assurance project plan that was developed through VISTAS and approved by EPA. EPA agrees that the process used to develop this inventory was adequate to meet the requirements of CAA section 182(a)(1) and the implementing regulations.

EPA has reviewed Georgia's emissions inventory and finds that it is adequate for the purposes of meeting section 182(a)(1) emissions inventory requirement. The emissions inventory is approvable because the emissions were developed consistent with the CAA, implementing regulations and EPA guidance for emission inventories.

III. Final Action

EPA is approving the 2002 base-year emissions inventory portion of the Atlanta Area's attainment demonstration SIP revision, submitted by the State of Georgia on October 21, 2009, for the 1997 8-hour ozone NAAQS. This action is being taken pursuant to section 110 of the CAA. On March 12, 2008, EPA issued a revised ozone NAAQS. *See* 73 FR 16436. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS. Requirements for the Atlanta Area under the 2008 ozone NAAQS will be addressed in the future. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 25, 2012 without further notice unless the Agency receives adverse comments by May 24, 2012.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 25, 2012 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 4, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart L—Georgia

■ 2. Section 52.570(e), is amended by adding a new entry for ''Atlanta; 1997 8-Hour Ozone 2002 Base-Year Emissions Inventory'' to read as follows:

§ 52. 570 Identification of plan.

* * * * *

(e) * * *

EPA–APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
* *	* * *	*	*
33. Atlanta 1997 8-Hour Ozone 2002 Base-Year Emissions Inventory.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties.	10/21/2009	4/24/2012 [Insert citation of publication].

[FR Doc. 2012–9707 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2012–0087; FRL–9663–4]

Direct Final Approval of Hospital/Medical/Infectious Waste Incinerators State Plan for Designated Facilities and Pollutants: Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving Illinois' revised State Plan to control air pollutants from ''Hazardous/Medical/Infectious Waste Incinerators'' (HMIWI). The Illinois Environmental Protection Agency (IEPA) submitted the revised State Plan on November 8, 2011 and supplemented it on December 28, 2011. The revised State Plan is consistent with revised Emission Guidelines (EGs) promulgated by EPA on October 6, 2009. This approval means that EPA finds that the revised State Plan meets applicable Clean Air Act (Act) requirements for subject HMIWI units. Once effective, this approval also makes the revised State Plan Federally enforceable.

DATES: This direct final rule will be effective June 25, 2012, unless EPA receives adverse comments by May 24, 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–2012–0087, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: nash.carlton@epa.gov.*
3. *Fax:* (312)886–6030.
4. *Mail:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–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–2012–0087. 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 Margaret Sieffert, Environmental Engineer, at (312) 353–1151 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@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 does the state plan contain?
III. Does the state plan meet the EPA requirements?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. Background

On October 6, 2009, in accordance with sections 111 and 129 of the Act,

EPA promulgated revised HMIWI EGs and compliance schedules for the control of emissions from HMIWI units. *See* 74 FR 51368. EPA codified these revised regulations at 40 CFR part 60, subpart Ce. A HMIWI unit as defined in 40 CFR 60.51c is any device that combusts any amount of hospital waste and/or medical/infectious waste. Under section 129(b)(2) of the Act and the revised guidelines at subpart Ce, States with subject sources must submit to EPA plans that implement the revised EGs. The plans must be at least as protective as the revised EGs, which are not Federally enforceable until EPA approves a State Plan (or promulgates a Federal Plan for implementation and enforcement).

On November 8, 2011 and supplemented on December 28, 2011, Illinois submitted its revised HMIWI State Plan to EPA. This submission followed public hearings for preliminary adoption of a revised State rule at 35 Ill. Adm. Code Part 229 on June 8, 2011 and June 28, 2011, and for final adoption on September 22, 2011. The revised rule at 35 Ill. Adm. Code Part 229, which establishes emission standards for existing HMIWI, became effective on September 30, 2011. The revised Plan includes the revisions to 35 Ill. Adm. Code Part 229.

II. What does the State plan contain?

The State submittal is based on the revised HMIWI EGs (40 CFR subpart Ce) and the revised New Source Performance Standards (NSPS) (40 CFR part 60, subpart Ec) for HMIWI promulgated on October 6, 2009. The State's revised rule at 35 Ill. Adm. Code Part 229 incorporates significant portions of the HMIWI EG's. As set forth in CAA section 129 and in 40 CFR part 60, subparts B and Ce, the revised State Plan address the thirteen minimum required elements, as follows:

1. A demonstration of the State's legal authority to carry out the HMIWI State Plan and identification of the enforceable mechanisms. Illinois has provided a detailed list of its legal authorities to carry out its Plan and identified the enforceable mechanism.
2. An inventory of affected HMIWI units, including language that states that sources subject to the standard ''include but are not limited to'' the inventory in the State Plan and an additional statement that says ''should another source be discovered subsequent to this notice, there will be no need to reopen the State Plan.'' Illinois has provided this.
3. An inventory of the emissions from each of the HMIWI units. Illinois has provided this.
4. Emission limits for HMIWI that are the same as those required by the EG. Illinois has provided this.
5. Testing and monitoring requirements that are the same as those required by the EG. Illinois has provided this.
6. Reporting and recordkeeping requirements that are the same as those required by the EG. Illinois has provided this.
7. Operator training and qualification requirements that are the same as those required by the EG. Illinois has provided this.
8. Inspections requirements that are the same as those required by the EG. Illinois has provided this.
9. Waste management plan requirements that are the same as those in the EG. Illinois has provided this.
10. A compliance schedule with increments. Illinois has provided this.
11. A final compliance date of October 6, 2014. Illinois has provided this.
12. A record of public hearings on the revised State rule and Plan. Illinois has provided this.
13. A provision for State progress reports to EPA. Illinois will submit information pertaining to emissions, inspections, status of compliance, dates of performance testing, and enforcement actions to EPA's Emissions Inventory System and Air Facility System. Illinois has stated they will work with EPA regarding the format required for submission of performance test reports and correlation of State test data to emission limits.

III. Does the state plan meet the EPA requirements?

EPA evaluated the revised HMIWI State Plan submitted by Illinois for consistency with the Act, EPA regulations and policy. For the reasons discussed above, EPA has determined that the revised State Plan meets all applicable requirements and, therefore, is approving it.

IV. What action is EPA taking?

EPA is approving the revised State Plan which Illinois submitted on November 8, 2011 and December 28, 2011, for the control of emissions from existing HMIWI sources in the State. EPA is publishing this approval notice without prior proposal because the Agency views this as a non-controversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan in the event adverse comments are filed. This rule will be effective June 25, 2012 without further notice unless we receive relevant adverse written comments by May 24, 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. If we do not receive any comments, this action will be effective June 25, 2012.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing Section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a Section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a Section 111(d)/129 plan submission, to use VCS in place of a Section 111(d)/129 plan submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Illinois' Section 111(d)/129 plan revision for HMIWI sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Hospital medical infectious waste incinerators, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 9, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart O—Illinois

■ 2. Sections 62.3340, 62.3341, and 62.3342 are revised to read as follows:

§ 62.3340 Identification of plan.

Illinois submitted, on November 8, 2011 and supplemented on December 28, 2011, a revised State Plan for implementing the Emission Guidelines affecting Hospital/Medical Infectious Waste Incinerators (HMIWI). The enforceable mechanism for this revised State plan is 35 Ill. Adm. Code Part 229. This rule was adopted by the Illinois Pollution Control Board on September 22, 2011 and became effective on September 30, 2011.

§ 62.3341 Identification of sources.

The Illinois State Plan for existing Hospital/Medical/Infectious Waste Incinerators (HMIWI) applies to all HMIWIs for which:

(a) Construction commenced either on or before June 20, 1996 or modification was commenced either on or before March 16, 1998; or

(b) Construction commenced either after June 20, 1996, but no later than December 1, 2008, or for which modification is commenced after March 16, 1998, but no later than April 6, 2010.

§ 62.3342 Effective date.

The Federal effective date of the Illinois State Plan for existing Hospital/Medical/Infectious Waste Incinerators is June 25, 2012.

[FR Doc. 2012–9712 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2012–0086; FRL–9663–2]

Direct Final Approval of Hospital/Medical/Infectious Waste Incinerators State Plan for Designated Facilities and Pollutants: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving Indiana's revised State Plan to control air pollutants from ''Hazardous/Medical/Infectious Waste Incinerators'' (HMIWI). The Indiana Department of Environmental Management (IDEM) submitted the revised State Plan on December 14, 2011. The revised State Plan is consistent with revised Emission Guidelines (EGs) promulgated by EPA on October 6, 2009. This approval means that EPA finds that the revised State Plan meets applicable Clean Air Act (Act) requirements for subject HMIWI units. Once effective, this approval also makes the revised State Plan Federally enforceable.

DATES: This direct final rule will be effective June 25, 2012, unless EPA receives adverse comments by May 24, 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–2012–0086, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: nash.carlton@epa.gov.*
3. *Fax:* (312) 886–6030.
4. *Mail:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–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–2012–0086. 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 Margaret Sieffert, Environmental Engineer, at (312) 353–1151 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@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 does the State plan contain?
III. Does the State Plan meet the EPA requirements?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. Background

On October 6, 2009, in accordance with sections 111 and 129 of the Act, EPA promulgated revised HMIWI EGs and compliance schedules for the control of emissions from HMIWI units. *See* 74 FR 51368. A HMIWI unit as defined in 40 CFR 60.51c is any device that combusts any amount of hospital waste and/or medical/infectious waste. EPA codified these revised regulations at 40 CFR part 60, subpart Ce. Under section 129(b)(2) of the Act and the revised EGs at subpart Ce, States with subject sources must submit to EPA plans that implement the revised EGs. The plans must be at least as protective as the revised EGs, which are not Federally enforceable until EPA approves a State Plan (or promulgates a Federal Plan for implementation and enforcement).

On December 14, 2011, Indiana submitted its revised HMIWI State Plan, which EPA received on December 19, 2011. This submission followed public hearings for preliminary adoption of the revised State rule on May 4, 2011 and for final adoption on August 3, 2011. The State adopted the final rule on August 3, 2011 and it became effective on October 28, 2011. The State submitted a correction to the Indiana Air Pollution Control Board on December 6, 2011 to correct a typographical error and it was accepted for filing. The correction was effective on January 20, 2012. The revised plan includes revisions to State rule 326 IAC 11–6, which establishes emission standards for existing HMIWI.

II. What does the State plan contain?

The State submittal is based on the revised HMIWI EGs (40 CFR part 60, subpart Ce) and the revised New Source Performance Standards (NSPS) (40 CFR part 60, subpart Ec) for HMIWI promulgated on October 6, 2009. As set forth in section 129 of the Act and in 40 CFR part 60, subparts B and Ce, the revised State Plan addresses the thirteen minimum required elements, as follows:

1. A demonstration of the State's legal authority to carry out the HMIWI State Plan and identified the enforceable mechanisms. Indiana has provided a detailed list which demonstrated that it has such legal authority and identified the enforceable mechanism.
2. An inventory of affected HMIWI units, including language that states that sources subject to the standard ''include but are not limited to'' the inventory in the State Plan and an additional statement that says ''should another source be discovered subsequent to this notice, there will be no need to reopen the State Plan.'' Indiana has provided this.
3. An inventory of the emissions from each of the HMIWI units. Indiana has provided this.
4. Emission limits for HMIWI that are the same as those required by the EG. Indiana has provided this.
5. Testing and monitoring requirements are the same as those required by the EG. Indiana has provided this.
6. Reporting and recordkeeping requirements are the same as those required by the EG. Indiana has provided this.
7. Operator training and qualification requirements are the same as those required by the EG. Indiana has provided this.
8. Inspections requirements are the same as those required by the EG. Indiana has provided this.
9. The waste management plan requirements are the same as those in the EG. Indiana has provided this.
10. A compliance schedule with increments. Indiana has provided this.
11. A final compliance date of October 6, 2014. Indiana has provided this.
12. A record of public hearings on the revised State rule and Plan. Indiana has provided this.
13. A provision for State progress reports to EPA. Indiana has stated that it will submit an annual report that will include updates to the inventory, any enforcement activities and submission of copies of technical reports on all performance testing on designated facilities. The Air Facility System will be used to submit information pertaining to emissions, inspections, status of compliance, dates of performance testing, and enforcement actions.

III. Does the State Plan meet the EPA requirements?

EPA evaluated the revised HMIWI State Plan submitted by Indiana for consistency with the Act, EPA regulations and policy. For the reasons

discussed above, EPA has determined that the revised State Plan meets all applicable requirements and, therefore, is approving it.

IV. What action is EPA taking?

EPA is approving the revised State Plan which Indiana submitted on December 14, 2011, for the control of emissions from existing HMIWI sources in the State. EPA is publishing this approval notice without prior proposal because the Agency views this as a non-controversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan in the event adverse written comments are filed. This rule will be effective June 25, 2012 without further notice unless we receive relevant adverse written comments by May 24, 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 25, 2012.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

In reviewing Section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a Section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a Section 111(d)/129 plan submission, to use VCS in place of a Section 111(d)/129 plan submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Indiana's Section 111(d)/129 plan revision for HMIWI sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Hospital medical infectious waste incinerators, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 9, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart P—Indiana

■ 2. Sections 62.3640, 62.3641, and 62.3642 are revised to read as follows:

§ 62.3640 Identification of plan.

On December 14, 2011, Indiana submitted a revised State Plan for implementing the revised emission guidelines for Hospital/Medical/Infectious Waste Incinerators (HMIWI). The enforceable mechanism for this revised State Plan is a State rule codified in 326 Indiana Administrative Code (IAC) 11–6. The rule was adopted on August 3, 2011, and became effective

on October 28, 2011. A typographical correction was submitted to the Indiana Air Pollution Control Board and accepted on December 6, 2011 and became effective on January 20, 2012.

§ 62.3641 Identification of sources.

The Indiana State Plan for existing Hospital/Medical/Infectious Waste Incinerators (HMIWI) applies to all HMIWIs for which construction commenced on

(a) On or before June 20, 1996 or for which modification was commenced on or before March 1998; or

(b) After June 20, 1996, but no later than December 1, 2008, or for which modification is commenced after March 16, 1998, but no later than April 6, 2010.

§ 62.3642 Effective Date.

The Federal effective date of the Indiana State Plan for existing Hospital/Medical/Infectious Waste Incinerators is June 25, 2012.

[FR Doc. 2012–9724 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2011–0108; FRL–9344–7]

RIN 2070–AB27

Modification of Significant New Uses of Tris Carbamoyl Triazine; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment implements a technical correction that published in the **Federal Register** of March 7, 2012. Specifically, the correction involves the removal of a cross-reference that was erroneously included in a final rule that published in the **Federal Register** of February 8, 2012.

DATES: This final rule is effective April 24, 2012.

ADDRESSES: The docket for this action, identified under docket identification (ID) number EPA–HQ–OPPT–2011–0108, is available online at *http://www.regulations.gov* and at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For information or additional instructions about the docket or visiting the EPA/DC, please go to *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Tracey Klosterman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–2209; email address: *klosterman.tracey@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What does this technical amendment do?

This technical amendment implements a technical correction that published in the **Federal Register** of March 7, 2012 (77 FR 13506) (FRL–9339–8), which removes a cross-reference erroneously placed in § 721.9719(a)(2)(ii) by a final rule that published in the **Federal Register** of February 8, 2012 (77 FR 6476) (FRL–9330–6).

In order to remove the erroneous cross-reference before the effective date of the February 8, 2012 final rule, EPA published the final rule technical correction in the **Federal Register** of March 7, 2012. Subsequently, however, the Office of the Federal Register (OFR) determined that the placement of the correction text in that document did not satisfy OFR's format requirements, and a second correction was necessary to effectuate the change in the Code of Federal Regulations (CFR). Since the February 8, 2012 final rule had become effective, the OFR instructed EPA to do this second correction as a technical amendment to the CFR.

III. Why is this technical amendment issued as a final rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because notice and comment are unnecessary. The hazard communication requirement that is being removed was never intended to be included in the significant new use rule (SNUR), the PMN submitter who brought the error to EPA's attention is familiar with the issue, and EPA is not aware of and does not expect there to be persons who would be adversely affected by the change as there are no companies making plans based on erroneous notice and no harm resulting from deleting the unnecessary requirement for a developmental effect warning. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the Statutory and Executive Order reviews apply to this action?

This technical amendment effectuates the March 7, 2012 technical correction to remove an erroneous cross-reference that was placed in § 721.9719(a)(2)(ii) when the final rule published in the **Federal Register** of February 8, 2012, modifying significant new uses of tris carbamoyl triazine. The February 8, 2012 final rule addresses these requirements for that action (see Unit IX. of the preamble to that action). This technical amendment does not otherwise amend or impose any other requirements.

As such, this technical amendment is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), nor does this technical amendment contain any information collections subject to OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Because the Agency has made a ''good cause'' finding that this technical amendment is not subject to notice-and-comment requirements under the APA or any other statute (see Unit III. of this document), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 USC 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*). Nor does this technical amendment

significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This technical amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), nor will this technical amendment have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000).

This technical amendment does not require any special considerations, OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). Nor will this technical amendment have any affect on energy supply, distribution or use as described in Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This technical amendment does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note). The technical amendment also does not involve special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (55 FR 7629, February 16, 1994).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

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

Dated: April 12, 2012.

Ward Penberthy,

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

Therefore, 40 CFR part 721 is corrected by making the following technical amendment:

PART 721—[AMENDED]

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

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

■ 2. In § 721.9719, revise paragraph (a)(2)(ii) to read as follows:

§ 721.9719 Tris carbamoyl triazine (generic).

(a) * * *

(2) * * *

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(ii), (g)(1)(iv), (g)(2)(ii), (g)(2)(iv), and (g)(5).

* * * * *

[FR Doc. 2012–9844 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 416, 419, 489, and 495

[CMS–1525–CN2]

RIN 0938–AQ26

Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; Hospital Value-Based Purchasing Program; Physician Self-Referral; and Patient Notification Requirements in Provider Agreements; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; Correction.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 30, 2011, entitled ''Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; Hospital Value-Based Purchasing Program; Physician Self-Referral; and Patient Notification Requirements in Provider Agreements'' and in the correction notice published in the **Federal Register** on January 4, 2012, entitled ''Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; Hospital Value-Based Purchasing Program; Physician Self-Referral; and Patient Notification Requirements in Provider Agreements; Corrections.''

DATES: *Effective date:* This document is effective on April 24, 2012.

Applicability Date: The corrections noted in this document and posted on the CMS Web site are applicable to payments on or after January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Erick Chuang, (410) 786–1816.

SUPPLEMENTARY INFORMATION:

I. Regulatory Overview

In FR Doc. 2011–26812 of November 30, 2011 (76 FR 74122) and FR Doc. 2011–33751 of January 4, 2012 (77 FR 217), there were a number of technical errors that are identified and corrected in the ''Correction of Errors'' section below.

We issued the calendar year (CY) 2012 hospital outpatient prospective payment system (OPPS)/ambulatory surgical center (ASC) final rule with comment period on November 1, 2011 (hereinafter referred to as the CY 2012 OPPS/ASC final rule with comment period). The CY 2012 OPPS/ASC final rule with comment period appeared in the November 30, 2011 **Federal Register**.

We issued a correction notice for the CY 2012 OPPS/ASC final rule with comment period on December 30, 2011 (hereinafter referred to as the CY 2012 OPPS/ASC correction notice). The CY 2012 OPPS/ASC correction notice appeared in the January 4, 2012 **Federal Register**.

The provisions in this correction notice are effective as if they had been included in the CY 2012 OPPS/ASC final rule with comment period and in the CY 2012 OPPS/ASC correction notice. Accordingly, the corrections are effective January 1, 2012.

II. Background

In the CY 2012 OPPS/ASC final rule with comment period, we finalized a continuation of our policy to exclude line items that were eligible for payment in the claims year but did not meet the Medicare requirements for payment (76 FR 74141). Line items not meeting requirements for Medicare payment were rejected or denied during claims processing. It is our longstanding policy not to use line items that were rejected or denied for payment for modeling

costs under the OPPS. In reviewing the claims data used to establish the ambulatory payment classification (APC) median costs for the CY 2012 OPPS/ASC final rule with comment period, we discovered that the trim of unpaid lines was not applied correctly. Therefore, we published a correction notice in the **Federal Register** on January 4, 2012, to correct our programming logic in the OPPS data process to apply the line item trim correctly. We also recalculated the median costs for each separately paid service using the claims that resulted from the correctly applied trim. In this correction notice, we are correcting the revenue code-to-cost center crosswalk in our programming logic and the packaging status of two drug codes.

III. Summary of Errors

A. Corrections to the Revenue Code-to-Cost Center Crosswalk

In the CY 2012 OPPS/ASC final rule with comment period, we finalized a continuation of our policy to apply the hospital-specific cost-to-charge ratios (CCRs) to the hospital's charges at the most detailed level possible, based on a revenue code-to-cost center crosswalk that contains a hierarchy of CCRs used to estimate costs from charges for each revenue code (76 FR 74134). This allowed us to estimate line-item costs for every claim in the dataset used to model the OPPS. In reviewing the program logic used to establish the APC median costs for the CY 2012 OPPS/ASC final rule with comment period, we discovered that this revenue code-to-cost center crosswalk contained incorrect mappings due to misalignments for several revenue codes, specifically revenue codes 790 (Extra-Corp Shock Wave Therapy), 800 (Inpatient Dialysis), 801 (Inpatient Hemodialysis), 802 (Inpatient peritoneal dialysis), 803 (inpatient dialysis CAPD), 804 (Inpatient dialysis CCPD), and 809 (Other inp dialysis). In this correction notice, we are correcting the revenue code-to-cost center crosswalk in our program logic to accurately reflect the crosswalk available online at *http://www.cms.gov/HospitalOutpatientPPS/03_crosswalk.asp#TopOfPage.* To obtain accurate median costs, we applied the available CCRs to the appropriate revenue code charges to estimate cost and recalculated the APC median costs for each separately paid service. We are making no other changes to the programming described in the CY 2012 OPPS/ASC final rule with comment period or the subsequent CY 2012 OPPS/ASC correction notice, which resolved a technical error in our cost modeling where the line item trim for eligible unpaid lines was not applied correctly. Those changes to the claims dataset used to model the OPPS APC median costs are reflected in this correction notice, since the combination of the line item trim and revenue code crosswalk in the data process have an interactive effect on the calculation of the APC payments.

The application of the correct revenue code-to-cost center crosswalk for the specific revenue codes resulted in changes to the APC median costs used to establish the relative payment weights, therefore affecting the CY 2012 OPPS payment rates, copayments, outlier threshold, and regulatory impact analysis. Due to changes in the APC median costs, we recalculated the budget neutral weight scaler discussed in section II.A.4. of the CY 2012 OPPS/ASC final rule with comment period (76 FR 74189) and in the CY 2012 OPPS/ASC correction notice when we addressed the line item trim issue. Using the updated unscaled relative weights, the CY 2012 budget neutrality weight scaler is changed from 1.3585 to 1.3597. We note that the weight scaler was initially corrected in the CY 2012 OPPS/ASC correction notice (77 FR 218) from 1.3588 to 1.3585. We also note that changes associated with the revised APC median costs and the corrected budget neutrality weight scaler have no additional effect on the budget neutrality, in particular, those applied to the CY 2012 conversion factor. Using the corrected revenue code-to-cost center crosswalk in our programs, the CY 2012 OPPS fixed-dollar outlier threshold remains at $2,025, as published in the CY 2012 OPPS/ASC correction notice.

We are also correcting the CY 2012 estimated impacts. The CY 2012 OPPS/ASC correction notice made changes to accurately apply the line item trim in our ratesetting process. As previously stated in this correction notice we are applying a corrected revenue code-to-cost center crosswalk. The combined corrections to the line item trim and revenue code-to-cost center crosswalk affects the calculation of APC median costs and the CY 2012 OPPS payment rates. Therefore, this correction notice makes minor changes to Table 59—Estimated Impact of the Final CY 2012 for the Hospital OPPS.

To view the revised payment rates that result from the changed median costs as well as the correction to the packaging status of HCPCS codes J1642 and J1644, see the Addenda and supporting files that are posted on the CMS Web site at: *http://www.cms.gov/HospitalOutpatientPPS/HORD/.* All revised Addenda for this correction notice will be contained in a zipped folder on the Web page associated with this correction notice. The corrected CY 2012 table of updated offset amounts is posted on the OPPS Web site under ''Annual Policy Files'' which is found on the left side of the page. The corrected file of median costs is found under supporting documentation for CMS–1525–FC.

ASC payment rates are based on the OPPS relative payment weights for the majority of services that are provided at ASCs. Therefore, the correct application of the line item based trim and the correct application of the revenue code-to-cost center crosswalk for the revenue codes specified above have an effect on the CY 2012 ASC relative payment weights and ASC payment rates. Due to the changes to the OPPS payment weights, we had to recalculate the budget neutral ASC weight scalar of 0.9466 discussed in section XIII.H.2.a of the CY 2012 OPPS/ASC final rule with comment period (76 FR 74447 to 74448). In the CY 2012 OPPS/ASC correction notice, we corrected the application of the line item based trim; using the updated scaled OPPS relative weights, the CY 2012 budget neutrality ASC weight scalar changed from 0.9466 to 0.9477 (77 FR 218). In this correction notice, we corrected the application of the revenue code-to-cost center crosswalk for the revenue codes specified above; using the updated scaled OPPS relative weights, the CY 2012 budget neutrality ASC weight scalar changed from 0.9477 to 0.9481. The changes associated with the revised OPPS relative weights and the corrected budget neutrality ASC weight scalar have no effect on the CY 2012 ASC conversion factor. To view the revised ASC payment rates that result from the revised ASC relative payment weights, see the ASC Addenda that are posted on the CMS Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/ASC-Regulations-and-Notices.html.* Select ''CMS–1525–FC'' from the list of regulations. All revised ASC addenda for this correction notice are contained in the zipped folder entitled ''Addendum AA, BB, DD1, DD2, EE—revised ASC payment rates resulting from upcoming **Federal Register** Correction Notice publication'' at the bottom of the page for CMS–1525–FC.

B. Correction to Packaging Status of Drug Codes

In the CY 2012 OPPS/ASC final rule with comment period, we finalized a continuation of our policy to make a single packaging determination for a

drug, rather than an individual healthcare common procedure coding system (HCPCS) code, when a drug has multiple HCPCS codes describing different dosages (76 FR 74303). For the CY 2012 OPPS/ASC final rule with comment period, there was an error in the calculation to determine the packaging status of drugs with multiple HCPCS codes that describe different dosages. This error resulted in the per-day cost for HCPCS J1642 (Injection, heparin sodium (heparin lock flush), per 10 units) and HCPCS J1644 (Injection, heparin sodium, per 1000 units) to be in excess of the $75 packaging threshold and both codes were consequently assigned to status indicator ''K'' (separately paid). After application of the correct calculation to determine the per-day cost for drugs that have multiple HCPCS codes describing different dosages, the per day cost for HCPCS J1642 and J1644 was below the $75 packaging threshold. Therefore, we are changing the status indicator assignment for HCPCS codes J1642 and J1644 from ''K'' to ''N'' (packaged) for CY 2012 to reflect this correction. In addition, because drugs that are determined to be packaged in the OPPS are also packaged under the ASC payment system, we are changing the ASC payment indicator assignment for HCPCS codes J1642 and J1644 from ''K2'' to ''N1'' (packaged) for CY 2012 to reflect the correction detailed above.

III. Waiver of Proposed Rulemaking and the 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the agency finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefor in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register.** This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

The policies and payment methodologies finalized in the CY 2012 OPPS/ASC final rule with comment period have previously been subjected to notice and comment procedures. This correction notice merely provides technical corrections to the CY 2012 OPPS/ASC final rule with comment period and the subsequent CY 2012 OPPS/ASC correction notice. The CY 2012 OPPS/ASC final rule with comment period was promulgated through notice and comment rulemaking. This correction notice does not make substantive changes to the policies or payment methodologies that were finalized in the final rule with comment period. For example, to conform the document to the final policies of the CY 2012 OPPS/ASC final rule with comment period, this notice makes changes to revise inaccurate tabular information and update payment numbers used in the example for calculation of an adjusted Medicare Payment. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice. In addition, we believe it is important for the public to have the correct information as soon as possible and find no reason to delay the dissemination of it. For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this correction notice are unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction notice.

IV. Correction of Errors

A. Corrections to CY 2012 OPPS/ASC Correction Notice

In FR Doc. 2011–33751 of January 4, 2012 (77 FR 217), make the following corrections:

1. On page 218, in the first column, in the second paragraph, in line 12, revise ''1.3585'' to read ''1.3597''.

2. On page 218, in the third column, in line 11, revise ''0.9477'' to read ''0.9481''.

3. On page 219, in the third column, in the first instruction, revise ''1.3585'' to read ''1.3597''.

4. On page 222, in the first column—

A. In instruction 5.A, revise ''$309.46'' to read ''$309.74''.

B. In instruction 5.B, revise ''$303.27'' to read ''$303.54''.

C. In instruction 6.A, revise ''$244.02'' to read ''$244.24'' and revise ''$309.46'' to read ''$309.74''.

5. On page 222, in the second column—

A. In instruction 6.B, revise ''$239.14'' to read ''$239.35'' and revise ''$303.27'' to read ''$303.54''.

B. In instruction 6.C, revise ''$123.78'' to read ''$123.90'' and revise ''$309.46'' to read ''$309.74''.

C. In instruction 6.D, revise ''$121.31'' to read ''$121.42'' and revise ''$303.27'' to read ''$303.54''.

D. In instruction 6.E, revise ''$367.80'' to read ''$368.13''.

E. In instruction 6.F, revise ''$123.78'' to read ''$123.90'' and revise ''$244.02'' to read ''$244.24''.

F. In instruction 6.G, revise ''$360.44'' to read ''$360.76'', ''$239.14'' to read ''$239.35'', and ''$121.31'' to read ''$121.42''.

G. In instruction 7.A, revise ''$61.90'' to read ''$61.95''.

6. On page 222, in the third column—

A. In instruction 7.B, revise ''$309.46'' to read ''$309.74''.

B. In instruction 9.A, revise ''0.9477'' to read ''0.9481''.

C. In instruction 9.B, revise ''0.9477'' to read ''0.9481''.

7. On pages 223 through 226, revise Table 59—Estimated Impact of the Final CY 2012 Changes for the Hospital Outpatient Prospective Payment System to read as follows:

BILLING CODE 4120–01–P

Table 59—ESTIMATED IMPACT OF THE FINAL CY 2012 FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENTS SYSTEM

	Number of Hospitals	APC Recalibration	New Wage Index and Rural Adjustment	New Cancer Hospital Adjustment	Comb (cols 2,3,4) with Market Basket Update	Column 5 with Frontier Wage Index Adjust ment	All Changes
ALL FACILITIES *	**(1)**	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**
ALL HOSPITALS	3,894	0.2	0.0	-0.2	1.9	2.0	1.8
(excludes hospitals permanently held harmless and CMHCs)							
URBAN HOSPITALS	2,945	0.2	0.0	-0.2	2.0	2.0	1.9
LARGE URBAN	1,607	0.2	0.1	-0.2	2.0	2.0	1.9
(GT 1 MILL.)							
OTHER URBAN	1,338	0.2	0.0	-0.2	1.9	2.1	1.8
(LE 1 MILL.)							
RURAL HOSPITALS	949	0.1	-0.3	-0.2	1.5	1.7	1.5
SOLE COMMUNITY	384	0.0	-0.2	-0.2	1.5	1.9	1.4
OTHER RURAL	565	0.2	-0.4	-0.2	1.5	1.5	1.5
BEDS (URBAN)							
0 - 99 BEDS	1,028	-0.5	0.1	-0.2	1.2	1.3	1.2
100-199 BEDS	841	0.3	0.2	-0.2	2.1	2.2	2.0
200-299 BEDS	454	0.5	0.1	-0.2	2.3	2.4	2.2
300-499 BEDS	419	0.3	-0.2	-0.2	1.8	1.9	1.8
500 + BEDS	203	0.2	0.1	-0.2	2.0	2.0	1.9
BEDS (RURAL)							
0 - 49 BEDS	349	0.0	-0.1	-0.2	1.5	1.8	1.5
50- 100 BEDS	355	0.0	-0.3	-0.2	1.4	1.6	1.4
101- 149 BEDS	140	0.2	-0.2	-0.2	1.7	1.9	1.7
150- 199 BEDS	57	0.1	-0.5	-0.2	1.2	1.8	1.2
200 + BEDS	48	0.2	-0.3	-0.2	1.5	1.5	1.4
VOLUME (URBAN)							
LT 5,000 Lines	597	-5.0	0.4	-0.2	-3.0	-2.8	-2.7
5,000 - 10,999 Lines	146	-2.1	0.1	-0.2	-0.3	0.0	-0.4
11,000 - 20,999 Lines	235	-0.7	-0.1	-0.2	0.9	0.9	0.9
21,000 - 42,999 Lines	477	0.3	-0.1	-0.2	1.9	1.9	1.8

	Number of Hospitals	APC Recalibration	New Wage Index and Rural Adjustment	New Cancer Hospital Adjustment	Comb (cols 2,3,4) with Market Basket Update	Column 5 with Frontier Wage Index Adjustment	All Changes
42,999 - 89,999 Lines	713	0.5	0.2	-0.2	2.3	2.3	2.2
GT 89,999 Lines	777	0.2	0.0	-0.2	1.9	2.0	1.9
VOLUME (RURAL)							
LT 5,000 Lines	67	-0.7	-0.6	-0.2	0.3	2.8	0.4
5,000 - 10,999 Lines	71	0.7	0.3	-0.2	2.7	2.9	2.6
11,000 - 20,999 Lines	174	0.3	-0.1	-0.2	1.8	2.1	1.7
21,000 - 42,999 Lines	282	0.3	-0.2	-0.2	1.7	2.0	1.7
GT 42,999 Lines	355	0.0	-0.3	-0.2	1.4	1.6	1.4
REGION (URBAN)							
NEW ENGLAND	150	-0.2	4.2	-0.2	5.7	5.7	5.4
MIDDLE ATLANTIC	355	0.1	0.0	-0.2	1.8	1.8	1.5
SOUTH ATLANTIC	449	0.3	-0.5	-0.2	1.5	1.5	1.6
EAST NORTH CENT.	472	0.3	-0.7	-0.2	1.3	1.3	1.1
EAST SOUTH CENT.	183	0.6	-0.8	-0.2	1.5	1.5	1.5
WEST NORTH CENT.	190	0.2	-0.1	-0.2	1.7	2.5	1.8
WEST SOUTH CENT.	498	0.3	0.1	-0.2	2.1	2.1	2.1
MOUNTAIN	208	0.2	-0.2	-0.2	1.6	2.0	1.6
PACIFIC	394	0.1	0.2	-0.2	2.0	2.0	2.0
PUERTO RICO	46	0.3	0.4	-0.2	2.4	2.4	2.4
REGION (RURAL)							
NEW ENGLAND	25	-0.9	-0.3	-0.2	0.4	0.4	0.5
MIDDLE ATLANTIC	67	-0.1	0.1	-0.2	1.6	1.6	1.6
SOUTH ATLANTIC	162	0.2	-0.2	-0.2	1.6	1.6	1.7
EAST NORTH CENT.	128	0.0	-0.8	-0.2	0.8	0.8	0.7
EAST SOUTH CENT.	170	0.6	-0.6	-0.2	1.6	1.6	1.6
WEST NORTH CENT.	101	-0.3	0.1	-0.2	1.5	2.7	1.6
WEST SOUTH CENT.	200	0.4	-0.1	-0.2	2.0	2.0	2.0
MOUNTAIN	67	0.0	-0.7	-0.2	1.0	2.8	0.9
PACIFIC	29	0.1	1.0	-0.2	2.7	2.7	2.8
TEACHING STATUS							
NON-TEACHING	2,895	0.3	-0.1	-0.2	1.9	2.0	1.8
MINOR	708	0.4	-0.1	-0.2	1.9	2.1	1.8
MAJOR	291	-0.1	0.3	-0.2	1.9	1.9	1.8

	Number of Hospitals	APC Recalibration	New Wage Index and Rural Adjustment	New Cancer Hospital Adjustment	Comb (cols 2,3,4) with Market Basket Update	Column 5 with Frontier Wage Index Adjust ment	All Changes
DSH PATIENT PERCENT							
0	11	-1.6	-0.2	-0.2	-0.1	-0.1	0.4
GT 0 - 0.10	353	0.0	0.2	-0.2	1.9	2.0	1.8
0.10 - 0.16	357	0.3	-0.3	-0.2	1.7	1.7	1.5
0.16 - 0.23	734	0.3	-0.1	-0.2	1.9	2.1	1.8
0.23 - 0.35	1,040	0.3	0.0	-0.2	2.0	2.1	1.9
GE 0.35	785	0.2	0.1	-0.2	1.9	1.9	1.9
DSH NOT AVAILABLE **	614	-5.8	0.6	-0.2	-3.6	-3.6	-3.5
URBAN TEACHING/DSH							
TEACHING & DSH	903	0.2	0.1	-0.2	1.9	2.1	1.8
NO TEACHING/DSH	1,456	0.4	0.0	-0.2	2.1	2.1	2.0
NO TEACHING/NO DSH	10	-1.6	-0.2	-0.2	-0.1	-0.1	0.4
DSH NOT AVAILABLE**	576	-6.1	0.7	-0.2	-3.8	-3.8	-3.7
TYPE OF OWNERSHIP							
VOLUNTARY	2,061	0.3	0.1	-0.2	2.0	2.1	1.9
PROPRIETARY	1,272	0.1	-0.1	-0.2	1.6	1.7	1.6
GOVERNMENT	561	0.1	-0.3	-0.2	1.5	1.5	1.5
CMHCs	204	-32.4	-0.3	-0.2	-30.9	-30.9	-30.8
Cancer Hospitals	11	0.7	0.3	11.6	14.3	14.3	13.3

Column (1) shows total hospitals and/or CMHCs.

Column (2) shows the impact of changes resulting from the reclassification of HCPCS codes among APC groups and the final recalibration of APC weights based on CY 2010 hospital claims data.

Column (3) shows the budget neutral impact of updating the wage index by applying the FY 2012 hospital inpatient wage index.

Column (4) shows the budget neutral estimated impact within the OPPS of applying budget neutrality to the $71 million differential between the final cancer hospital adjustment and TOPS payments to these hospitals in the cost report model used to develop the cancer hospital adjustment.

Column (5) shows the impact of all budget neutrality adjustments and the proposed addition of the 1.9 percent OPD fee schedule increase factor (3.0 percent reduced by 1.0 percentage points for the proposed productivity adjustment and further reduced by 0.1 percentage point in order to satisfy statutory requirements set forth in the Affordable Care Act).

Column (6) shows the non-budget neutral impact of applying the frontier State wage adjustment, after application of the CY 2012 final OPD fee schedule increase factor.

Column (7) shows the additional adjustments to the conversion factor resulting from a change in the pass-through estimate and adds final outlier payments. This column also shows the expiration of section 508 wages on September 30, 2011 and the application of the frontier State wage adjustment for CY 2012.
*These 4,160 providers include children and cancer hospitals, which are held harmless to pre-BBA amounts, and CMHCs.
** Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.

BILLING CODE 4120–01–C

8. On page 226, in the first column, in instruction 11, revise ''0.9477'' to read ''0.9481''.

B. Corrections to the Final Rule with Comment Period

In FR Doc. 2011–26812 of November 30, 2011 (76 FR 74122), make the following corrections:

1. On page 74303, in third column, end of the first paragraph, remove the last two sentences in the paragraph that begins at the bottom of the second column.

2. On page 74303, in third column, in the last paragraph, delete the following portion of the first sentence: ''With the exception of the changed status indicators for HCPCS J1642 and J1644,'' and capitalize the first letter of the new sentence.

3. On page 74304, in the third column of the table, in the data cells associated with J1642 and J1644, revise ''K'' to read ''N''.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 18, 2012.

Jennifer Cannistra,

Executive Secretary to the Department.

[FR Doc. 2012–9837 Filed 4–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, and 244

[Docket No. FRA–2004–17529; Notice No. 8]

RIN 2130–AB94

Inflation Adjustment of the Aggravated Maximum Civil Monetary Penalty for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation or Order

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: To comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, FRA is adjusting the aggravated maximum penalty that it will apply when assessing a civil penalty for a violation of a railroad safety statute, regulation, or order under its authority. In particular, FRA is increasing the aggravated maximum civil penalty (*i.e.,* the maximum civil penalty per violation where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury or has caused death or injury) from $100,000 to $105,000. The current minimum civil penalty per violation of $650 and the current ordinary maximum civil penalty per violation of $25,000 remain the same.

DATES: This final rule is effective June 25, 2012.

FOR FURTHER INFORMATION CONTACT: Veronica Chittim, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–0273), *veronica.chittim@dot.gov.*

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act) requires that an agency adjust by regulation each maximum civil monetary penalty (CMP), or range of minimum and maximum CMPs, within that agency's jurisdiction by October 23, 1996, and adjust those penalty amounts once every four years thereafter, to reflect inflation. Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, April 26, 1996. Congress recognized the important role that CMPs play in deterring violations of Federal laws, regulations, and orders and realized that inflation has diminished the impact of these penalties. In the Inflation Act, Congress found a way to counter the effect that inflation has had on the CMPs by having the agencies charged with enforcement responsibility administratively adjust the CMPs.

FRA is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes, regulations, and orders, including the civil penalty provisions codified primarily at 49 U.S.C. chapter 213. See 49 U.S.C. 103 and 49 CFR 1.49; 49 U.S.C. chapter 201–213. FRA currently has safety regulations in 31 parts of the Code of Federal Regulations that contain provisions referencing the agency's authority to impose civil penalties if a person violates any requirement in the pertinent portion of a statute or the Code of Federal Regulations. In this final rule, FRA is amending each of those separate regulatory provisions and the corresponding footnotes in each Schedule of Civil Penalties appended to those regulations, in order to raise the aggravated maximum CMP to $105,000. Where applicable, FRA is amending the corresponding appendices to those regulatory provisions which outline FRA enforcement policy. See 49 CFR part 209, app. A; 49 CFR part 228, app. A. FRA is also amending several sections in the civil penalty schedules to reflect FRA's existing practice, which is to increase the guideline penalty amount from the statutory, inflation-adjusted minimum of $650 (or for some line items, $500) to $1,000 for an ordinary violation, and $2,000 for a willful violation, to allow room for downward negotiation during the

settlement process. These select changes to the penalty guidelines do not modify the statutory minimum penalty (which remains at $650), but simply memorialize FRA's policy. See 49 CFR 228.9; 49 CFR 228.11; 49 CFR 228.17; 49 CFR 231.146.A; 49 CFR 240.215(b); 49 CFR 240.223(a), (b).

Further, FRA is revising language in 49 CFR part 209, appendix A, ''Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws,'' to better reflect the proper statutory history and authorities, particularly as the original version of the statement was written in 1988 and has not been fully updated to reflect the recodification of the Federal railroad safety statutes, effective July 5, 1994, Public Law 103–272, 108 Stat. 745, or the enactment on October 16, 2008, of the Rail Safety Improvement Act of 2008 (RSIA of 2008), Public Law 110–432, Div. A, 122 Stat. 4848. These changes include the updated statutory citations that resulted from the 1994 recodification. Finally, FRA is adding the language ''or orders'' in two places within part 209, appendix A, ''Penalty Schedules: Assessment of Maximum Penalties,'' to reflect FRA's already existing policy of establishing civil penalty schedules and recommended civil penalty amounts applicable to violations of various orders issued by FRA (such as emergency orders under 49 U.S.C. 20104) when necessary to advance the agency's safety mission.

Description of the Calculation of the Adjustment and of FRA's Recent Actions to Comply With the Inflation Act and the Rail Safety Improvement Act of 2008

Under the Inflation Act, the inflation adjustment is to be calculated by increasing the maximum CMP, or the range of minimum and maximum CMPs, by the percentage that the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment (here, June 2011) exceeds the CPI for the month of June of the last calendar year in which the amount of such penalty was last set or adjusted (here, June 2009 for the minimum CMP of $650, the ordinary maximum of $25,000, and the aggravated maximum CMP of $100,000). See 73 FR 79698 (Dec. 30, 2008), the final rule that made those CMP changes, effective March 2, 2009. The Inflation Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of $100 for a penalty between $100 and $1,000, or to the nearest multiple of $5,000 for a penalty of more than $10,000 and less than or equal to $100,000. The first CMP adjustment may not exceed an increase of ten percent. FRA utilizes Bureau of Labor Statistics data to calculate adjusted CMP amounts. As will be described, FRA has adjusted its CMPs for inflation over the years since the 1996 amendment to the Inflation Act requiring such inflation adjustments.

In addition, FRA has revised its CMPs pursuant to the Rail Safety Improvement Act of 2008 (RSIA of 2008), Public Law 110–342, Div. A, 122 Stat. 4848, enacted October 16, 2008, which raised the ordinary maximum civil penalty to $25,000 and raised the aggravated maximum civil penalty (for a grossly negligent violation or a pattern of repeated violations that has created an imminent hazard of death or injury or caused death or injury) to $100,000. See sec. 302, which amended 49 U.S.C. 21301(a)(2), 21302(a)(2), and 21303(a)(2). The RSIA of 2008 did not amend the minimum civil penalty, which at the time of its enactment remained, pursuant to the Inflation Act, at an inflation-adjusted $550. 69 FR 30591 (May 28, 2004) and 69 FR 62817 (Oct. 28, 2004). (In 2004, FRA had determined, by applying the adjustment calculation using the June 2003 CPI, that the minimum CMP should be increased from $500 to $550, effective June 28, 2004, except for the amendments to part 222, which became effective December 18, 2004.)

Prior to the enactment of the RSIA of 2008, FRA had been evaluating the need to make inflation adjustments to its CMP amounts under the requirements of the Inflation Act; however, because the RSIA of 2008 increased the authorized amounts for ordinary maximum CMPs (from $16,000 [1] to $25,000) and aggravated maximum CMPs (from $27,000 [2] to $100,000), FRA amended the regulations, civil penalty schedules, and some related guidance in the Code of Federal Regulations to reflect this change in statutory authority for ordinary maximum and aggravated maximum CMPs, which temporarily alleviated the need to perform inflation adjustment calculations for FRA's ordinary maximum and aggravated maximum CMPs. As discussed, although the RSIA of 2008 increased the authority for maximum penalties, it did not address the minimum CMP amount; therefore, FRA calculated whether an inflation adjustment was necessary with respect to the minimum CMP. Applying the inflation adjustment calculation, FRA determined that the $550 minimum CMP should be increased to $650. 73 FR 79698 (Dec. 30, 2008). In 2009, FRA also published a correcting amendment to correct an error relating to the total ordinary maximum civil monetary penalty amount in 49 CFR part 232, app. A. 74 FR 15387 (Apr. 6, 2009).

In 2012, four years after the 2008 adjustment, FRA has again evaluated whether inflation adjustments to its CMP amounts are necessary under the requirements of the Inflation Act. Applying the inflation adjustment calculation, FRA has determined that the minimum CMP of $650 and the ordinary maximum CMP of $25,000 should remain the same but that the aggravated maximum CMP should be increased to $105,000, as the following calculations show.

Calculations to Determine Civil Monetary Penalty Updates for 2012

1. Minimum CMP of $650 Unchanged

As required, this year, FRA reevaluated the minimum CMP and concluded that it should remain the same ($650), as the next calculations show. The June 2011 CPI of 676.162 divided by the CPI for June 2009 of 646.12 (since the last update was in 2009) equals an inflation factor of 1.046494387; $650 times 1.046494387 equals $680. The raw inflation adjustment amount of $30 is rounded to the nearest multiple of $100, which is $0. The inflation adjusted minimum penalty is $650 plus $0, or $650, and is applicable to all of the rail safety statutes, regulations, and orders. See appendix to this final rule. Thus, the FRA minimum CMP stays the same, at $650.

2. Ordinary Maximum CMP of $25,000 Unchanged

Applying the adjustment calculation using the June 2011 CPI, FRA has determined that the ordinary maximum CMP should remain the same ($25,000), as the following calculations show. The June 2011 CPI of 676.162 divided by the June 2009 CPI of 646.12 (since the last update was in 2009) equals an inflation factor of 1.046494387; $25,000 times 1.046494387 equals $26,162, or a raw inflation adjustment amount of $1,162, which is rounded to the nearest multiple of $5,000, which is $0. See appendix to this final rule. Therefore, the ordinary maximum CMP should remain at $25,000.

3. Aggravated Maximum CMP of $100,000 Raised to $105,000

FRA also reevaluated the CMP for an aggravated violation and determined that it should be increased to $105,000,

[1] 72 FR 51194 (Sept. 6, 2007).

[2] 69 FR 30591 (May 28, 2004); 69 FR 62817 (Oct. 28, 2004).

as the following calculations show. The June 2011 CPI of 676.162 divided by the CPI for June 2009 of 646.12 (since the last update was in 2009) equals an inflation factor of 1.046494387; $100,000 times 1.046494387 equals $104,649. The raw inflation adjustment amount of $4,649 is rounded to the nearest multiple of $5,000, which is $5,000. The inflation-adjusted aggravated maximum penalty is $100,000 plus $5,000 (the rounded raw inflation adjustment amount), or $105,000, and is applicable to all of the rail safety statutes, regulations, and orders. See appendix to this final rule. The aggravated maximum CMP has been adjusted previously according to the Inflation Act. However, the RSIA of 2008 significantly raised the aggravated maximum penalty from $27,000 to $100,000. Public Law 110–342, Div. A, 122 Stat. 4848. In this way, the RSIA of 2008 ''reset'' the aggravated maximum penalty, and this review may be considered the first one conducted under the Inflation Act of the new, statutory aggravated maximum CMP. Thus, the ten-percent cap for first time adjustments does apply, and the new maximum penalty amount must not exceed $110,000. However, the increase due to inflation rounds to $5,000, and therefore the ten-percent cap does not constrain the increase. This new FRA aggravated maximum penalty will apply to violations that occur on or after June 25, 2012.

Public Participation

FRA is proceeding to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. Public comment is unnecessary because FRA is not exercising discretion in a way that could be informed by public comment. As such, notice and comment procedures are ''impracticable, unnecessary, or contrary to the public interest'' within the meaning of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Likewise, the adjustments required by the Inflation Act are ministerial acts over which FRA has no discretion, making public comment unnecessary. FRA is issuing these amendments as a final rule applicable to all future rail safety civil penalty cases under its authority to cite for violations that occur on or after the effective date of this final rule.

Regulatory Impact

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

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures. See 44 FR 11034; February 26, 1979. It 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 rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because it is limited to a ministerial act on which the agency has no discretion. The economic impact of the final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Determination

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although this rule will apply to railroads and others that are considered small entities, there is no economic impact on any person who complies with the Federal railroad safety laws and the regulations and orders issued under those laws.

C. Federalism

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 13132, preparation of a Federalism assessment is not warranted.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $140,800,000 or more in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The final rule issued today will not result in the expenditure, in the aggregate, of $140,800,000 or more in any one year by State, local, or Indian Tribal governments, or the private sector, and thus preparation of a statement is not required.

F. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

G. Energy Impact

According to definitions set forth in Executive Order 13211, there will be no significant energy action as a result of the issuance of this final rule.

List of Subjects

49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 213

Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Incorporation by reference, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 216

Administrative practice and procedures, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 217

Incorporation by reference, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Communications, Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements, Telephone.

49 CFR Part 221

Incorporation by reference, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 222

Administrative practice and procedure, Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 223

Glass and glass products, Incorporation by reference, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 224

Incorporation by reference, Penalties, Railroad locomotive safety, Railroad safety, and Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements, Whistleblowing.

49 CFR Part 227

Incorporation by reference, Locomotive noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Administrative practice and procedure, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements, Sanitation.

49 CFR Part 229

Accident investigation, Data preservation, Event recorders, Incorporation by reference, Locomotive noise control, Locomotives, Occupational safety and health, Penalties, Railroad locomotive safety, Railroad safety, Reporting and recordkeeping requirements, Sanitation.

49 CFR Part 230

Locomotives, Penalties, Railroad locomotive safety, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 232

Incorporation by reference, Locomotives, Penalties, Railroad locomotive safety, Railroad power brakes, Railroad safety, Reporting and recordkeeping requirements, Two-way end-of-train devices.

49 CFR Part 233

Accident reporting, Penalties, Railroad safety, Railroad signals, Reporting and recordkeeping requirements.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

49 CFR Part 235

Administrative practice and procedure, Penalties, Railroad safety, Railroad signals, Reporting and recordkeeping requirements.

49 CFR Part 236

Incorporation by reference, Penalties, Positive train control, Railroad safety, Railroad signals, Reporting and recordkeeping requirements.

49 CFR Part 237

Bridge safety, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Incorporation by reference, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Penalties, Railroad safety, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 242

Administrative practice and procedure, Conductor, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 244

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, and 244, of subtitle B, chapter II of title 49 of the Code of Federal Regulations are amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 209.409 [Amended]

■ 2. Section 209.409 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

■ 3. Appendix A to part 209 is amended:

■ a. By revising the introductory text; and

■ b. In the ''Penalty Schedules: Assessment of Maximum Penalties'' section by:

■ i. Revising the first, second, and third paragraphs;

■ ii. Adding new fourth, fifth, and sixth paragraphs; and

■ iii. Revising the last paragraph.

The revisions and additions read as follows:

Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

The Federal Railroad Administration (''FRA'') enforces the Federal railroad safety statutes under delegation from the Secretary of Transportation. See 49 CFR 1.49(c), (d), (f), (g), (m), and (oo). Those statutes include 49 U.S.C. ch. 201–213 and uncodified provisions of the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Div. A, 122 Stat. 4848). On July 4, 1994, the day before the enactment of Public Law 103–272, 108 Stat. 745, the Federal railroad safety statutes included the Federal Railroad Safety Act of 1970 (''Safety Act'') (then codified at 45 U.S.C. 421 *et seq.*), and a group of statutes enacted prior to 1970 referred to collectively

herein as the ''older safety statutes'': the Safety Appliance Acts (then codified at 45 U.S.C. 1–16); the Locomotive Inspection Act (then codified at 45 U.S.C. 22–34); the Accident Reports Act (then codified at 45 U.S.C. 38–43); the Hours of Service Act (then codified at 45 U.S.C. 61–64b); and the Signal Inspection Act (then codified at 49 App. U.S.C. 26). Effective July 5, 1994, Public Law 103–272 repealed certain general and permanent laws related to transportation, including these rail safety laws (the Safety Act and the older safety statutes), and reenacted them as revised by that law but without substantive change in title 49 of the U.S. Code, ch. 201–213. Regulations implementing the Federal rail safety laws are found at 49 CFR parts 209–244. The Rail Safety Improvement Act of 1988 (Pub. L. 100–342, enacted June 22, 1988) (''RSIA'') raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. FRA also enforces the hazardous materials transportation laws (49 U.S.C. ch. 51 and uncodified provisions) (formerly the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.,* which was also repealed by Public Law 103–272, July 5, 1994, and reenacted as revised but without substantive change) as it pertains to the shipment or transportation of hazardous materials by rail.

* * * * *

Penalty Schedules: Assessment of Maximum Penalties

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the Federal rail safety laws, regulations, or orders. *Id.,* secs. 3, 13–15, 17. Pursuant to sec. 16 of RSIA, the penalty for a violation of the Hours of Service Act was changed from a flat $500 to a penalty of ''up to $1,000, as the Secretary of Transportation deems reasonable.'' Under all the other statutes, and regulations and orders under those statutes, the maximum penalty was raised from $2,500 to $10,000 per violation, except that ''where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury,'' the penalty was raised to a maximum of $20,000 per violation (''the aggravated maximum penalty'').

The Rail Safety Enforcement and Review Act (RSERA), Public Law 102–365, 106 Stat. 972, enacted in 1992, increased the maximum penalty from $1,000 to $10,000, and provided for an aggravated maximum penalty of $20,000 for a violation of the Hours of Service Act, making these penalty amounts uniform with those of FRA's other safety laws, regulations, and orders. RSERA also increased the minimum civil monetary penalty from $250 to $500 for all of FRA's safety regulatory provisions and orders. *Id.,* sec. 4(a).

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–373, April 26, 1996) (Inflation Act) required that agencies adjust by regulation each minimum and maximum civil monetary penalty within the agency's jurisdiction for inflation and make subsequent adjustments once every four years after the initial adjustment. Accordingly, FRA's minimum and maximum civil monetary penalties have been periodically adjusted, pursuant to the Inflation Act, through rulemaking.

The Rail Safety Improvement Act of 2008 (''RSIA of 2008''), enacted October 16, 2008, raised FRA's civil monetary ordinary and aggravated maximum penalties to $25,000 and $100,000 respectively. FRA amended the civil penalty provisions in its regulations so as to make $25,000 the ordinary maximum penalty per violation and $100,000 the aggravated maximum penalty per violation, as authorized by the RSIA of 2008, in a final rule published on December 30, 2008 in the **Federal Register**. 73 FR 79700. The December 30, 2008 final rule also adjusted the minimum civil penalty from $550 to $650 pursuant to Inflation Act requirements. *Id.* A correcting amendment to the civil penalty provisions in 49 CFR part 232 was published on April 6, 2009. 74 FR 15388.

Effective June 25, 2012, the aggravated maximum penalty was raised from $100,000 to $105,000 pursuant to the Inflation Act.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation or order specific dollar amounts for initial penalty assessments. The schedule (except where issued after notice and an opportunity for comment) constitutes a statement of agency policy, and is ordinarily issued as an appendix to the relevant part of the Code of Federal Regulations. For each regulation or order, the schedule shows two amounts within the $650 to $25,000 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). In one instance—part 231—the schedule refers to sections of the relevant FRA defect code rather than to sections of the CFR text. Of course, the defect code, which is simply a reorganized version of the CFR text used by FRA to facilitate computerization of inspection data, is substantively identical to the CFR text.

* * * * *

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to $105,000 per violation where a pattern of repeated violations or a grossly negligent violation has created an imminent hazard of death or injury or has caused death or injury. This authority to assess a penalty for a single violation above $25,000 and up to $105,000 is used only in very exceptional cases to penalize egregious behavior. FRA indicates in the penalty demand letter when it uses the higher penalty amount instead of the penalty amount listed in the schedule.

* * * * *

Appendix B to Part 209—[Amended]

■ 4. Footnote 1 to appendix B to part 209 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 213—[AMENDED]

■ 5. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Public Law 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 213.15 [Amended]

■ 6. In § 213.15, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix B to Part 213—[Amended]

■ 7. Footnote 1 to appendix B of part 213 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 214—[AMENDED]

■ 8. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 214.5 [Amended]

■ 9. Section 214.5 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 214—[Amended]

■ 10. Footnote 1 to appendix A of part 214 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 215—[AMENDED]

■ 11. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 215.7 [Amended]

■ 12. Section 215.7 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix B to Part 215—[Amended]

■ 13. Footnote 1 to appendix B of part 215 is amended by removing the

numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 216—[AMENDED]

■ 14. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 216.7 [Amended]

■ 15. Section 216.7 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 217—[AMENDED]

■ 16. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 217.5 [Amended]

■ 17. Section 217.5 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 217—[Amended]

■ 18. Footnote 1 to appendix A of part 217 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 218—[AMENDED]

■ 19. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 218.9 [Amended]

■ 20. Section 218.9 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 218—[Amended]

■ 21. Footnote 1 of appendix A to part 218 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 219—[AMENDED]

■ 22. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

§ 219.9 [Amended]

■ 23. In § 219.9, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 219—[Amended]

■ 24–26. Appendix A of part 219 is amended by:

■ a. Removing the numerical amount ''-5,000'' from the entry at 219.701(a) and adding in its place the numerical amount ''5,000'';

■ b. Removing the numerical amount ''-7,500'' from the entry at 219.701(a) and adding in its place the numerical amount ''7,500''; and

■ c. Removing from footnote 1 the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 220—[AMENDED]

■ 27. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20103, note, 20107, 21301–21302, 20701–20703, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 220.7 [Amended]

■ 28. Section 220.7 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix C to Part 220—[Amended]

■ 29. Footnote 1 to appendix C of part 220 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 221—[AMENDED]

■ 30. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 221.7 [Amended]

■ 31. Section 221.7 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix C to Part 221—[Amended]

■ 32. Footnote 1 to appendix C of part 221 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 222—[AMENDED]

■ 33. The authority citation for part 222 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 222.11 [Amended]

■ 34. Section 222.11 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix H to Part 222—[Amended]

■ 35. Footnote 1 to appendix H of part 222 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 223—[AMENDED]

■ 36. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 223.7 [Amended]

■ 37. Section 223.7 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix B to Part 223—[Amended]

■ 38–39. Appendix B is amended by:

■ a. Removing the numerical amount ''1,500'' from the entry at 223.17 and adding in its place the numerical amount ''2,000''; and

■ b. Removing from footnote 1the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 224—[AMENDED]

■ 40. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 224.11 [Amended]

■ 41. Paragraph (a) of § 224.11 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 224—[Amended]

■ 42. Appendix A of part 224 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 225—[AMENDED]

■ 43. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–20902, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 225.29 [Amended]

■ 44. Section 225.29 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 225—[Amended]

■ 45. Footnote 1 to appendix A of part 225 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 227—[AMENDED]

■ 46. The authority citation for part 227 continues to read as follows:

Authority: 49 U.S.C. 20103, 20103, note, 20701–20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 227.9 [Amended]

■ 47. Paragraph (a) of § 227.9 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix G to Part 227—[Amended]

■ 48. Footnote 1 to appendix G of part 227 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 228—[AMENDED]

■ 49. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Pub. L. 110–432, 122 Stat. 4860–4866; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 U.S.C. 103; and 49 CFR 1.49.

§ 228.21 [Amended]

■ 50. Section 228.21 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

■ 51. In appendix A to part 228, below the heading ''GENERAL PROVISIONS,'' the ''*Penalty*'' paragraph is amended by adding three sentences to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

GENERAL PROVISIONS

* * * * *

Penalty. * * * Meanwhile, the ordinary maximum penalty was increased from $16,000 to $25,000 and the aggravated maximum was increased from $27,000 to $100,000 in accordance with the authority provided under the Rail Safety Improvement Act of 2008. See sec. 302, Div. A, Public Law 110–432, 122 Stat. 4848, 4878, Oct. 16, 2008; 49 U.S.C. 21301–21303. Effective June 25, 2012, the aggravated maximum penalty was raised from $100,000 to $105,000 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990. Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Sec. 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, Apr. 16, 1996.

* * * * *

Appendix B to Part 228—[Amended]

■ 52–58. Appendix B is amended by:

■ a. Removing the numerical amount ''$650'' from the entry at 228.9 and adding in its place the numerical amount ''$1,000'';

■ b. Removing the numerical amount ''$1,000'' from the entry at 228.9 and adding in its place the numerical amount ''$2,000'';

■ c. Removing the numerical amount ''650'' from the entry at 228.11 and adding in its place the numerical amount ''1,000'';

■ d. Removing the numerical amount ''1,000'' from the entry at 228.11 and adding in its place the numerical amount ''2,000'';

■ e. Removing the numerical amount ''650'' from the entry at 228.17 and adding in its place the numerical amount ''1,000'';

■ f. Removing the numerical amount ''1,000'' from the entry at 228.17 and adding in its place the numerical amount ''2,000''; and

■ g. Removing from footnote 1 the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 229—[AMENDED]

■ 59. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49 (c), (m).

§ 229.7 [Amended]

■ 60. Paragraph (b) of § 229.7 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix B to Part 229—[Amended]

■ 61. Footnote 1 to appendix B of part 229 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 230—[AMENDED]

■ 62. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 230.4 [Amended]

■ 63. Paragraph (a) of § 230.4 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 231—[AMENDED]

■ 64. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 231.0 [Amended]

■ 65. Paragraph (f) of § 231.0 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 231—[Amended]

■ 66–68. Appendix A is amended by:

■ a. Removing the numerical amount ''650'' from the entry at 213.146.A and adding in its place the numerical amount ''1,000'';

■ b. Removing the numerical amount ''1,000'' from the entry at 213.146.A and adding in its place the numerical amount ''2,000''; and

■ c. Removing from footnote 1 the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 232—[AMENDED]

■ 69. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 232.11 [Amended]

■ 70. In § 232.11, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 232—[Amended]

■ 71. Footnote 1 to appendix A of part 232 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 233—[AMENDED]

■ 72. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 233.11 [Amended]

■ 73. Section 233.11 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 233—[Amended]

■ 74. Footnote 1 to appendix A of part 233 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 234—[AMENDED]

■ 75. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; Pub. L. 110–432, Div. A, § 202; and 49 CFR 1.49.

§ 234.6 [Amended]

■ 76. In § 234.6, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 234—[Amended]

■ 77. Footnote 1 to appendix A of part 234 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 235—[AMENDED]

■ 78. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 235.9 [Amended]

■ 79. Section 235.9 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 235—[Amended]

■ 80. Footnote 1 to appendix A of part 235 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 236—[AMENDED]

■ 81. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 20501–20505, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 236.0 [Amended]

■ 82. In § 236.0, paragraph (f) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 236—[Amended]

■ 83. Footnote 1 to appendix A of part 236 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 237—[AMENDED]

■ 84. The authority citation for part 237 continues to read as follows:

Authority: 49 U.S.C. 20102–20114; Pub. L. 110–432, division A, section 417; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 237.7 [Amended]

■ 85. In § 237.7, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix B to Part 237—[Amended]

■ 86. Footnote 1 to appendix B of part 237 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 238—[AMENDED]

■ 87. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 238.11 [Amended]

■ 88. In § 238.11, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 238—[Amended]

■ 89. Footnote 1 to appendix A to part 238 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 239—[AMENDED]

■ 90. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (g), (m).

§ 239.11 [Amended]

■ 91. Section 239.11 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 239—[Amended]

■ 92. Footnote 1 to appendix A to part 239 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 240—[AMENDED]

■ 93. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 240.11 [Amended]

■ 94. In § 240.11, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 240—[Amended]

■ 95–101. Appendix A is amended by:
■ a. Removing the numerical amount ''500'' from the entry at 240.215(b) and adding in its place the numerical amount ''1,000'';
■ b. Removing the numerical amount ''1,000'' from the entry at 240.215(b) and adding in its place the numerical amount ''2,000'';
■ c. Removing the numerical amount ''500'' from the entry at 240.223(a) and adding in its place the numerical amount ''1,000'';
■ d. Removing the numerical amount ''1,000'' from the entry at 240.223(a) and adding in its place the numerical amount ''2,000'';
■ e. Removing the numerical amount ''500'' from the entry at 240.223(b) and adding in its place the numerical amount ''1,000'';
■ f. Removing the numerical amount ''1,000'' from the entry at 240.223(b) and adding in its place the numerical amount ''2,000''; and
■ g. Removing from footnote 1 the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 241—[AMENDED]

■ 102. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 241.15 [Amended]

■ 103. In § 241.15, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix B to Part 241—[Amended]

■ 104. Footnote 1 to appendix B of part 241 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 242—[AMENDED]

■ 105. The authority citation for part 242 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 242.11 [Amended]

■ 106. In § 242.11, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Appendix A to Part 242—[Amended]

■ 107. Footnote 1 to appendix A of part 242 is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

PART 244—[AMENDED]

■ 108. The authority citation for part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 244.5 [Amended]

■ 109. In § 244.5, paragraph (a) is amended by removing the numerical amount ''$100,000'' and adding in its place the numerical amount ''$105,000''.

Issued in Washington, DC on April 18, 2012.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix: Step-by-Step Calculations to Determine Civil Monetary Penalty Updates: 2012

These calculations follow guidance by the U.S. Department of Transportation and the Government Accountability Office (GAO, which was formerly the General Accounting Office) to determine if the civil monetary penalties (CMPs) should be updated according to the Inflation Act. (Sources for guidance: (1) GAO attachment to memorandum with subject ''Annual Review of Department of Transportation's (DOT) Civil Penalties Inflation Adjustment,'' dated July 10, 2003; (2) policy paper entitled ''Federal Civil Penalties Inflation Adjustment Act of 1990''). In brief, the minimum stays the same at $650, the ordinary maximum stays the same at $25,000, but the aggravated maximum rises from $100,000 to $105,000 under the Inflation Act.

Minimum CMP

The current minimum CMP is $650, last updated on December 30, 2008, effective March 2, 2009. See 73 FR 79698.

Step 1: Find the Consumer Price Index (CPI). (Bureau of Labor Statistics (BLS), 1967 Base, U.S. City Average)

The CPI for June of the preceding year, i.e., CPI for June 2011 = *676.162.*

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2009 = *646.12.*

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2011}}{\text{CPI for June 2009}} = \frac{676.162}{646.121} = \underline{1.046494387}.$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

Raw Inflation Adjustment = CMP × COLA = $650 × 1.046494387 = $680.122 ≈ $*680.*

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the *increase* in the CMP is rounded, according to the rounding rules. Increase = Raw Inflation Adjustment—Original CMP = $680 − $650 = $30.

Use the following rounding rule: ''If the current unadjusted penalty is greater than $100 and less than or equal to $1,000, round the *increase* to the nearest multiple of $100.'' (Federal Civil Penalties Inflation Adjustment Act of 1990, (DOT guidance, p.4)) Multiples of $100 are ($0, $100, $200, * * *). The nearest multiple of $100 is therefore $0. Rounded, the $30 increase = $*0.*

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = $650 + $0 = $*650.*

Step 6: Apply a 10% Ceiling if Necessary.

As the minimum CMP has been adjusted previously according to the Inflation Act (effective March 2009), the 10% cap for first time adjustments does not apply. Also, the RSIA of 2008 did not affect the minimum statutory penalty.

Step 7: Determine New Penalty.

The new minimum CMP = $650.

For 2012, the minimum CMP stays the same.

Ordinary Maximum CMP

The current ordinary maximum CMP is $25,000, last updated on December 30, 2008, effective March 2, 2009. See 73 FR 79698.

Step 1: Find the Consumer Price Index (CPI). (BLS, 1967 Base, U.S. City Average.)

The CPI for June of the preceding year, i.e., CPI for June 2011 = *676.162.*

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2009 = *646.121.*

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2011}}{\text{CPI for June 2009}} = \frac{676.162}{646.121} = \underline{1.046494387}.$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

Raw Inflation Adjustment = CMP × COLA = $25,000 × 1.046494387 = $26,162.36 ≈ $*26,162.*

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the *increase* in the CMP is rounded, according to the rounding rules. Increase = Raw Inflation Adjustment—Original CMP = $26,162 − $25,000 = $1,162.

Use the following rounding rule: ''If the current unadjusted penalty is greater than $10,000 and less than or equal to $100,000, round the *increase* to the nearest multiple of $5,000;'' (Federal Civil Penalties Inflation Adjustment Act of 1990, (DOT guidance, p.4)) Multiples of $5,000 are ($0, $5,000, $10,000, * * *). The nearest multiple of $5,000 is therefore $0. Rounded, the $1,162 increase = $*0.*

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = $25,000 + $0 = $*25,000.*

Step 6: Apply a 10% Ceiling if Necessary.

The maximum CMP has been adjusted previously according to the Inflation Act (effective March 2009). However, the RSIA of 2008 significantly raised the maximum penalty from $16,000 to $25,000. In this way, the RSIA of 2008 ''reset'' the maximum penalty, and this review may be considered the first one conducted under the Inflation Act of the new statutory maximum CMP.

The 10% cap for first time adjustments does apply.

The new maximum penalty amount cannot exceed: $25,000 + (10% × $25,000) = *$27,500.*

Step 7: Determine New Penalty.

The new maximum CMP = $25,000.

For 2012, the maximum CMP stays the same. The increase due to inflation rounds to $0, and therefore the 10% cap is not a constraining factor either.

Aggravated Maximum CMP

The current aggravated maximum CMP is $100,000, last updated on December 30, 2008, effective March 2, 2009. See 73 FR 79698.

Step 1: Find the Consumer Price Index (CPI). (BLS, 1967 Base, U.S. City Average.)

The CPI for June of the preceding year, i.e., CPI for June 2011 = *676.162.*

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2009 = *646.121.*

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2011}}{\text{CPI for June 2009}} = \frac{676.162}{646.121} = \underline{1.046494387}.$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

Raw Inflation Adjustment = CMP × COLA = $100,000 × 1.046494387 = $104,649.44 ≈ *$104,649.*

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the *increase* in the CMP is rounded, according to the rounding rules. Increase = Raw Inflation Adjustment—Original CMP = $104,649 − $100,000 = $4,649.

Use the following rounding rule: ''If the current unadjusted penalty is greater than $10,000 and less than or equal to $100,000, round the *increase* to the nearest multiple of $5,000;'' (Federal Civil Penalties Inflation Adjustment Act of 1990, (DOT guidance, p.4)) Multiples of $5,000 are ($0, $5,000, $10,000, * * *). The nearest multiple of $5,000 is therefore $5,000. Rounded, the $4,649 increase = $*5,000.*

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = $100,000 + $5,000 = $*105,000.*

Step 6: Apply a 10% Ceiling if Necessary.

The aggravated maximum CMP has been adjusted previously according to the Inflation Act (effective March 2009). However, the RSIA of 2008 significantly raised the aggravated maximum penalty from $27,000 to $100,000. In this way, the RSIA statute ''reset'' the aggravated maximum penalty, and this review may be considered the first one conducted under the Inflation Act of the new, statutory aggravated maximum CMP.

The 10% cap for first time adjustments does apply.

The new maximum penalty amount cannot exceed: $100,000 + (10% × $100,000) = $*110,000.*

Step 7: Determine New Penalty.

The new maximum CMP = $105,000.

For 2012, the aggravated maximum CMP should increase. The increase due to inflation rounds to $5,000, and therefore the 10% cap does not constrain the increase.

[FR Doc. 2012–9709 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 77, No. 79
Tuesday, April 24, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0441; Directorate Identifier 2012–CE–011–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileria de Aeronáutica S.A. (EMBRAER) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Empresa Brasileria de Aeronáutica S.A. (EMBRAER) Model EMB–505 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an inadequate amount of drain holes in the primary control surfaces (rudder, elevator, and aileron) and their tab surfaces may allow water to accumulate in the control surfaces. This condition could cause unbalanced flight control surfaces and reduced flutter margins, which could result in loss of control of the airplane. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 8, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Phenom Maintenance Support, Av. Brigadeiro Faria Lima, 2170, São José dos Campos—SP, CEP: 12227–901—P.O. Box 36/2, BRASIL; fax ++55 12 3927–2619; email *phenom.reliability@embraer.com.br;* Internet: *http://www.embraer.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0441; Directorate Identifier 2012–CE–011–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2012–03–01, dated March 20, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been found that certain regions of the rudder, elevator, ailerons, and their tabs surfaces does not present adequate drainage capacity to avoid water accumulation inside of these control surfaces. Internal water accumulation may lead to flight control surfaces unbalancing possibly reducing the flutter margins, which could result in loss of airplane control.

The MCAI requires visually inspecting the control surfaces (rudder, elevator, and aileron) and their tab surfaces for the existence of required drain holes and modifying the control surfaces by drilling drain holes. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Phenom Service Bulletin No. 505–57–0002, dated February 13, 2012; Phenom Service Bulletin No. 505–57–0003, dated November 16, 2011; and Phenom Service Bulletin No. 505–57–0004, dated February 16, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this

AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 38 products of U.S. registry.

We also estimate that it would take from .5 work-hour to 2 work-hours per product for 10 of the affected airplanes to comply with the basic inspection requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed inspection on U.S. operators to be from $425 to $1,700, or $42.50 to $170 per product.

In addition, we estimate that any necessary follow-on actions would take from 2 work-hours to 38 work-hours and require parts costing $50, for a cost from $220 to $3,280 per product. We have no way of determining the number of products that may need these actions.

We also estimate that it would take from 19 work-hours to 27 work-hours per product for 36 of the affected airplanes to comply with basic modification requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $100 per product.

Based on these figures, we estimate the cost of the proposed modification on U.S. operators to be from $61,740, to $86,220, or $1,715 to $2,395 per product.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileria de Aeronáutica S.A. (EMBRAER): Docket No. FAA–2012–0441; Directorate Identifier 2012–CE–011–AD.

(a) Comments Due Date

We must receive comments by June 8, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Empresa Brasileria de Aeronáutica S.A. (EMBRAER) Model EMB–505 airplanes certificated in any category.

(1) *Group 1:* Serial numbers (S/Ns) 50500030, 50500033 thru 50500037, 50500039, 50500040, 50500044, and 50500046.

(2) *Group 2:* S/Ns 5050004 thru 50500029, 50500031, 50500032, 50500038, 50500041 thru 50500043, 50500045, 50500047 thru 50500059, 50500061, 50500063, 50500065 thru 50500068, 50500070, 50500074, and 50500075.

(3) *Group 3:* S/N 50500072.

(4) *Group 4:* S/Ns 50500069, 50500071, and 50500073.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an inadequate amount of drain holes in the primary control surfaces (rudder, elevator, aileron) and their tab surfaces may allow water to accumulate in the control surfaces. We are issuing this AD to prevent unbalanced flight control surfaces and reduced flutter margins, which could result in loss of control of the airplane.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) *Group 1 airplanes specified in paragraph (c)(1) of this AD:*

(i) Within the next 100 hours time-in-service after the effective date of this AD or within the next 3 calendar months after the effective date of this AD, whichever occurs first, visually inspect the right-hand (RH) and left-hand (LH) ailerons lower skin for the existence of required drain holes.

(ii) Before further flight after the inspections required in paragraph (f)(1)(i) of this AD, if the required drain holes do not exist, drill the drain holes.

(iii) Within the next 24 months after the effective date of this AD, rework the ailerons, ailerons trim-tabs, ailerons horn cover, rudder, rudder trim-tab, elevators and elevators auto-tab surfaces by drilling additional drain holes.

(iv) Do the actions required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD following the Accomplishment Instructions in EMBRAER Phenom Service Bulletin No. 505–57–0003, dated November 16, 2011.

(v) Do the actions required in paragraph (f)(1)(iii) of this AD following Part I of the Accomplishment Instructions in EMBRAER Phenom Service Bulletin No. 505–57–0002, dated February 13, 2012.

(2) *Group 2 airplanes specified in paragraph (c)(2) of this AD:* Within the next 24 months after the effective date of this AD, rework the ailerons, ailerons trim-tabs, ailerons horn cover, rudder, rudder trim-tab, elevators and elevators auto-tab surfaces by drilling additional drain holes. Do the modifications following Part I of the Accomplishment Instructions in EMBRAER Phenom Service Bulletin No. 505–57–0002, dated February 13, 2012.

(3) *Group 3 airplanes specified in paragraph (c)(3) of this AD:*

(i) Within the next 24 months after the effective date of this AD, rework the rudder, rudder trim-tab, elevators and elevators auto-tab surfaces by drilling additional drain holes.

(ii) Within the next 24 months after the effective date of this AD, inspect the ailerons for the existence of required drain holes.

(iii) Before further flight after the inspections required in paragraph (f)(3)(ii) of this AD, if the required drain holes do not exist, drill the drain holes.

(iv) Do the actions required in paragraph (f)(3)(i) of this AD following Part II of the Accomplishment Instructions in EMBRAER Phenom Service Bulletin No. 505–57–0002, dated February 13, 2012.

(v) Do the actions required in paragraphs (f)(3)(ii) and (f)(3)(iii) of this AD following Part II of the Accomplishment Instructions in EMBRAER Phenom Service Bulletin No. 505–57–0004, dated February 16, 2012.

(4) *Group 4 airplanes specified in paragraph (c)(4) of this AD:*

(i) Within the next 24 months after the effective date of this AD, inspect the ailerons, elevators, and rudder for the existence of required drain holes.

(ii) Before further flight after the inspection required in paragraph (f)(4)(i) of this AD, if the required drain holes do not exist, drill the drain holes.

(iii) Do the actions required in paragraphs (f)(4)(i) and (f)(4)(ii) of this AD following Part I of the Accomplishment Instructions in EMBRAER Phenom Service Bulletin No. 505–57–0004, dated February 16, 2012.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI Agência Nacional de Aviação Civil (ANAC) Brazilian Airworthiness Directive 2012–03–01, dated March 20, 2012; EMBRAER Phenom Service Bulletin No. 505–57–0002, dated February 13, 2012; EMBRAER Phenom Service Bulletin No. 505–57–0003, dated November 16, 2011; and EMBRAER Phenom Service Bulletin No. 505–57–0004, dated February 16, 2012, for related information. For service information related to this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Phenom Maintenance Support, Av. Brigadeiro Faria Lima, 2170, São José dos Campos—SP, CEP: 12227–901—P.O. Box 36/2, BRASIL; fax ++55 12 3927–2619; email *phenom.reliability@embraer.com.br;* Internet: *http://www.embraer.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on April 18, 2012.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–9794 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–5–020]

Standards for Business Practices and Communication Protocols for Public Utilities

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to incorporate by reference the business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB) that pertain to the measurement and verification of demand response and energy efficiency resources participating in organized wholesale electricity markets. NAESB adopted the measurement and verification of demand response standards in response to the Commission's findings in Order No. 676–F.

DATES: Comments are due June 25, 2012.

ADDRESSES: Comments, identified by docket number RM05–5–020, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

These standards can be obtained from NAESB at 801 Travis Street, Suite 1675, Houston, TX 77002, telephone: (713) 356–0060, *http://www.naesb.org*, and are available for viewing in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT:

David Kathan (Technical Issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6404, *david.kathan@ferc.gov*;

Dennis Hough (Legal Issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8631, *dennis.hough@ferc.gov*.

SUPPLEMENTARY INFORMATION:

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Notice of Proposed Rulemaking

(April 19, 2012)

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to amend its regulations at 18 CFR 38.2 under the Federal Power Act [1] to incorporate by reference the business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB) that pertain to the measurement and verification of demand response and energy efficiency resources participating in organized wholesale electricity markets.[2] Adoption of these standards is intended to improve the methods and procedures used to accurately measure demand response and energy efficiency resource performance. Additionally, these standards should help Regional Transmission Organizations (RTO) and Independent System Operators (ISO) to properly credit demand response and energy efficiency resources for their services.[3]

I. Background

2. NAESB is a private consensus standards developer that divides its activities among four quadrants, each of which is composed of members from all segments of its respective industry.[4] NAESB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI). NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of NAESB, and each wholesale electricity standard that NAESB's WEQ adopts is supported by a consensus of the seven industry segments: end users, distribution/load serving entities, transmission, generation, marketers/brokers, independent grid operators/planners and technology/services. Under the WEQ process, for a standard to be approved, it must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee, with support from at least 40 percent of each of the seven industry segments.[5] For final approval, 67 percent of the WEQ's general membership must ratify the standard.[6]

3. In 2006, the Commission issued Order No. 676, a Final Rule that incorporated by reference business practice standards for the WEQ adopted by NAESB applicable to public utilities.[7] Since 2006, the NAESB consensus industry stakeholder process has reviewed the NAESB business practice standards for public utilities with a view to creating a more efficient marketplace and it has adopted revisions that, in a number of instances, the Commission has made mandatory by incorporating by reference into the Commission's regulations.[8]

4. NAESB began work on the development of business practice standards pertaining to the measurement and verification of demand response [9] products and services in July 2007, when the NAESB WEQ Demand Side Management—Energy Efficiency (DSM–EE) subcommittee began work on this issue. This effort led to the adoption and ratification by NAESB of initial measurement and verification standards early in 2009.

5. On April 17, 2009, NAESB filed a report (April 2009 Report) informing the Commission that it had adopted an initial set of business practice standards to categorize various demand response products and services and to support the measurement and verification of these products and services in organized wholesale electricity markets (Phase I Demand Response M&V Standards).[10] Key to obtaining consensus on the initial set of standards was the agreement to proceed with further work on more detailed technical standards for the measurement and verification of demand response resources. The NAESB report recognized that these standards would need to be followed by the development of more detailed technical standards for the measurement and verification of demand response

[1] 16 U.S.C. 791a *et seq.* (2006).

[2] *See* Report, North American Energy Standards Board, Measurement and Verification of Demand Response Products, Docket No. RM05–5–020 (filed May 3, 2011) (May 3 Report) (providing a status update and description of the proposed standards). In accordance with applicable copyright laws, complete versions of the standards are available from NAESB at 801 Travis Street, Suite 1675, Houston, TX 77002, telephone: (713) 356–0060, *http://www.naesb.org,* and are available for viewing in the Commission's Public Reference Room.

[3] The Commission has also sought RTO and ISO proposals regarding their measurement and verification methodologies, including in Order No. 745, *Demand Response Compensation in Organized Wholesale Energy Markets,* Order No. 745, 76 Fed. Reg. 16,658 (Mar. 24, 2011), FERC Stats. & Regs. ¶ 31,322, at P 93–95 (2011), *order on reh'g,* Order No. 745–A, 137 FERC ¶ 61,215, at P 123 (2011).

[4] The four quadrants are the wholesale and retail electric quadrants and the wholesale and retail natural gas quadrants.

[5] Under NAESB's procedures, interested persons may attend and participate in NAESB committee meetings and phone conferences, even if they are not NAESB members.

[6] *See* May 3 Report at 2.

[7] *See Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676, FERC Stats. & Regs. ¶ 31,216, (2006), *reh'g denied,* Order No. 676–A, 116 FERC ¶ 61,255 (2006).

[8] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 (2010); Order No. 676–E, FERC Stats. & Regs. ¶ 31,299 (2009); Order No. 676–D, 124 FERC ¶ 61,317 (2008), Order No. 676–C, FERC Stats. & Regs. ¶ 31,274 (2008), Order No. 676–B, FERC Stats. & Regs. ¶ 31,246 (2007).

[9] Demand response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy. 18 CFR 35.28(b)(4) (2011).

[10] Report, North American Energy Standards Board, Measurement and Verification of Demand Response Products, Docket No. RM05–5–017, at 2 (filed Apr. 17, 2009) (April 2009 Report).

products and services in RTO and ISO areas.

6. On April 15, 2010, the Commission issued Order No. 676–F, incorporating by reference [11] the Phase I Demand Response M&V Standards [12] that categorize various demand response products and services and support the measurement and verification of these products and services in organized wholesale electricity markets.[13] The Commission stated that ''[w]hile NAESB's Phase I [Demand Response] M&V Standards represent a good first step, additional substantive standards would appear beneficial in creating transparent and consistent measurement and verification of demand response products and services in wholesale electric markets.'' [14] The Commission also stated that ''we expect Phase II will address issues related to baseline development * * *'' [15] The Commission anticipated that the measurement and verification standards needed to accomplish this goal would be a focus of NAESB's Phase II measurement and verification standards development efforts.[16]

7. NAESB subsequently initiated specific plans to improve and adopt additional technical standards and filed a report [17] with the Commission on May 3, 2011 (May 3 Report) that informed the Commission that NAESB had adopted a revised set of standards covering measurement and verification (Phase II Demand Response M&V Standards) and a new set of standards covering energy efficiency,[18] and explained its efforts to develop these standards.

8. As discussed in more detail below, the Phase II Demand Response M&V Standards add more specifications to the existing Phase I Demand Response M&V Standards' definitions and business practice standards in the following areas: meter data reporting deadline, advanced notification, telemetry interval, meter accuracy for after-the-fact metering, meter data reporting interval, and adjustment window.[19] During NAESB's work on Phase II, the WEQ DSM–EE Wholesale Demand Response Work Group (WEQ DR work group) discussed the level of detail to be included in the standards, with most participants agreeing that the standards developed should not ''duplicate efforts undertaken in the ISO–RTO stakeholder process,'' which vetted the adopted programs extensively.[20] NAESB states that a majority of the WEQ DR work group agreed that ''impacting the stakeholder process would require guidance from the FERC.'' [21]

9. In addition to demand response standards, NAESB drafted, discussed, and adopted business practice standards for the measurement and verification of energy efficiency in organized wholesale electricity markets (Wholesale Energy Efficiency M&V Standards). NAESB reports that the work took place between July 2009 and December 2010, and was considered in NAESB's DSM–EE subcommittee meetings and WEQ's Executive Committee meetings. The standards are designed to create a standard method for quantifying the energy reductions from energy efficiency measures. The Wholesale Energy Efficiency M&V Standards include six new definitions and 63 business practice standards. Included are definitions for energy efficiency baseline and demand reduction value. The standards contain criteria for the use of energy efficiency products in organized wholesale electricity markets, general measurement and verification plan requirements, and detailed criteria of acceptable measurement and verification methodologies. NAESB states that the standards are built upon PJM Interconnection, L.L.C. and ISO New England Inc. manuals, the Federal Energy Management Program (FEMP) measurement and verification standards,[22] the International Performance Measurement and Verification Protocol (IPMVP),[23] and several state protocols.[24]

II. Discussion

10. The Commission proposes to incorporate by reference into our regulations both the Phase II Demand Response M&V Standards and associated terms, and the Wholesale Energy Efficiency M&V Standards and associated terms.

A. NAESB Phase II Demand Response M&V Standards

11. The Commission proposes to incorporate by reference into its regulations the Phase II Demand Response M&V Standards as a further step toward transparency and consistency in the methods RTOs and ISOs use to measure and verify demand response in their organized wholesale electricity markets.[25] Additionally, the Commission seeks comment on the Phase II Demand Response M&V Standards and on certain aspects of measurement and verification of demand response more generally,

[11] Incorporation by reference makes compliance with these standards mandatory for public utilities subject to Part 38 of the Commission's regulations.

[12] *See Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,646 (2009) (2009 NOPR).

[13] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 (2010).

[14] Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 at P 32.

[15] *Id.* P 37.

[16] *Id.* P 32.

[17] *See supra* n.2.

[18] Energy efficiency:

[r]efers to programs that are aimed at reducing the energy used by specific end-use devices and systems, typically without affecting the services provided. These programs reduce overall electricity consumption (reported in megawatthours), often without explicit consideration for the timing of program-induced savings. Such savings are generally achieved by substituting technologically more advanced equipment to produce the same level of end-use services (e.g. lighting, heating, motor drive) with less electricity. Examples include high-efficiency appliances, efficient lighting programs, high-efficiency heating, ventilating and air conditioning (HVAC) systems or control modifications, efficient building design, advanced electric motor drives, and heat recovery systems.

U.S. Energy Information Administration Glossary, *http://www.eia.gov/tools/glossary/index.cfm?id=E* (last visited Feb. 24, 2012).

[19] NAESB states that ''advance notification'' involves a communication to the demand response resource made prior to when its services are required. The ''telemetry interval,'' as described by NAESB, is the period of time between submissions of data. NAESB defines ''adjustment window'' as a period of time used to calculate a baseline adjustment.

[20] May 3 Report at 1–2.

[21] *Id.* at 1.

[22] U.S. Department of Energy, FEMP, M&V Guidelines: Measurement and Verification for Federal Energy Projects, Version 3.0, April 2008, *http://www1.eere.energy.gov/femp/pdfs/mv_guidelines.pdf.*

[23] Efficiency Valuation Organization, IPMVP Public Library of Documents, *http://www.evo-world.org/.*

[24] May 3 Report at 3.

[25] We propose to incorporate by reference the following standards collectively identified by NAESB as 2010 Wholesale Electric Quadrant Annual Plan Item 4(a) and 4(b): General—Section 015–1.0; Telemetry—Section 015–1.1; After-the-Fact Metering—Section 015–1.2; Performance Evaluation—Section 015–1.3; General—Section 015–1.4; Telemetry—Section 015–1.5; After-the-Fact Metering—Section 015–1.6; Performance Evaluation—Section 015–1.7; General—Section 015–1.8; Telemetry—Section 015–1.9; After-the-Fact Metering—Section 015–1.10; Performance Evaluation—Section 015–1.11; General—Section 015–1.12; Telemetry—Section 015–1.13; After-the-Fact Metering—Section 015–1.14; Performance Evaluation—Section 015–1.15; Baseline Information—Section 015–1.16; Event Information—Section 015–1.17; Special Processing—Section 015–1.18; Baseline Information—Section 015–1.19; Event Information—Section 015–1.20; Special Processing—Section 015–1.21; Baseline Information—Section 015–1.22; Event Information—Section 015–1.23; Special Processing—Section 015–1.24; Baseline Information—Section 015–1.25; Event Information—Section 015–1.26; Special Processing—Section 015–1.27; Baseline Information—Section 015–1.28; Event Information—Section 015–1.29; and Special Processing—Section 015–1.30.

including the degree to which standardization is important, the appropriate degree of detail and specificity that any such standards should contain, and the appropriate mechanism for achieving any necessary improvements in this area.

1. Description

12. The Phase II Demand Response M&V Standards build on the Phase I Demand Response M&V Standards. These new standards also include updates to certain associated definitions as well as some formatting and organizational changes. The collective set of Phase I and Phase II Demand Response M&V Standards comprise two parts: the first part establishes criteria for the use of equipment, technology, and procedures to quantify the demand reduction value [26] of four product categories,[27] and the second part includes business practice requirements for five performance evaluation types.[28]

13. In the Phase II Demand Response M&V Standards, NAESB consistently replaced references to the ''System Operator'' with the term ''Governing Documents'' [29] throughout most of the standards. Other changes include adding a meter data reporting deadline (103 days for the energy and capacity product categories and 55 days for reserve and regulation product categories); specifying an advanced notification of one day maximum to the demand response resource that its capacity product category will be required; establishing a telemetry interval of six seconds for the provider of the regulation product category to submit data to the system operator; tightening the requirement for meter accuracy for after-the-fact metering for all four product categories; and defining an adjustment window of four hours for calculating baseline adjustments for the baseline type-I and baseline type-II performance evaluation types.

14. As characterized by NAESB, the set of business practice standards represented by the combination of Phase I and Phase II efforts ''provide a framework that may be used to develop performance evaluation methodologies for specific Demand Response services; they do not specify detailed characteristics of performance evaluation methodologies.'' [30] The standards state that, should a conflict arise between the business practice standards and a System Operator's Governing Documents, the Governing Documents would have precedence.[31]

2. Discussion

15. As noted above, when the Commission approved the Phase I Demand Response M&V Standards in Order No. 676–F, it recognized that ''additional substantive standards would appear beneficial in creating transparent and consistent measurement and verification * * * in wholesale electric markets.'' [32] The Commission agreed with commenters ''that more detailed measurement and verification standards will reduce costs for customers and market participants, particularly those participating in multiple markets'' and that ''demand response providers that participate in more than one RTO or ISO should not have to incur the costs of developing different business processes to adapt to the differing RTO/ISO requirements, increasing the cost and complexity of their business.'' [33] While the Commission acknowledged that NAESB's efforts may not result in a single performance evaluation method, the Commission emphasized that ''greater standardization of the performance evaluation methods will improve the accuracy of measuring and verifying demand response performance and may reduce costs.'' [34]

16. The 2009 NOPR noted that the key to several NAESB participants' willingness to accept the Phase I Demand Response M&V Standards was an agreement among participants to include more specific technical measurement and verification standards in NAESB's annual work plan and to proceed with further work on more detailed technical standards.[35] Similarly, in its April 2009 Report, NAESB stressed that ''more technical standards would be needed to support the standards provided in the recommendation,'' that ''[a]ll WEQ [Executive Committee] members agreed to have a follow-up development effort to provide additional technical context to the standards,'' and that ''the DSM–EE subcommittee [had already] begun efforts to scope the development of more detailed technical standards for the measurement and verification of demand response products and services in ISO–RTO footprint areas.'' [36]

17. As noted above, NAESB acknowledges that the resulting set of business practice standards represented by the combination of Phase I and Phase II efforts set forth a generalized performance evaluation methodology that lacks specific provisions or detailed requirements.[37] The Commission invites comments on the proposed Phase II standards. Further, in light of the Commission's statements in Order No. 676–F regarding the importance of consistency and specificity, we invite comment as to whether the Phase II Demand Response M&V Standards that we propose to adopt herein are sufficiently detailed to provide transparent measurement and verification among regions, and whether greater detail or prescriptiveness would be appropriate. We also seek comment on the degree to which encouraging greater consistency among markets and regions would reduce costs for customers and market participants or otherwise facilitate participation by end users in multiple markets.

18. To the extent that greater detail is recommended, the Commission seeks comment as to whether sufficient experience in demand response is available to identify best practices in the area of measurement and verification, particularly for performance evaluation types such as baseline calculations. Similarly, we seek comment about the particular areas where enhancing such detail or consistency would be most useful. For example, are consistent telemetry and metering requirements more or less important than consistent approaches to the determination of baselines; would it be worthwhile to address procedures for weather adjustments; or are any other particular aspects of measurement and verification appropriate for further effort regarding the addition of increased specificity and more consistency across RTOs and ISOs?

[26] NAESB defines ''demand reduction value'' as the amount of a demand resource's reduced electricity usage.

[27] The four product categories are energy service, capacity service, reserve service, and regulation service.

[28] The five performance evaluation types are maximum base load, meter before/meter after, baseline type-I, baseline type-II, and metering generator output.

[29] ''Governing Documents'' are documents that control or affect the interaction and relationship between a system operator and other parties, for example, applicable statutes and regulations, tariffs, contracts, manuals, and other relevant procedures. The DSM–EE subcommittee made this change to remove system operator discretion and to more accurately reflect that rules are developed by markets not the system operator. *See* 2008 WEQ AP Item 5(a) Recommendation to the NAESB WEQ Executive Committee at 37 (Sept. 30, 2010) (*available at* May 3 Report, Appendix B, Page 5, *http://www.naesb.org/pdf4/dsmee_group3_093010reqcom_a1.doc*).

[30] 2010 WEQ AP Item 4(a) and 4(b) Final Action at 12 (ratified Mar. 21, 2011).

[31] *Id.* at 10.

[32] Order No. 676–F, FERC Stats. & Regs. ¶ 31,309 at P 32.

[33] *Id.* P 33.

[34] *Id.* P 34.

[35] NOPR, FERC Stats. & Regs. ¶ 32,646 at P 6.

[36] April 2009 Report at 2.

[37] *See* 2010 WEQ AP Item 4(a) and 4(b) Final Action at 12 (ratified Mar. 21, 2011).

19. The Commission appreciates the efforts of the WEQ thus far in developing these standards. The Commission also understands that various participants in the NAESB process expressed concern that the NAESB process should not duplicate efforts undertaken in the stakeholder processes of the RTOs and ISOs, which vetted their individual programs extensively.[38] As a result, many of the standards defer to the existing Governing Documents of the RTOs and ISOs. The Commission seeks comment on whether further development of more substantive measurement and verification standards broadly applicable to RTOs and ISOs are required and, if so, whether a NAESB or a Commission-led, or other process should carry out the task. If commenters prefer the NAESB process, we request comment on the best relationship framework between NAESB and the RTO and ISO stakeholder processes to facilitate the formulation of standards.

B. NAESB Wholesale Energy Efficiency M&V Standards

20. The Commission proposes to incorporate by reference into our regulations the Wholesale Energy Efficiency M&V Standards.[39] These business practice standards provide criteria for energy efficiency resources participating in organized wholesale electricity markets, general requirements for the structure of a measurement and verification plan, and detailed criteria for acceptable measurement and verification methodologies. The standards incorporate documentation and reporting requirements applicable to installed energy efficiency measures. The standards also consider technical requirements such as identification of energy efficiency baseline conditions, statistical significance requirements for measurement methodologies requiring statistical estimation techniques, and technical requirements for measurement equipment.

1. Description

21. The purpose of these business practice standards is to establish a standard method for quantifying the energy reductions associated with energy efficiency measures such as lighting, appliances, industrial process improvements, and building management. NAESB describes the Wholesale Energy Efficiency M&V Standards as an initial set of standards for the participation of energy efficiency products in organized wholesale electricity markets.

22. NAESB adopted its Wholesale Energy Efficiency M&V Standards under its consensus procedures. The consensus process developed by NAESB requires the organization to be fully aware of the positions of each of NAESB's six wholesale electric segments (i.e., end users, distribution/load serving entities, transmission, generation, marketers/brokers, and independent grid operators/planners).

2. Discussion

23. The Commission preliminarily finds that the Wholesale Energy Efficiency M&V Standards provide substantive detail to assure more effective evaluation of the performance of energy efficiency products and services. The standards provide the means for demonstrating consistent and reliable evidence of reductions in electricity usage attributable to energy efficiency resources that qualify to participate in organized wholesale electricity markets. The NAESB standards are intended to provide for proper measurement and verification of energy efficiency resources so that the resources may be compensated in accordance with how well they perform, and how performance continues as equipment or systems age. The standards should also help to ensure that energy efficiency resources and other electricity resources are treated comparably.

24. The Commission appreciates the detail provided within the Wholesale Energy Efficiency M&V Standards. The standards provide four measurement and verification methodologies (Sections 021–3.6.1.1–021–3.6.1.4), as well as a mechanism by which energy efficiency resource providers may propose, and RTOs and ISOs may consider, alternative measurement and verification methodologies (Section 021–3.6.2). The Commission recognizes that the establishment of baseline performance data and monitoring of post-installation performance of energy efficiency measures is conducted by directly measuring and monitoring system loads, or extrapolating from a selection of available measurement variables. The standards contain 15 technical requirements for all measurement equipment devices used by energy efficiency resource providers (Sections 021–3.11.1–021–3.11.15). Specifically, the 15 technical requirements provide standards for interval meters that record electricity usage data as well as for the measurement or monitoring of ''proxy variables'' that do not directly measure electricity consumption. The technical requirements for proxy variable measurement include detailed accuracy and precision requirements. The standards also contain five statistical requirements intended to ensure accuracy for the measurement methodologies requiring statistical estimation techniques (Sections 021–3.8.2–021–3.8.6). The Commission invites comment on the proposed standards.

III. Notice of Use of Voluntary Consensus Standards

25. Office of Management and Budget Circular A–119 (section 11) (Feb. 10, 1998) provides that federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by the NAESB WEQ.

IV. Information Collection Statement

26. The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

27. The following burden estimate is based on the projected costs for the

[38] *See* May 3 Report at 1.

[39] We propose to incorporate by reference the following standards collectively identified by NAESB as 2010 Wholesale Electric Quadrant Annual Plan Item 4(d): Energy Efficiency Resource Use Criteria in Wholesale Markets—Section 021–3.1; General Measurement and Verification Plan Requirements—Section 021–3.2; Post Installation M&V Report Components—Section 021–3.3; Performance Reporting—Section 021–3.4; M&V Supporting Documents—Section 021–3.5; M&V Methodologies—Section 021–3.6; Energy Efficiency Baseline Conditions—Section 021–3.7; Statistical Significance—Section 021–3.8; Nominated Energy Efficiency Value Calculations/Demand Reduction Value Calculations—Section 021–3.9; Measurement and Monitoring—Section 021–3.10; Measurement Equipment Specifications—Section 021–3.11; and Data Validation—Section 021–3.12.

industry to implement revisions to the WEQ Standards currently incorporated by reference into the Commission's regulations at 18 CFR 38.2 and to implement the new standards adopted by NAESB that we propose here to incorporate by reference.

	FERC Collection No.	Number of respondents (A)	Number of responses per respondent (B)	Hours per response (C)	Total number of hours (A) × (B) × (C)
Demand Response Standards	FERC–516[40]	6	1	4	24
	FERC–717[41]	6	1	9	54
Energy Efficiency Standards	FERC–516	6	1	6	36
	FERC–717	6	1	12	72
Total for FERC–516					78
Total for FERC–717					108
Total One-Time Burden					186

Total Annual Hours for Collection: (Reporting and Recordkeeping, (if appropriate)) = 186 hours.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:[42]

	FERC–516	FERC–717
Demand Response Standards Annualized Capital/Startup Costs	$1,416	$3,186
Demand Response Standards Annualized Costs (Operations & Maintenance)	N/A	N/A
Energy Efficiency Standards Annualized Capital/Startup Costs	2,124	4,248
Energy Efficiency Standards Annualized Costs (Operations & Maintenance)	N/A	N/A
Demand Response Standards Total Annualized Costs	1,416	[43] 3,186
Energy Efficiency Standards Total Annualized Costs	2,124	[44] 4,248
All Standards Total Annualized Costs	3,540	7,434

28. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (formerly Open Access Same Time Information System) (FERC–717); Electric Rate Schedule Filings (FERC–516).

Action: Proposed collection.

OMB Control No.: 1902–0096 (FERC–516); 1902–0173 (FERC–717).

Respondents for This Rulemaking: RTOs and ISOs.

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of the Information: This proposed rule, if implemented, will help to standardize the methods and procedures used by RTOs and ISOs to accurately measure demand response and energy efficiency resource performance, thereby improving an RTO's or ISO's capability to detect anti-competitive or manipulative behavior. Additionally, this proposed rule will help RTOs and ISOs to properly credit demand response and energy efficiency resources for their efforts.

29. *Internal Review:* The Commission has reviewed the business practice standards proposed in this NOPR and has made a preliminary determination that these standards are necessary to maintain consistency and help increase the effectiveness of RTO and ISO rules pertaining to measurement and verification of demand response and energy efficiency resource practices. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

30. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, email: *DataClearance@ferc.gov*, phone: (202) 502–8663, fax: (202) 273–0873].

31. Comments concerning the information collections proposed in this NOPR and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budge, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at the following email address: *oira_submission@omb.eop.gov.* Please reference FERC–xxx and the docket number of this proposed rulemaking (Docket No. RM05–5–020) in your submission.

[40] "FERC–516" is the Commission's identifier that corresponds to OMB control no. 1902–0096 which identifies the information collection associated with Electric Rate Schedules and Tariff Filings.

[41] "FERC–717" is the Commission's identifier that corresponds to OMB control no. 1902–0173 which identifies the information collection associated with Standards for Business Practices and Communication Protocols for Public Utilities.

[42] The Total Annual Cost for information collection is $10,974. This number is reached by multiplying the total hours to prepare responses (186) by an hourly wage estimate of $59 (a composite estimate of wages plus benefits that includes legal, technical and support staff rates. Based on data from the Bureau of Labor Statistics at *http://bls.gov/oes/current/naics3_221000.htm* and *http://www.bls.gov/news.release/ecec.nr0.htm*). (78 hours for demand response standards + 108 hours for energy efficiency standards) × $59/hour = $10,974.

[43] We note that 24 hours at $59/hour = $1,416 and 54 hours at $59/hour = $3,186.

[44] We note that 36 hours at $59/hour = $2,124 and 72 hours at $59/hour = $4,248.

V. Environmental Analysis

32. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[45] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[46] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.[47] Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

33. The Regulatory Flexibility Act of 1980 (RFA)[48] generally requires an administrative agency to perform an analysis of rulemakings that will have a significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rulemaking while minimizing any significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) develops the numerical definition of a small business.[49] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed four million megawatt hours.[50]

34. The regulations proposed here impose requirements only on RTOs and ISOs, which are not small businesses. Moreover, these requirements are designed to benefit all customers, including small businesses. Accordingly, the Commission hereby certifies, pursuant to section 605(b) of the RFA,[51] that the regulations proposed herein will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

35. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 25, 2012. Comments must refer to Docket No. RM05–5–020, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

36. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

37. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

38. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

39. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

40. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

41. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 38

Conflicts of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 38, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

1. The authority citation for part 38 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 38.2 is amended by revising paragraph (a)(12) and adding paragraph (a)(13) to read as follows:

§ 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) * * *

(12) Business Practices for Measurement and Verification of Wholesale Electricity Demand Response (WEQ–015, 2010 Annual Plan Items 4(a) and 4(b), March 21, 2011).

(13) Business Practice Standards for Measurement and Verification of Energy Efficiency Products (WEQ–021, 2010 Annual Plan Item 4(d), May 13, 2011).

* * * * *

[FR Doc. 2012–9809 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0201]

RIN 1625–AA08

Special Local Regulations; ODBA Draggin on the Waccamaw, Atlantic Intracoastal Waterway, Bucksport, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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[45] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[46] 18 CFR 380.4.

[47] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), and 380.4(a)(27).

[48] 5 U.S.C. 601–612.

[49] 13 CFR 121.101.

[50] 13 CFR 121.201, Sector 22 Utilities n.1.

[51] 5 U.S.C. 605(b).

SUMMARY: The Coast Guard proposes to establish special local regulations on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the ODBA Draggin on the Waccamaw, a series of high-speed boat races. The event is scheduled to take place on Saturday, June 23, 2012, and Sunday, June 24, 2012. Approximately 40 high-speed race boats are anticipated to participate in the races. These special local regulations are necessary to provide for the safety of life and property on navigable waters of the United States during the event. These special local regulations would temporarily restrict vessel traffic in a portion of the Atlantic Intracoastal Waterway. Persons and vessels that are not participating in the races would be prohibited from entering, transiting through, anchoring in, or remaining within the restricted area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 15, 2012. Requests for public meetings must be received by the Coast Guard on or before April 30, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0201 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 John Santorum, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.R.Santorum@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–2012–0201], indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2012–0201] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0201'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before April 30, 2012 using one of the four methods specified under **ADDRESSES.** Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the proposed rule is to insure safety of life and property on the navigable waters of the United States during the ODBA Draggin on the Waccamaw boat races.

Discussion of Proposed Rule

On Saturday, June 23, 2012, and Sunday, June 24, 2012 the Outboard Drag Boat Association (ODBA) will host Draggin on the Waccamaw, a series of high-speed boat races. The event will be held on a portion of the Atlantic Intracoastal Waterway in Bucksport, South Carolina. Approximately 40 high-speed race boats are anticipated to participate in the races.

The proposed rule would establish special local regulations that encompass certain waters of the Intracoastal Waterway in Bucksport, South Carolina. The special local regulations would be enforced daily from 11:30 a.m. until 7:30 p.m. on June 23, 2012 through June 24, 2012. The special local regulations would consist of a regulated area around vessels participating in the event. The regulated area would be as follows: All

waters of the Atlantic Intracoastal Waterway encompassed within an Imaginary line connecting the following points; starting at point 1 in position 33°39′11.46″ N 079°05′36.78″ W; thence west to point 2 in position 33°39′12.18″ N 079°05′47.76″ W; thence south to point 3 in position 33°38′39.48″ N 079°05′37.44″ W; thence east to point 4 in position 33°38′42.3″ N 079°05′30.6″ W; thence north back to origin. All coordinates are North American Datum 1983. Persons and vessels would be prohibited from entering, transiting through, anchoring, or remaining within the regulated area unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization would be required to comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard would provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

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

Regulatory Planning and Review

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

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Intracoastal Waterway encompassed within the regulated area from 11:30 a.m. until 7:30 p.m. on June 23, 2012 and June 24, 2012. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign John Santorum, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.R.Santorum@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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 proposed rule would not result in such an expenditure, we do

discuss the effects of this proposed 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 proposed 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 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

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

Technical Standards

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. This proposed rule involves establishing special local regulations issued in conjunction with a marine regatta, as described in figure 2–1, paragraph (34)(h), of the Instruction. Under figure 2–1, paragraph (34)(h) of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this proposed rule. 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 100

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 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35T07–0201 to read as follows:

§ 100.35T07–0201 Special Local Regulations; ODBA Draggin on the Waccamaw, Atlantic Intracoastal Waterway, Bucksport, SC.

(a) *Regulated Area.* The following regulated area isestablished as a special local regulation: All waters of the Atlantic Intracoastal Waterway encompassed within an Imaginary line connecting the following points; starting at point 1 in position 33°39′11.46″ N 079°05′36.78″ W; thence west to point 2 in position 33°39′12.18″ N 079°05′47.76″ W; thence south to point 3 in position 33°38′39.48″ N 079°05′37.44″ W; thence east to point 4 in position 33°38′42.3″ N 079°05′30.6″ W; thence north back to origin. All coordinates are North American Datum 1983.

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

(c) *Regulations.*

(1) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16 to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

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

(d) *Enforcement Periods.* This rule will be enforced from 11:30 a.m. until 7:30 p.m. daily on June 23, 2012 and June 24, 2012.

Dated: April 2, 2012.

M.F. White,

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

[FR Doc. 2012–9647 Filed 4–23–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0347; FRL–9662–9]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Milwaukee-Racine Nonattainment Area; Determination of Attainment for the 2006 24-Hour Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Milwaukee-Racine, Wisconsin area has attained the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data, from the 2008–2010 monitoring period, supplemented by statistical analysis of these data, showing that the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS. Data available to date for 2011 are consistent with continued attainment. On March 7, 2011, the Wisconsin Department of Natural Resources (WDNR) requested that EPA approve its request for a determination that the Milwaukee-Racine area has attained the standard. If EPA finalizes this proposed determination, the requirement for the State of Wisconsin

to submit an attainment demonstration, associated reasonably available control measures (RACM) to include reasonably available control technology (RACT), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before May 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0347, 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–2011–3047. 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 instructions on submitting comments, go to Section I 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 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 Gilberto Alvarez, Environmental Scientist, at (312) 886–6143 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Gilberto Alvarez, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6143, *alvarez.gilberto@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. What action is EPA taking?
II. What is the background for this action?
III. What is EPA's analysis of the Relevant Air Quality Data?
IV. How did EPA address missing data?
V. Proposed Action
VI. What is the effect of this action?
VII. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing to determine that the Milwaukee-Racine area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This proposed determination is based upon quality-assured, quality controlled, and certified ambient air monitoring data, from the 2008–2010 monitoring period, supplemented by an analysis of whether two sites that were shut down at the end of 2009 would likely have shown attainment had they continued operating. Data in the EPA Air Quality System database available for 2011 are consistent with continued attainment.

II. What is the background for this action?

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a three-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 μg/m³ based on a three-year average of the 98th percentile of 24-hour concentrations. On November 13, 2009, EPA designated the Milwaukee-Racine area as nonattainment for the 2006 24-hour standard (74 FR 58688). On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ standards. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of a determination that an area has attained the $PM_{2.5}$ standards. While 40 CFR 51.1004(c) was promulgated as part of a set of regulations addressing $PM_{2.5}$ NAAQS promulgated in 1997, EPA believes that the same approach is warranted with respect to the $PM_{2.5}$ NAAQS promulgated in 2006.

EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposure to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the Clean Air Act (CAA). EPA and state air quality agencies initiated the monitoring process for the $PM_{2.5}$ NAAQS in 1999 and began operating a full set of air quality monitors by January 2001.

On November 13, 2009, EPA published its air quality designations and classifications for the 2006 24-hour $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2006–2008 (74 FR 58688). Those designations became effective on December 14, 2009. The Milwaukee-Racine area was designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS (see 40 CFR part 81). On March 7, 2011, the WDNR requested that EPA approve its request for a determination that the area has attained the standard, based upon data from the 2008–2010 monitoring period.

III. What is EPA's analysis of the Relevant Air Quality Data?

Today's proposed rulemaking assesses whether the Milwaukee-Racine $PM_{2.5}$ nonattainment area is attaining the 2006 24-hour $PM_{2.5}$ NAAQS, based on the most recent three years of quality-assured data. The area is defined at 40 CFR 81.350, and comprises Milwaukee, Racine and Waukesha Counties.

Under EPA regulations at 40 CFR 50.7, 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentrations, as determined in accordance with appendix N of this part, is less than or equal to 35 μg/m³.

Milwaukee-Racine Air Quality

EPA has reviewed the ambient air monitoring data for the Milwaukee-Racine area in accordance with the provisions of 40 CFR Part 50, appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the three-year period from 2008 to 2010, as well as additional data representing three of four quarters in 2011.

The following table provides the design values (the metrics calculated in accordance with 40 CFR part 50, appendix N, for determining compliance with the NAAQS) for the 2006 24-hour $PM_{2.5}$ NAAQS for the Milwaukee-Racine nonattainment monitors with data for the years 2008–2010.

TABLE 1—MILWAUKEE-RACINE AREA 24-HOUR $PM_{2.5}$ 98TH PERCENTILE CONCENTRATIONS AND DESIGN VALUES FROM 2008–2010 (IN μG/M³)

Site name	Site No.	24-Hour 98 Percentile FRM $PM_{2.5}$ concentration			Resulting design value*
		2008	2009	2010	
Milw-DNR SERHQ	550790026	27.5	39.0	31.9	33
Waukesha	551330027	29.9	32.0	35.9	33
Milw-16th CHC	550790010	27.3	39.1	30.9	32
Milw-FAA/College Ave.	550790058	26.9	33.0	35.3	31
Virginia Street	550790043	27.4	41.7	**	35
Wells Street	550790099	29.0	40.3	**	35

* Design Values were developed in accordance with 40 CFR part 50 appendix N; FRM—Federal Reference Method.
** Indicates incomplete data due to monitor shut down.

IV. How did EPA address missing data?

Appendix N of 40 CFR part 50 sets forth data handling conventions and computations necessary for determining whether areas have met the $PM_{2.5}$ NAAQS, including requirements for data completeness. A monitor meets data completeness requirements when at least 75 percent of the scheduled sampling days of each quarter have valid data. The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data as set forth at 40 CFR part 50, appendix N, section 4.1(c).

As part of their annual monitoring network review and to save resources, WDNR discontinued two monitoring sites (Site Numbers 550790043 and 550790099) on December 31, 2009, resulting in incomplete data for those two sites for 2010. Data from Milwaukee area monitors are shown in Table 1. When Wisconsin requested to shut down two monitors, four of the six monitors within the Milwaukee-Racine area were violating the 2006 24-hour $PM_{2.5}$ NAAQS, including the two sites WDNR requested to shut down. In 2010, the remaining two violating sites in Milwaukee had data showing that they attained the 2006 24-hour $PM_{2.5}$ NAAQS for the 2008–2010 monitoring period. However, because the two sites which were shut down at the end of 2009 were also violating, EPA needed to determine if those two sites would likely have met the 2006 24-hour $PM_{2.5}$ NAAQS if they had continued operating. The approach summarized in this section, and further described in the Technical Support Document (TSD), may or may not be appropriate for other areas with less than complete data. EPA will evaluate the appropriateness of this analytical approach for each area with less than complete data on a case-by-case basis. The analysis described below is similar to analyses conducted for other areas, such as the West Virginia/Kentucky/Ohio Huntington-Ashland Nonattainment Area, except that the analysis presented here is addressing the 24-hour $PM_{2.5}$ NAAQS as opposed to the annual $PM_{2.5}$ NAAQS (76 FR 27290).

Monitoring Network

EPA has determined that the 2006 $PM_{2.5}$ monitoring network for Milwaukee-Racine nonattainment area is adequate, even though two monitors have been shut down. The area currently has four monitoring locations. Under 40 CFR part 58, appendix D, a minimum of three monitors is required. While the area meets the minimum requirements, EPA and the State recognize that more monitors are often necessary to adequately characterize air quality. Therefore, EPA has requested that WDNR re-establish one monitor (Site Number 550790099). This monitor has been placed back into service as of January 2012. Nevertheless, EPA believes that sufficient data are currently available to determine whether the Milwaukee-Racine area is attaining the standard.

Methodology

In situations like those in Milwaukee, where there are missing or incomplete data due to monitor shutdown or other factors, EPA believes that it is often appropriate to use historical data along with statistical techniques to impute missing data, use those imputed data to estimate the three-year design value that would likely have occurred if complete data had been obtained, and thereby determine if the monitor in question would likely have met the NAAQS.

The statistical technique in this case required comparing the two monitoring sites with missing 2010 data against a comparison monitor which is in the general vicinity of the sites with missing data. The comparison monitor is usually the highest correlated site based on historical data. For this reason, the two sites which were shut down (Site Numbers 550790043 and 550790099) were compared with an active monitoring site (Site Number 550790026). These monitors are located within 3 miles and 2 miles, respectively, of the comparison monitor.

A review of historical data for the four monitors that were violating the 24-hour $PM_{2.5}$ NAAQS in the area shows that the

98th percentiles from the two discontinued monitors generally tracked the other two violating monitors well, in that all four sites had 98th percentiles that rose and fell with each other, especially during the period from 2007 and continuing through 2009. If this pattern continued into 2010, there is a strong statistical likelihood, as discussed below, that the two discontinued monitors would have had 98th percentile values that would have been less than those seen in 2009. If 2010 were consistent with 2007 through 2009, the 98th percentile concentrations for the two missing monitors would be below the design value, which would have resulted in the two sites showing attainment.

As part of the analysis of the missing data, a set of statistical regression techniques were used to provide further information regarding the two discontinued monitors' attainment status. The method used to determine the design value for the two discontinued monitors involves establishing a statistical relationship between data for those two monitors (Site Numbers 550790043 and 550790099) and for the monitor which was best correlated with these monitors and remained in operation (in this analysis, Site Number 550790026). A regression equation was used to estimate values to fill in for the missing data from the discontinued monitors. This analysis provided a ''best estimate'' design value for the two sites without 2010 data.

The estimated design values were then analyzed using a bootstrapping statistical method, intended to assess the 2010 concentrations that would have been expected at the sites without 2010 monitoring data had there been random observed associations between the shutdown sites and the comparison site according to the pre-2010 data base. Bootstrapping involves the use of regression residuals and repeating the regression analysis 1,000 times. EPA accepts a monitor as meeting the standard when at least 90% of the bootstrapped design values meet the standard. After extensive statistical analysis, the percentage of bootstrapping results that met the 2006 24-hour $PM_{2.5}$ NAAQS of 35 μg/m^3 were consistently at or above 90%.

Therefore, EPA proposes to conclude that both discontinued monitors would have attained the NAAQS, along with the two monitors which remained in operation. Data available to date for 2011 are consistent with continued attainment.

V. Proposed Action

EPA is proposing to determine that the Milwaukee-Racine nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This proposed determination is based on the analysis presented in the previous section, and because the 2008–2010 design value at each monitor in the Milwaukee-Racine nonattainment area is at or less than the 2006 24-hour $PM_{2.5}$ NAAQS of 35 μg/m^3. This review addresses air quality data collected in the three-year period from 2008 to 2010, as well as additional data representing three of four quarters in 2011.

Pursuant to section 40 CFR 51.1004(c), applicable to the $PM_{2.5}$ standards, if EPA finalizes this proposed determination, it will suspend the requirements for WDNR to submit for this area an attainment demonstration and associated RACM/RACT, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for as long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

VI. What is the effect of this action?

Pursuant to section 40 CFR 51.1004(c), if EPA finalizes this proposed determination for the Milwaukee-Racine nonattainment area, it would suspend the requirements for the State to submit an attainment demonstration and RACM (including RACT), RFP, contingency measures, and any other planning SIPs related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS, and continue until such time, if any, that EPA subsequently determines that the area has violated the 2006 24-hour $PM_{2.5}$ NAAQS. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment based on the 2006 24-hour $PM_{2.5}$ NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register,** that the area has violated the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist for the pertinent area, and WDNR would have to address the relevant requirements for that area. EPA's proposed determination, that the air quality data show attainment of the 2006 24-hour $PM_{2.5}$ NAAQS, is not equivalent to the redesignation of the area to attainment. This action would not constitute a redesignation to attainment under 107(d)(3) of the CAA, because EPA would not yet have an approved maintenance plan for the area as required under 175A of the CAA, nor would it have determined that the area has met the other requirements for redesignation. The designation status of the area would remain nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA approves all remaining requirements and determines that the area meets the CAA requirements for redesignation to attainment.

This action is limited to a determination that the Milwaukee-Racine area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. The 2006 $PM_{2.5}$ NAAQS, which became effective on December 18, 2006 (71 FR 61144) are set forth at 40 CFR 50.13.

VII. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain Federal requirements, and it would 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 2006 24-hour $PM_{2.5}$ clean NAAQS data determination for the Milwaukee-Racine, Wisconsin area 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, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 9, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–9811 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0140(a); FRL–9662–2]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Annual Emissions Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a portion of a State Implementation Plan (SIP) revision submitted on January 31, 2008, by the State of North Carolina, through the North Carolina Division of Air Quality, to meet the emissions statements requirement for North Carolina. EPA is proposing to approve the addition of Cabarrus, Lincoln, Rowan, and Union Counties in their entireties and Davidson Township and Coddle Creek Township in Iredell County to the annual emissions reporting requirement into the North Carolina SIP. This action is being taken pursuant to section 110 and section 182 of the Clean Air Act.

DATES: Written comments must be received on or before May 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number, ''EPA–R04–OAR–2009–0140,'' 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–2009–0140,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

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: Ms. Sara Waterson of the Regulatory Development Section, in the 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) 562–9061. Ms. Sara Waterson can be reached via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 27, 2008, EPA published a revised ozone national ambient air quality standard (NAAQS). *See* 73 FR 16436. The current action, however, is being taken to address requirements under the 1997 ozone NAAQS.

For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: March 4, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–9620 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0021(b); FRL–9661–9]

Approval and Promulgation of Implementation Plans; Georgia; Atlanta; Ozone 2002 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the ozone 2002 base year emissions inventory portion of the state implementation plan (SIP) revision submitted by the State of Georgia on October 21, 2009. The emissions inventory is part of the Atlanta, Georgia (hereafter referred to as ''the Atlanta Area'' or ''Area''), ozone attainment demonstration that was submitted for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The Atlanta Area is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties. This action is being taken pursuant to section 110 of the Clean Air Act. In the Rules Section of this **Federal Register**, EPA is approving Georgia's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal, and anticipates no adverse comments.

DATES: Written comments must be received on or before May 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0021 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2010–0021,'' 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 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: Sara Waterson, 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) 562–9061. Ms. Waterson can be reached via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 12, 2008, EPA issued a revised ozone NAAQS. *See* 73 FR 16436. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS. Requirements for the Atlanta Area under the 2008 ozone NAAQS will be addressed in the future. For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: April 4, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–9706 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0194; FRL–9664–5]

Approval and Promulgation of Implementation Plans; California; Revisions to the California State Implementation Plan Pesticide Element

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve several revisions to the Pesticide Element of the California state implementation plan (SIP). These revisions include regulations adopted by the California Department of Pesticide Regulation (CDPR) that: (1) Reduce volatile organic compound (VOC) emissions from the application of agricultural field fumigants in the South Coast, Southeast Desert, Ventura, San Joaquin Valley (SJV), and Sacramento Metro ozone nonattainment areas by restricting fumigant application methods; (2) establish a contingency fumigant emissions limit and allocation system for Ventura; (3) require CDPR to prepare and make available to the public an annual pesticide VOC emissions inventory report; and (4) require recordkeeping and reporting of pesticide usage. EPA also proposes to approve CDPR's commitments to manage VOC emissions from the use of agricultural and commercial structural pesticides in the SJV to ensure that they do not exceed 18.1 tons per day and to implement restrictions on VOC emissions in the SJV from non-fumigant pesticides by 2014. Lastly, EPA is providing its response to a remand by the Ninth Circuit Court of Appeals of EPA's 2009 approval of a revision to the California SIP related to reducing VOC emissions from pesticides.

DATES: Any comments must arrive by May 24, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0194, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *Email: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel, (AIR–4), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

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

Docket: The technical support document (TSD) and the index to the docket for this proposed action is available electronically on the *www.regulations.gov* Web site and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with either of the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For information on the proposed action on CDPR's regulations: Nancy Levin, Rules Office (AIR–4), (415) 972–3848, *levin.nancy@epa.gov.* For information on the proposed actions on CDPR's commitments and the PEST–1 measure: Frances Wicher, Air Planning Office (AIR–2), (415) 972–3957, *wicher.frances@epa.gov.*

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

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I. Introduction

This proposed action deals with revisions to California's federally-approved program to reduce emissions from the use of agricultural and structural pesticides to improve ozone air quality in five areas of the State: the South Coast, Southeast Desert (SED), Ventura, San Joaquin Valley (SJV), and Sacramento Metro nonattainment areas. Pesticides contribute to ozone pollution through the emissions of volatile organic compounds (VOC). VOC react in the atmosphere with nitrogen oxides (NO_X) in the presence of sunlight to form ozone. Breathing ground-level ozone can result in a number of health effects that are observed in broad segments of the population. These health effects include reduced lung function and inflamed airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Ozone exposure also increases the risk of premature death from heart or lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.

Pesticides contribute about 5 percent to total VOC emissions in SJV and Ventura ozone nonattainment areas and less than 1 percent to total VOC emissions in the South Coast, SED, and Sacramento Metro areas. *See* TSD, section I.D.

This proposal addresses the regulation of VOC emissions from pesticides under the federal Clean Air Act (CAA or ''Act''). Pesticides and their uses and application are primarily regulated under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This proposal does not address regulations of pesticides under FIFRA or other federal acts.

II. The Current California SIP Pesticide Element and a Description of the Proposed Revisions

A. Currently-Approved Provisions of the California SIP Pesticide Element

Prior to today's proposal, EPA has taken three actions to either approve or revise provisions of the California SIP Pesticide Element. We briefly describe each action below. More information on each action and its background can be found in section I.E. of the TSD for this proposal.

• *1994 Pesticide Element*—The 1994 Pesticide Element was submitted by California in November 1994 as part of the State's comprehensive 1-hour ozone attainment plan (known as the 1994 Ozone SIP) and included a plan by CDPR to reduce VOC emissions from agricultural and structural pesticides in five ozone nonattainment areas by a maximum of 20 percent from 1990 baseline levels by 2005 and to adopt regulations if necessary to achieve these reductions. EPA approved the 1994 Pesticide Element on January 8, 1997 (62 FR 1150) and codified it at 40 CFR 52.220(c)(204)(i)(A)(6) and 52.220(c)(236).

• *PEST–1 Measure in CARB's 2003 State Strategy*—In 2003, the California Air Resources Board (CARB) updated the statewide strategy that was part of the 1994 Ozone SIP. One of the measures in the 2003 State Strategy was PEST–1 (''Implement Existing Pesticide Strategy''), which retained and continued unchanged the provisions of the 1994 Pesticide Element. EPA approved the PEST–1 measure into the California SIP as part of its action to approve in part and disapprove in part the 2003 South Coast Air Quality Management Plan and 2003 State Strategy. *See* 74 FR 10176 (March 10, 2009), codified at 40 CFR 52.220(c)(339)(ii)(A)(*1*).[1]

• *2007 Ventura Pesticide Element*—In 2007, CARB submitted a revision to the Ventura portion of the 1994 Pesticide Element. This revision reduced in part and temporally the emissions reduction commitment for Ventura in 1994 Pesticide Element. EPA approved this revision in 2008. *See* 73 FR 41277 (July 18, 2008), codified at 40 CFR 52.220(c)(355)(i)(A).

B. Proposed Revisions to the California SIP Pesticide Element

EPA is proposing to approve regulations and commitments adopted by the CDPR to limit VOC emissions from the use of agricultural and commercial structural pesticides in the South Coast, SED, Ventura, SJV, and Sacramento Metro ozone nonattainment areas.[2] These CDPR regulations and commitments were submitted by CARB to EPA as follows:

1. October 12, 2009 submittal[3] of the following CDPR regulations:

• Title 3 California Code of Regulations (CCR), sections 6447 (first paragraph) and 6447.3–6452 pertaining to field fumigation methods;

• Portions of 3 CCR sections 6452.1–6452.4 and sections 6624–6626 pertaining to emission inventory;

• 3 CCR sections 6452.2 and 6452.3 pertaining to field fumigation limits and allowances in the Ventura ozone nonattainment area.[4]

2. October 12, 2009 submittal[5] of CDPR's revised ''Pesticide Emission Reduction Commitment for the San Joaquin Valley''. This submittal caps VOC emissions from the use of agricultural and commercial structural pesticides in the SJV to 18.1 tpd and commits CDPR to implement restrictions on non-fumigant pesticides in the SJV by 2014.

3. August 2, 2011 submittal[6] of the following CDPR regulations which revised in part and added to the October 12, 2009 submittal:[7]

[1] In *Association of Irritated Residents* v. *EPA,* No. 09–71383, the 9th Circuit Court of Appeals remanded the approval of PEST–1 to EPA with the instructions to determine whether the Pesticide Element has sufficient enforcement mechanisms to satisfy the requirements of the Clean Air Act (CAA or Act). We provide our response to the remand in section IV of this notice.

[2] The South Coast nonattainment area includes Orange County and portions of Los Angeles, San Bernardino, and Riverside Counties. The Southeast Desert (SED) nonattainment area includes the Coachella Valley in Riverside County, Antelope Valley in Los Angeles County, and the southwestern quadrant of San Bernardino County. The Ventura nonattainment area is Ventura County. The San Joaquin Valley (SJV) nonattainment area includes San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare and Kings Counties and the valley portion of Kern County. The Sacramento Metro nonattainment area includes Sacramento County and parts of El Dorado, Placer, Solano and Sutter Counties.

[3] *See* letter, James N. Goldstene, Executive Officer, CARB to Laura Yoshii, Acting Regional Administrator, EPA Region 9, October 12, 2009.

[4] CARB did not submit for inclusion into the SIP those portions of 3 CCR sections 6452.2 and 6452.3 pertaining to field fumigation limits and allowances in the South Coast, SED, SJV, and Sacramento Metro ozone nonattainment areas.

[5] See letter, James N. Goldstene, Executive Officer, CARB to Laura Yoshii, Acting Regional Administrator, EPA Region 9, October 12, 2009.

[6] *See* letter, James N. Goldstene, Executive Officer, CARB to Jared Blumenfeld, Regional Administrator, EPA Region 9, August 2, 2011.

[7] As part of its August 2, 2011 submittal, CARB also submitted 3 CCR section 6400 (Restricted Materials), 6446 (Methyl Iodide Field—General Requirements) and section 6446.1 (Methyl Iodide Field Fumigation Methods) and methyl-iodide

• 3 CCR sections 6448.1, 6449.1, and 6450.1 pertaining to fumigation method restrictions.

• Portions of 3 CCR sections 6452.2 and 6452.3 pertaining to field fumigation limits and allowances in the Ventura ozone nonattainment area.

• 3 CCR section 6452.4 pertaining to the annual VOC emissions inventory report.

• 3 CCR sections 6624 and 6626 pertaining to pesticide use records and reports.

The submitted CDPR regulations that we are proposing action on today can be divided into four distinct but related parts. The first part (3 CCR sections 6447 through 6452) establishes standards for fumigant application and restricts the use of certain higher-emitting application methods in the five nonattainment areas. The second part (3 CCR sections 6452.2 and 6452.3) provides a contingency mechanism to limit VOC emissions from field fumigant applications in the Ventura nonattainment area. The third part (3 CCR section 6452.4) requires CDPR to annually report on pesticide VOC emissions in each of the five nonattainment areas and establishes requirements for the report. The fourth part (3 CCR sections 6624 and 6626) establishes the recordkeeping and reporting requirements necessary to ensure compliance with the other parts. We describe each part in more detail below.

The first part (3 CCR sections 6447 through 6452) establishes, by fumigant and method, requirements for the field application of seven fumigants and restricts the use of certain higher-emitting application methods in the South Coast, SED, Ventura, SJV, and Sacramento Metro ozone nonattainment areas during the period May 1 to October 31.[8] Requirements are described for the field fumigants: methyl bromide (sections 6447 and 6447.3), 1,3-dichloropropene (sections 6448 and 6448.1), chloropicrin (sections 6449 and 6449.1), metam-sodium, potassium N-methyldithiocarbamate and dazomet (sections 6450, 6450.1 and 6450.2), and sodium tetrathiocarbonate (sections 6451 and 6451.1).

Specific requirements for applying these fumigants include, for example, limiting fumigant application rates (pounds/acre); specifying application methods (e.g., minimum injection depth below soil surface, number of water treatments, minimum hours to leave tarpaulin in place); and requiring plans to address damaged tarpaulins. 3 CCR section 6452 allows CDPR to approve alternative fumigation methods under certain conditions and based on specific criteria.

As submitted, the second part of CDPR's regulations (3 CCR sections 6452.2 and 6452.3) apply only to the Ventura ozone nonattainment area. This part requires CDPR to set a field fumigant VOC emissions limit for Ventura in its annual VOC emissions inventory report if overall pesticide emissions (not just fumigant emissions) in the Ventura nonattainment area are found to be within five percent of or exceed the listed benchmark. The benchmark is equivalent to the 20 percent reduction in pesticide VOC emissions from 1990 emissions levels that is required in the area by the California SIP Pesticide Element. This part further requires that the county agricultural commissioner add conditions to field fumigation permits or take other actions that will prevent the field fumigant limit from being exceeded.

The third part of the submitted regulations (3 CCR section 6452.4) requires CDPR to issue an annual emissions inventory report that reports the total agricultural and commercial structural (fumigant and nonfumigant) pesticide VOC emissions for previous years in each of the five nonattainment areas and evaluates compliance with the emissions reduction targets in each area. This section specifies the method for calculating emissions and requires CDPR make a draft emissions inventory available to the public for a 45-day comment period and post the final report on its Web site.

The fourth part of the submitted regulations (3 CCR sections 6624 and 6626) establishes the pesticide use recordkeeping and reporting requirements needed to assure compliance with the other parts. This part requires anyone using pesticides in specific applications to keep and maintain certain records for two years and requires operators of property that produces an agricultural commodity and agricultural pest control businesses to report the use of pesticides to the county agricultural commissioner. These sections require the recording and reporting of the method for fumigant application in the five nonattainment areas.

CDPR has revised its commitments in the 1994 Pesticide Element to limit VOC emissions from agricultural and commercial structural pesticides in the SJV. Specifically, it is now committing to

• Use a specified emissions estimation methodology to establish the 1990 pesticide VOC emission levels and evaluate compliance with the provisions in the 1994 Pesticide Element for SJV;

• Implement restrictions on agricultural fumigation methods and by 2014 implement restrictions on VOC emissions from non-fumigant pesticides; and

• Manage VOC emissions from agricultural and commercial structural pesticide use to ensure that they do not exceed 18.1 tons-per-day in the SJV area (which is equivalent to a 12 percent reduction in pesticide VOC emissions from 1990 levels).

III. EPA's Evaluation of the Revisions to the California SIP Pesticide Element

A. CAA Procedural and Administrative Requirements for SIP Submittals Under CAA Section 110

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with EPA's implementing regulations in 40 CFR 51.102. All three submittals under consideration here included evidence of adequate public notice and opportunity for comment.

CAA section 110(k)(1)(B) requires EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any SIP submittal that we have not affirmatively determined to be complete or incomplete will become complete by operation of law six months after the day of submittal. The October 12, 2009 submittals of the CDPR's regulations and the revised SJV Pesticide Element went complete by operation of law on April 12, 2009. The August 2, 2011 submittal of revisions to CDPR's regulations went complete by operation of law on February 2, 2012.

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related portions of provisions 6452.2(a)(4)(Annual Volatile Organic Compound Emissions Inventory Report) and 6624(f) (Pesticide Use Records). We are deferring action on these provisions due to California's cancellation, effective March 21, 2012, of the registration of all products containing the active ingredient methyl iodide. CDPR adopted this set of methyl iodide-related regulations on May 11, 2011, after and separately from the CDPR April 7, 2011 regulations that are also included in the CARB August 2, 2011 submittal.

[8] CDPR's regulations establishing the parameters for field fumigant application methods (but not the restrictions on which methods may be used during certain periods of the year) apply statewide; however, EPA is limiting its approval to just the five listed nonattainment areas.

B. Enforceability of Emission Limitations Under CAA Section 110(a)(2)(A)

CAA section 110(a)(2)(A) requires that SIP ''shall include enforceable emissions limitations, and such other control measures, means or techniques (* * *) as well as schedules and timetables for compliance, as may be necessary or appropriate for attainment * * *.''

In order to be enforceable, SIP regulations and commitments must be clear regarding, for example, who must comply, by what date, the standard of compliance, the methods used to determine compliance, and the process and criteria for obtaining any variation from the normal mode of compliance.[9] Guidance used to help evaluate enforceability includes the Bluebook and the Little Bluebook.[10]

Field Fumigant Regulations

CDPR's regulations include recordkeeping requirements in 3 CCR section 6624 (Pesticide Use Records) and the reporting requirements in 3 CCR section 6626 (Pesticide Use Reports for Production Agriculture). Among these recordkeeping and reporting requirements is the provision that require any person who uses a fumigant in any of the five ozone nonattainment areas to record and report a description of the application method. See 3 CCR sections 6624(f) and 6626(d). The regulations provide specific methods, limits, and timeframes for agricultural use of each fumigant. The regulations provide a process and criteria for use of a field fumigation method not described in the regulations. The request to implement a method not described in the regulations must be accompanied by scientific data documenting the VOC emissions, and that the method will not result in emissions greater than any one of the methods allowed for use by the regulations. The director must consider criteria such as data sufficiency and validity, and representativeness of field conditions studied. *See* 3 CCR section 6452.

The recordkeeping and report requirements and other rule provisions in the submitted regulations are clear and adequate to ensure that California's submitted fumigant regulations is enforceable as required by of CAA section 110(a)(2)(A).

Pesticide Emission Reduction Commitment for the San Joaquin Valley

The mechanism to track compliance with the 18.1 tpd limit on VOC emissions from agricultural and commercial structural pesticides in SJV is the Annual VOC Emissions Inventory Report required by 3 CCR section 6452.4. (Annual Volatile Organic Compound Emissions Inventory Report). For tracking compliance with the overall VOC limit in the SJV, CDPR proposes to use the emissions estimation methodology described on page 2–4 (in the section ''Procedure for Calculating Unadjusted and Adjusted Volatile Organic Compound Emissions'') of November 5, 2008 memorandum from Rosemary Neal, CDPR to Randy Segawa, CDPR, Subject: Update to the Pesticide Volatile Organic Inventory; Estimated Emissions 1990–2006, and Preliminary Estimates for 2007 (''Neal memorandum'').[11] Procedures for calculating pesticide VOC emissions are also in 3 CCR section 6452.4(a)(1).[12] The Neal memorandum lays out a calculation process that follows standard inventorying practice and provides the same procedures for calculating VOC emissions as 3 CCR section 6452.4(a)(1). Pesticide usage rates used to calculate total emissions are collected from pesticide use reports which are required by 3 CCR section 6626 and the requirements for persons (e.g., pesticide applicators) to keep and report the data necessary for preparing the annual report are in 3 CCR section 6624. These provisions are clear and adequate in combination with the fumigant regulations to ensure the pesticide VOC limit for the SJV is enforceable as required by CAA section 110(a)(2)(A).

CDPR has committed to implement restrictions on VOC emissions from non-fumigant regulations by 2014 which we interpret to mean by no later than May 1, 2014 given that CDPR projects emissions reductions from these restrictions in 2014 and its control program operates from May 1 to October 31 of each year. *See* ''Proposed SIP Commitment for San Joaquin Valley,'' page 2. To achieve reductions in 2014, the restriction would need to be implemented by the beginning of the regulatory season (May 1) in that year. CDPR does not commit to a specific emissions reduction from the additional restrictions on non-fumigant pesticide; however, the restrictions are part of CDPR's regulatory program to ensure that the inventory target of 18.1 tpd in the SJV is not exceeded (*Id.* at page 1), which effectively defines the needed stringency. This commitment is sufficiently clear and adequate to ensure that is enforceable as required by CAA section 110(a)(1)(A).

C. Reasonably Available Control Measures/Reasonably Available Control Technology (RACM/RACT) Requirement Under CAA Sections 172(c)(1) and 182(b)(1)

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' RACM is a requirement only for nonattainment areas.

EPA defines RACM as any potential control measure for application to point, area, on-road and non-road emissions source categories that meets certain criteria. These criteria include whether the measure is technologically and economically feasible and either individually or collectively with other RACM can advance the attainment date by at least one year. *See* 57 FR 13498, 13560 (April 16, 1992). The determination as to whether a SIP provides for the implementation of RACM as required by CAA section 172(c)(1) is done as part of an area's attainment and reasonable further progress plans and not on a rule-by-rule basis.

For ozone nonattainment areas classified as moderate or above, CAA section 182(b)(2) requires the implementation of reasonably available control technologies (RACT) on all major sources of VOC[13] and for each

[9] ''Review of State Implementations Plans and Revisions for Enforceability and Legal Sufficiency'' (Enforceability Guidance), Craig Potter, EPA, September 23, 1987. See also General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990. 57 FR 13498, 13502 and 13541 (April 16, 1992) and CAA sections 110(a)(2) and 172(c)(6). *http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/review-enf-rpt.pdf.*

[10] ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' U.S. EPA, OAQPS, May 25, 1988 (''the Bluebook'') and ''Guidance Document for Correcting Common VOC and Other Rule Deficiencies,'' U.S. EPA Region 9, August 21, 2001 (''the Little Bluebook'').

[11] The Neal memorandum was included as part of October 12, 2009 submittal of the ''Pesticide Emission Reduction Commitment for the San Joaquin Valley'' and we intend to include it as additional material in the California SIP should we finalize our proposed approval of CDPR's commitment.

[12] These procedures apply not only to SJV but also to the other four nonattainment areas.

[13] In areas classified as severe (such as SED, Ventura, and Sacramento Metro), a major source is a stationary source that emits or has the potential to emit at least 25 tons of VOC or NO_X per year. *See* CAA sections 182(d) and (f). For extreme areas (South Coast and SJV), a major stationary sources

VOC source category for which EPA has issued a Control Techniques Guideline (CTG). CAA section 182(f) requires that RACT under section 182(b)(2) also apply to major stationary sources of NO_X. *See* CAA sections 182(d) and (f).

The proposed revisions to the California SIP Pesticide Element that we are evaluating here are intended to reduce VOC emissions in the South Coast, SED, Ventura, SJV, and Sacramento Metro ozone nonattainment areas. VOC emissions contribute to the formation of ozone and secondary particulate matter. EPA, though, has determined by rule that states do not need to address controls for sources of VOC emissions for $PM_{2.5}$ standard attainment unless the state and/or EPA make a technical demonstration that such controls would significantly contribute to reducing $PM_{2.5}$ concentrations in the nonattainment area. *See* 40 CFR 51.1002(c)(3). Such a determination would be made in the context of each area's plan for attainment of the $PM_{2.5}$ standards. Of the areas subject to the California SIP Pesticide Element, only the South Coast, SJV, and Sacramento Metro areas are nonattainment for one or more of the $PM_{2.5}$ standards and only South Coast controls VOC for $PM_{2.5}$ attainment.

Field Fumigant Regulations

CARB's 2009 submittal of the field fumigant regulations did not include a demonstration of how the field fumigation methods implement RACT.[14] In response to EPA comments, CDPR provided a document containing more detailed information on its RACT evaluation of fumigation methods.[15] This document contains a general discussion of strategies for controlling VOC emissions from fumigants and an evaluation of field fumigation method options, including the basis for those accepted and those rejected by CDPR for inclusion in its regulations. It discusses current research on fumigant VOC emission reduction methods, including a reevaluation of fumigants to obtain additional data to replace surrogate data used in developing the adopted regulations.

Field fumigation emissions are considered fugitive emissions because they are emissions that ''could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.'' [16] As noted above, CAA section 182(b)(1) requires RACT be applied to all to major stationary sources in a ozone nonattainment area classified moderate or above. EPA has not yet defined by rule whether fugitive emissions must be included in determination of major source status for the purposes determining the application of section 182(b)(1) RACT requirement; however, EPA believes, based on the information provided in the CDPR's alternatives analysis, and the research cited to support it, that CDPR has demonstrated that the proposed regulations are stringent enough to implement RACT-level controls on the application of pesticides.

On January 10, 2012, EPA partially approved and partially disapproved the section 182(b)(1) RACT SIP submitted by California on June 18, 2009 for the SJV ozone nonattainment area. The partial disapproval was based in part on our conclusion that the State had not fully satisfied CAA section 182(b) RACT requirements for the application of fumigants. *See* 77 FR 1417, 1425 (January 10, 2012). Based on our proposed finding here that CDPR's field fumigant regulations provide RACT-level controls on this source category, final approval of these regulations would satisfy California's obligation to implement RACT under CAA section 182(b)(1) for this source category for the 1-hour ozone and 1997 8-hour ozone standards for the SJV RACT SIP.

EPA has recently approved the attainment, RFP and RACM demonstrations in the 8-hour ozone SIPs for the South Coast and San Joaquin Valley and the $PM_{2.5}$ SIP for the South Coast (which did include VOC reductions in its RFP and attainment demonstrations).[17] These demonstrations relied in part on VOC control measures in the 2007 State Strategy; however, EPA's approval of these demonstrations did not rely on emissions reductions from CDPR's field fumigant regulations. Therefore, their approval into the SIP is consistent with the approved RACM demonstrations.

CARB has submitted SIPs to address attainment of the 1997 8-hour ozone standard in the SED, Ventura County, and Sacramento Metro nonattainment. EPA has not yet acted on these plans although we note that none rely on reductions from controls on pesticides.

Pesticide Emission Reduction Commitment for the San Joaquin Valley

As noted above, the demonstration that a SIP provides for the implementation of RACM as required by CAA section 172(c)(1) is done as part of an area's attainment and reasonable further progress plans and not on an individual rule or commitment basis.

EPA recently approved the 2007 8-hour ozone SIP for the San Joaquin Valley, including the SIP's RACM demonstration. 77 FR 12652 (March 1, 2012). To demonstrate that the SIP provided for RACM, California relied in part on measures in the 2007 State Strategy, including the ''Pesticide Emission Reduction Commitment for the San Joaquin Valley'' (as revised April 17, 2009) that we are proposing to approve here. However, because we had not yet approved the commitment into the SIP, we did not grant any emissions reductions credit to the commitment in either the RFP or attainment demonstration nor did we rely on it to make our determination that the 2007 SIP provided for RACM. *See* Air Division, EPA Region 9, ''Final Technical Support Document and Response to Comments Final Rule on the San Joaquin Valley 2007 Ozone Plan and the San Joaquin Valley Portions of the 2007 State Strategy,'' December 15, 2011, pp. 51–57. Because EPA's approvals of the attainment, RFP, and RACM demonstrations in the SJV 2007 8-hour ozone SIP did not rely on emissions reductions from CDPR's commitment to limit pesticide VOC emissions in the SJV to 18.1 tpd, its approval into the SIP is consistent with the approved RACM demonstration.

D. Finding of Non-Interference With Applicable Requirements of the CAA Under Section 110(l)

Revisions to the SIP, including revisions to SIP-approved control measure, must meet the requirements of CAA section 110(l) to be approved by EPA. CAA section 110(l) ''Plan Revisions'' provides in relevant part:

The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in [section 171]) or any other applicable requirement of [the CAA].

is one that emits or has the potential to emit at least 10 tons of VOC or NO_X per year. *See* CAA sections 182(e) and (f).

[14] *See* letter, Andrew Steckel, EPA Region 9 to Frank Spurlock, CDPR and Mike Guzzetta, CARB, November 2, 2010.

[15] *See* letter and attachments, Randy Segawa, CDPR to Andrew Steckel, EPA–Region 9, Reducing Volatile Organic Compound Emissions from Pesticides: Analysis of Alternatives for Field Fumigation Methods, June 28, 2011.

[16] *See* 40 CFR 70.2 (Definitions).

[17] *See* 76 FR 69928 (November 9, 2011) (South Coast $PM_{2.5}$ Plan), 77 FR 12652 (March 1, 2012) (SJV 2007 8-hour Ozone SIP), and 77 FR 12674 (March 1, 2012) (South Coast 8-hour Ozone Plan). EPA has also recently approved the SJV 2008 $PM_{2.5}$ SIP which relied in part on measures in the 2007 State Strategy. In approving that SIP, EPA concurred with the State's determination that VOC did not need to be controlled for $PM_{2.5}$ attainment in the SJV and therefore the plan did not include did not need to evaluate VOC control measures as part of its RACM demonstration. *See* 76 FR 69896, 69924 (November 9, 2011). The $PM_{2.5}$ plan for the Sacramento Metro area is not due until late 2012.

We interpret section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. We also interpret section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. The scope and rigor of an adequate section 110(l) demonstration of noninterference depends on the air quality status of the area, the potential impact of the revision on air quality, the pollutant(s) affected, and the nature of the applicable CAA requirements.

In reviewing a modification to an approved SIP provision, we look to see to what extent the existing SIP has relied on that provision to meet applicable CAA requirements. For emissions reduction measures, we generally conclude that the revision will not interfere with any applicable requirement related to attainment or RFP if the revised SIP will provide the same or more emissions reductions on the same or similar schedule as the existing SIP. We note, however, that CAA section 110(l) does not bar approval of SIP revisions that may result in higher levels of emissions than would potentially occur under the unrevised SIP; only that such revisions do not result in the applicable SIP no longer providing for expeditious attainment or RFP or complying with any other applicable requirements of the CAA.

The submittals that we are evaluating in this proposal for inclusion into the California SIP control VOC emissions in five California areas. Neither the field fumigant regulations nor the SJV pesticide SIP commitment explicitly regulated any other pollutant besides VOC. VOC is a precursor pollutant for ozone as well as for both fine ($PM_{2.5}$) and coarse (PM_{10}) particulate matter.[18] At this time, only the South Coast's SIP relies on VOC controls for $PM_{2.5}$ or PM_{10} attainment and none of its adopted particulate matter plans rely on reductions from the California SIP Pesticide Element (either as already approved or proposed for approval here) to demonstrate attainment, RFP, or RACM or to meet any other requirement of the CAA.

Field Fumigant Regulations

The CDPR's field fumigant regulations are the first such regulations incorporated into the California SIP. Their approval will strengthen the SIP by providing SIP-enforceable measures and compliance procedures to reduce emissions from the application of fumigants in the five ozone nonattainment areas covered by the regulations. Their approval will also aid compliance with the approved California SIP Pesticide Element's provisions for reducing VOC emissions by 20 percent from 1990 baseline levels in the South Coast, SED, Ventura, and Sacramento Metro ozone nonattainment areas. Their approval will also aid compliance with the proposed 18.1 tpd limit on pesticide VOC emissions in the San Joaquin Valley. Therefore, EPA proposes to find that approving the field fumigant regulations into the California SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress or with any other applicable requirement of the CAA.

Pesticide Emission Reduction Commitment for the San Joaquin Valley

In 1997, EPA approved the 1994 Pesticide Element into the California SIP. See 62 FR 1150, 1170 (January 8, 1997). As approved, the Element's goal was to reduce VOC emissions from agricultural and commercial structural pesticide applications by a maximum of 20 percent from the 1990 baseline emission inventory by 2005 in areas that relied on VOC reductions from pesticides in their attainments plans with reductions to occur linearly from 1990 to 2005 but it allowed for less than 20 percent if fewer VOC reductions from pesticide were needed. *See* ''The State Implementation Plan for Agricultural and Commercial Structural Pesticides,'' November 15, 1994 (''1994 Pesticide SIP''), p. 1.[19]

The attainment demonstration for the SJV in the 1994 Ozone SIP relied in part on reductions of 12 percent from 1990 emissions levels from the 1994 Pesticide Element to demonstrate attainment by the area's then-applicable attainment deadline of November 15, 1999. In approving the 1994 Pesticide Element and the SJV ozone attainment demonstration, EPA credited the element with 13 tpd (in 1994 SIP currency[20]) in VOC emissions reductions in 1999.[21] At the same time, EPA noted that California had committed to adopt and submit any regulations necessary to reduce VOC emissions from agricultural and commercial structural pesticides by 12 percent in 1999[22] in SJV. *See* 61 FR 10920, 10935 (March 18, 1996).

In 2003, CARB updated the strategy that was part of the 1994 Ozone SIP. One of the measures in the 2003 State Strategy was PEST–1 (''Implement Existing Pesticide Strategy''), which retained the provisions of the 1994 Pesticide Element. In 2004, CARB submitted the 2004 Extreme [1-hour Ozone] Attainment Plan for the SJV[23] which relied in part on the 2003 State Strategy for the reductions needed to demonstrate attainment by SJV's new applicable attainment date of November 15, 2010. On page 27 of its staff report for that plan,[24] CARB discusses the measures in the 2003 State Strategy including PEST–1. It describes the measure as a ''[c]ontinuation of the Department of Pesticide Regulation's approved SIP obligation to reduce volatile emissions from pesticides [which f]or the San Joaquin Valley * * * means a pesticide VOC emissions

[18] As noted previously, while EPA considers VOC to be a precursor to PM, it does not require control of VOC emissions for PM standard attainment in most instances. *See* 72 FR 20586, 20589 (April 25, 2007) and 57 FR 13498, 13538 (April 16, 1992).

[19] As submitted, the 1994 Pesticide Element consisted of three documents: the 1994 Pesticide SIP and the memorandum from James W. Wells, Director, CDPR, to James D. Boyd, Executive Officer, CARB, May 9, 1995 (''Wells memorandum'') and the letter from James D. Boyd, Executive Officer, CARB, to David Howekamp, Division Director, EPA–Region 9, June 13, 1996 (''Boyd Letter''). As approved, it consisted of the 1994 Pesticide SIP (40 CFR 52.220(c)(204)(i)(A)(6)) and the Boyd letter (40 CFR 52.220(c)(236)). See section IV of this preamble for further discussion of the 1994 Pesticide Element.

[20] A SIP's ''currency'' is the emissions inventory on which it is based. An emissions reduction expressed in a particular ''SIP currency'' is an emissions reduction calculated using the inventory included in that SIP. Because inventories vary from SIP to SIP for reasons unrelated to controls (e.g., improved activity estimates or emissions factors), the estimated emissions reductions from a control measure in tons per day can change from SIP to SIP even if the effectiveness of the control measure as a percentage of the emissions category does not.

[21] The 13 tpd figure was provided by CARB on page A–2 and in Attachment C of the Boyd Letter. For the 1994 Ozone SIP, the State estimated that VOC emissions from pesticide use in 1990 in the San Joaquin Valley were 62.5 tpd. A 12 percent reduction from this level would require reducing overall pesticide emissions to be no more than 55.0 tpd in 1999. The State further estimated that without controls, VOC emissions from pesticides in the SJV would increase to 67.9 tpd by 1999, thereby requiring a reduction of 12.9 tpd (67.9 tpd minus 55.0 tpd, rounded to 13 tpd) in 1999 in order to meet the target level for a 12 percent reduction. See CDPR, *Staff Report on the Department of Pesticide Regulation's Proposed SIP Commitment for San Joaquin Valley,''* undated, p. 1, ftn 1.

[22] A 20 percent reduction that was to occur linearly over the fifteen years between 1990 and 2005 would accrue reductions at a rate of 1.33 percent per year (20 percent divided by 15 years) resulting in a 12 percent reduction by 1999 (9 years times 1.33 percent per year).

[23] San Joaquin Valley Air Pollution Control District, ''Extreme Ozone Attainment Demonstration Plan'' adopted October 8, 2004; amended October 20, 2005 and August 21, 2008.

[24] CARB, *Staff Report, Proposed 2004 State Implementation Plan For Ozone In The San Joaquin Valley,* Release Date: September 28, 2004.

target of 12 percent less than 1990 levels.''

EPA approved PEST–1 into the SIP as part of its action to approve in part and disapprove in part the 2003 South Coast AQMP. *See* 74 FR 10176 (March 10, 2009), codified at 40 CFR 52.220(c)(ii)(A)(1). We have not approved any other changes to the SJV-related provisions of 1994 Pesticide Element nor have we granted any emissions reductions credit for the 1994 Pesticide Element beyond the 13 tpd (in 1994 SIP currency) approved as part of our action on the 1994 Ozone SIP.[25]

California is now proposing to revise its SIP Pesticide Element for the SJV to replace the requirement to achieve a percent reduction in VOC emissions from pesticides with a limit on overall VOC emissions from pesticides in the SJV of 18.1 tpd of VOC during the high ozone season of May 1 to October 31. The 18.1 tpd cap equates to a reduction of 12 percent from the current estimate of 1990 pesticide VOC emissions levels in the SJV.[26]

Based on our review of the proposed revision, we find that the revision will result in, at minimum, the same emissions reductions that are currently required by the approved SIP and will not delay those reductions given that the limit is currently effective. We, therefore, propose to find that approving CDPR's commitment to manage VOC emissions from agricultural and commercial structural pesticide use to ensure that they do not exceed 18.1 tpd in the SJV area into the California SIP will not interfere with any requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

In comments that EPA received on its proposed approval of the SJV 2004 Extreme Ozone Attainment Plan (74 FR 33933(July 14, 2009)), several non-governmental organizations argued that the 1994 Pesticide Element requires a 20 percent reduction in VOC emissions from 1990 levels by 2005 in the SJV citing to the Boyd letter on page A–2.[27]

In the Boyd letter, CARB provided EPA with suggested revisions to our March 18, 1996 (61 FR 10920, 10935) proposed approval of the 1994 Ozone SIP. In reference to the 1994 Pesticide Element, CARB stated that the ''commitment is for a 20% reduction from 1990 levels by 2005 in each SIP area, except [San Diego]. [CARB] only took credit in the attainment year: SJV 1999 = 12%; Sac 2005 = 20%; Ven 2005 = 20%; SED 2007 = 20%; SC 2010 = 20%.'' EPA does not find the ''commitment is for a 20% reduction'' statement determinative as to the State's commitment for SJV, not only because it is immediately contradicted by the statement that a 12 percent credit was taken only in the attainment year of 1999 but also because it is not entirely consistent with the more extensive language describing the emissions reductions target in other parts of the approved 1994 Pesticide Element and does not reflect the reductions relied on in the SIP.

The 1994 Pesticide Element committed CDPR to a ''maximum of 20 percent'' reduction in pesticide VOC emissions from 1990 baseline levels in areas ''which reference VOC reductions'' from the element in their plans. *See* 1994 Pesticide SIP, p. 1. With this language, the percent reduction required in an area is tied to the emissions reductions referenced, that is, relied on, in that area's plan. As approved, the 1994 Pesticide Element also allowed for reductions of less than 20 percent if fewer VOC reductions from pesticide were needed. *Id.* As noted above, the reductions relied on in the 1994 Ozone SIP in its attainment demonstration for SJV in 1999 were 13 tpd (in 1994 SIP currency) which equates to 12 percent reduction from 1990 baseline in 1999 (when anticipated growth in pesticide VOC emissions between 1990 and 1999 is excluded) and no additional reductions have been relied on in any SIP for SJV subsequent to the 1994 one.

Approval of the revised ''Pesticide Emission Reduction Commitment for the San Joaquin Valley'' (submitted in 2009) will not interfere with any applicable requirement related to attainment or reasonable further progress for any $PM_{2.5}$ or PM_{10} standard in the SJV. EPA has determined that VOC controls are not required for particulate matter control in the SJV. *See* 72 FR 20586, 20589 (April 25, 2007), 69 FR 30006, 30007 (May 26, 2004), and 76 FR 69896, 69924 (November 9, 2011).

Additional information on EPA's determination under CAA section 110(l) can be found in section II.D. of the TSD for this proposal.

IV. Response To Remand in Association of Irritated Residents Case

In this section, we discuss why EPA believes that our proposed approval of the fumigant regulations and commitment for the SJV obviate the need to rescind or modify EPA's previous approvals of the California SIP Pesticide Element notwithstanding the deficiencies in the 1994 Pesticide Element that have been brought to light by subsequent litigation. In so doing, we summarize the relevant background that provides the context for this explanation.

In 1994, California submitted the 1994 Pesticide SIP as part of its comprehensive 1994 Ozone SIP. The 1994 Pesticide SIP set forth the goal of reducing VOC emissions from pesticide use by as much as 20 percent from 1990 levels as needed in those areas of California that relied on emissions reductions from pesticides to meet CAA requirements for attainment of the 1-hour ozone standard. The 1994 Pesticide SIP included a process for re-evaluation of pesticide products (to refine emissions estimates and to review for possible restrictions on use), for establishing the 1990 base year inventory and for tracking emissions, for reducing VOC emissions from pesticide use through voluntary changes in pest management practices, and for developing additional regulatory measures to ensure that reductions are achieved.

Upon review of the 1994 Pesticide SIP, EPA identified certain completeness and approvability issues and requested clarification. *See* letters, David P. Howekamp, Director, Air and Toxics Division, EPA Region 9 to James W. Wells, Director, CDPR, March 20, 1995 and April 21, 1995. CDPR responded to EPA's request with a clarification of the 1994 Pesticide SIP that established a commitment on the part of CDPR ''to adopt and submit to U.S. EPA by June 15, 1997, any regulations necessary to reduce [VOC] emissions from agricultural and commercial structural pesticides by specific percentages of the 1990 base year emissions, by specific years, and in specific nonattainment areas,'' as listed in a table showing percent reductions of 8, 12, 16, and 20 percent by 1996, 1999, 2002, and 2005, respectively, in the following nonattainment areas: South Coast, Southeast Desert, Ventura, San

[25] We have approved two ozone plans for the SJV since the 1997: the 2004 Ozone Plan in 2010 and the second, the 2007 8-hour Ozone Plan in 2012. *See* 75 FR 10420 (March 8, 2010) and 77 FR 12652 (March 1, 2012). Neither plan nor our approval of them relied on reductions in pesticide emissions to meet any applicable CAA requirement.

[26] *See* CDPR, *Staff Report on the Department of Pesticide Regulation's Proposed SIP Commitment for San Joaquin Valley,*'' undated (enclosure 2 to *memorandum,* Christopher W. Reardon, Chief Deputy Director, CDPR, to James Goldstene, Executive Officer, CARB, October 5, 2009; subject: Amendments to the Pesticide Element of the Ozone State Implementation Plan).

[27] See letter, Brent Newell, Legal Director, Center on Race, Poverty & the Environment, August 31, 2009, ''Comments on Approval and Promulgation of Implementation Plans: 1-Hour Ozone Extreme Area Plan for San Joaquin Valley, CA (Docket No. EPA–R09–OAR–2008–0693),'' pp. 16–20.

Joaquin Valley, and Sacramento Metro. *See* letter, James W. Wells, Director, CDPR, to David P. Howekamp, EPA Region 9, March 31, 1995; the Wells memorandum; and the related transmittal letter for the Wells memorandum from James D. Boyd, Executive Officer, CARB to Felicia Marcus, Regional Administrator, EPA Region 9, May 11, 1995.

In March 1996, EPA proposed to approve the 1994 Pesticide Element, among other elements of the 1994 Ozone SIP and did so based in part on the clarification provided by CDPR through the Wells memorandum. *See* 61 FR 10920, 10935–10936 (March 18, 1996). In response to EPA's proposed rule, CARB submitted a letter stating: ''In the pesticide element of the SIP, the [CDPR] projected a steady decline in volatile emissions from pesticides between 1996 and 2005. However, California took SIP credit for these reductions only in the applicable attainment year for the San Joaquin Valley, Sacramento Region, Ventura County, the Southeast Desert, and the South Coast. The notice should reflect this information.'' *See* letter, James M. Strock, Secretary for Environmental Protection, California Environmental Protection Agency, to Felicia Marcus, Regional Administrator, EPA Region 9, May 2, 1996. CARB subsequently submitted the Boyd Letter providing additional detail that was intended to supplement the technical corrections identified in the State's formal May 2 comment letter. Through the Boyd Letter, CARB clarified again that CDPR's commitment was for a 20 percent reduction from 1990 levels by 2005 in the five specified nonattainment area but also noted that CARB only took credit in the attainment year, which CARB specified as a 12 percent reduction by 1999 in San Joaquin Valley, and 20 percent reduction in the attainment years for the four other nonattainment areas.[28]

In 1997, EPA took final action to approve the 1994 Pesticide Element, and most of the 1994 California Ozone SIP and again referred to the Wells memorandum as providing the clarification necessary to provide EPA with the basis to approve the 1994 Pesticide Element as meeting the applicable requirements for enforceability of SIP revisions. *See* 62 FR 1150, 1169–1170 (January 8, 1997). However, in the 1997 final rule, EPA referred explicitly to California's request in its May 2, 1996 comment letter to exclude emissions reductions for interim years from the SIP, and also implicitly referred to the Boyd Letter by citing CARB's decision not to assign credit to the pesticides measure except for purposes of attainment. In the final rule, we tried to reconcile the Wells memorandum with California's comment letter and the Boyd letter and summarized what we believed the Pesticide Element to contain with respect to regulatory measures, as follows: ''As described in the SIP, California has committed to adopt and submit to U.S. EPA by June 15, 1997, any regulations necessary to reduce VOC emissions from agricultural and commercial structural pesticides by 20 percent of the 1990 base year emissions in the attainment years for Sacramento, Ventura, Southeast Desert, and the South Coast, and by 12 percent in 1999 for the San Joaquin Valley.'' *Id.* at 1170.

In listing the specific portions of the 1994 Ozone SIP and related documents that we were approving and incorporating as part of the California SIP in our 1997 final action, we listed CDPR's 1994 Pesticide SIP and the Boyd Letter, but did not list the Wells memorandum. While EPA's failure to approve and incorporate the Wells memorandum into the SIP may have been inadvertent, California's May 2, 1996 comment letter and the Boyd Letter made such approval and incorporation (i.e., without modification) problematic because the Wells memorandum contained interim year emissions reduction commitments that the California comment letter and Boyd Letter specifically excluded.

In the mid-2000's, several community groups sued CDPR under the CAA for failure to adopt and submit regulations ensuring VOC emissions reductions from pesticide use in Ventura County based on the commitments set forth in the Wells memorandum. Upon review of the record, the Ninth Circuit Court of Appeals in effect denied the community group the remedy that the group sought based on the court's determination that the Wells memorandum was not in fact approved into the California SIP and thus the commitment by CDPR to adopt and submit regulations as set forth in the Wells memorandum was not enforceable under the Act. *See El Comité para el Bienestar de Earlimart* v. *Warmerdam,* 539 F.3d 1062 (9th Cir. 2008) (*Warmerdam*). In the wake of the *Warmerdam* decision, the community group filed a petition for review in the Ninth Circuit challenging EPA's 1997 approval of the 1994 Ozone SIP on the grounds that, without the Wells memorandum, EPA's approval of that SIP was arbitrary and capricious because it relied on unenforceable emissions reductions from the 1994 Pesticide Element. *See El Comité para el Bienestar de Earlimart* v. *EPA,* No. 08–74340 (''*El Comité*''). The Ninth Circuit has not issued its decision in the *El Comité* case against EPA's approval of the 1994 Ozone SIP.

Meanwhile, in 2004, California resubmitted the 1994 Pesticide Element to EPA as part of the 2003 State Strategy, which was originally intended to replace the state measures potion of the 1994 California Ozone SIP in the California SIP, in the form of a control measure referred to as ''PEST–1.'' PEST–1 was simply a continuation of the original 1994 Pesticide Element. In 2009, we approved PEST–1 as part of our approval of the 2003 State Strategy reasoning that approval or disapproval of PEST–1 amounted to the same thing from the standpoint of the California SIP, namely the 1994 Pesticide Element. *See* 74 FR 10176 (March 10, 2009). EPA's approval of PEST–1 was challenged and the Ninth Circuit disagreed with EPA's decision that approval or disapproval of PEST–1 amounted to the same thing and remanded the approval of PEST–1 back to EPA for an evaluation of the Pesticide Element for enforceability. *See Association of Irritated Residents* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), revised January 27, 2012 (*AIR*). Specifically, the Ninth Circuit held, given its earlier finding in the *Warmerdam* case that the Wells memorandum was not approved and incorporated into the California SIP, that EPA must determine whether the approved 1994 Pesticide Element has sufficient enforcement mechanisms to satisfy the requirements of the CAA. In light of the decision in *AIR,* EPA filed a supplemental brief that argues that the decision in the AIR case makes the *El Comité* case moot on the grounds that the relief granted in the *AIR* case with respect to PEST–1 amounts to the same relief that the petitioner could gain by a favorable decision in the *El Comité* case, namely re-evaluation of the Pesticide Element for enforceability. The petitioners in the *El Comité* disagree that the *AIR* decision has made the *El Comité* case moot, and the Ninth Circuit has not yet issued its decision in the *El Comité* case.

[28] At the time of EPA's action on the 1994 California Ozone SIP and related 1994 Pesticide Element, the SJV was classified as a ''serious'' nonattainment area for the 1-hour ozone standard with an applicable attainment date of 1999. *See* 61 FR 10920, 10925. Years after approval of the 1994 SIP, the SJV was reclassified as ''severe'' and then ''extreme'' for the 1-hour ozone standard. *See* 66 FR 56476 (November 8, 2001) and 69 FR 20550 (April 16, 2004).The other four areas were classified as ''severe'' or ''extreme'' with later attainment dates at the time of EPA's action on the ozone SIP and Pesticide Element.

In light of the remand in the *AIR* case and with due consideration to the history summarized above, we must re-evaluate the enforceability of the 1994 Pesticide Element recognizing that the Wells memorandum is not approved into the SIP and take appropriate remedial actions if the element (without the Wells memorandum) does not meet the minimum requirements for enforceability under the CAA. We are using this proposed rule on the submitted fumigant regulations and revised SIP commitment for the SJV as the opportunity to present our re-evaluation and to explain our rationale for taking no action to rescind or modify our approvals of the 1994 Pesticide Element in 1997 and again (as PEST–1) in 2009.

First, we recognize that the 1994 Pesticide Element is a ''committal'' measure rather than a ''control'' measure. That is, the 1994 Pesticide Element constitutes a measure for which the State does not provide regulations (or equivalent enforceable mechanism) in support of the emissions reductions credited to the measure at the time EPA takes action on the RFP or attainment demonstration plan that relies on the emissions reduction, but commits to adopt and submit regulations in support of the emissions reductions prior to the time when the reductions are needed for RFP or attainment. EPA has found, under certain circumstances, that committal measures that are relied on to meet RFP, attainment, and/or other emissions reductions requirements of the CAA to be enforceable, and thus approvable, only if such measures identify the responsible party, applicability, adoption dates for rules (if applicable), implementation dates, and emissions reductions in terms of emissions rates (such as tons per day) equal to the credit taken in the RFP or attainment plan for the committal measure.

Back in 1995, when EPA reviewed the 1994 Pesticide SIP, we sought clarification from CDPR on whether the 1994 Pesticide SIP establishes a commitment to limit VOC emissions from pesticides to specific percentages of the 1990 base year emissions by specific years in specific nonattainment areas, regardless of future growth in emissions that might otherwise occur and whether the Pesticide Element establishes a commitment to adopt any regulations by a specific month prior to the implementation date. *See* letter, David P. Howekamp, Director, Air and Toxics Division, EPA Region 9 to James W. Wells, Director, CDPR, March 20, 1995. Later, we requested that CDPR modify the SIP to be explicit as to the dates of rule adoption and submittal and the emissions reductions by date and area. *See* letter, David P. Howekamp, Director, Air and Toxics Division, EPA Region 9 to James W. Wells, Director, CDPR, April 21, 1995. The clear implication in EPA's request to CDPR is that EPA believed at the time that such a modification of the 1994 Pesticide SIP was necessary to meet the minimum level of enforceability for crediting the emissions reductions from such a committal measure. CDPR's response, via CARB, was the Wells memorandum.

EPA's views on acceptable committal measures have not changed significantly since the time of EPA's review and approval of the 1994 Pesticide Element in 1997, and thus, we can infer from the correspondence between EPA and CDPR cited above and EPA's statements in both the 1996 proposed rule and 1997 final rule that, in the absence of the Wells memorandum, EPA would not have approved the 1994 Pesticide Element on the grounds that it does not meet the minimum level of enforceability that the CAA requires. *See, generally,* CAA section 110(a)(2) (''Each such plan shall (A) include enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of [the CAA]''). We have no reason to conclude otherwise today, and thus, we affirm that, absent a commitment providing the specificity found in the Wells memorandum, the 1994 Pesticide Element does not meet the minimum requirements for enforceability of SIP committal measures.

Second, we discuss what actions EPA should take to address the deficiency in enforceability of the 1994 Pesticide Element as discussed above. We do so recognizing that CDPR has, since EPA's approval of the 1994 Pesticide Element, adopted and (via CARB) submitted regulations that in effect have converted many of the non-regulatory provisions in the 1994 Pesticide Element into a regulatory form. Specifically, CDPR has adopted and submitted regulations restricting the use of field fumigant application methods; requiring CDPR to annually inventory and report pesticide VOC emissions for each area; establishing pesticide use recordkeeping and reporting requirements; and creating a contingency field fumigation limit and allowance program for Ventura. These are the types of regulations that the commitment in the Well memorandum would have made enforceable had the Wells memorandum been approved into the SIP, and thus, we find no need to perfect the commitment to regulations in the 1994 Pesticide Element because the actual *submittal* of the regulations themselves obviates the need for an enforceable *commitment* to submit those same regulations.

While we believe that the submitted CDPR regulations fulfill the otherwise unenforceable commitment in the 1994 Pesticide Element to adopt and submit regulations, the question remains whether the regulations alone suffice to ensure that the emission reduction targets (20 percent from 1990 levels in the South Coast, Southeast Desert, Ventura, and Sacramento Metro areas and 12 percent from 1990 levels in San Joaquin Valley) are met. Based on our review of the regulations for this proposed action, we find that compliance with the emission reductions targets is provided through CDPR regulations limiting field fumigant application to lower-emitting methods and establishing a fumigant emissions limit and allocation system for Ventura County and monitored and enforced through regulations that require recordkeeping and reporting of pesticide usage and CDPR to annually evaluate and report VOC emissions from pesticides in each area.

These provisions are adequate to ensure that the emission reduction targets are met in the Sacramento Metro, South Coast, and Southeast Desert areas given that VOC emissions from pesticide use are typically 60 percent lower than 1990 levels in Sacramento Metro and Southeast Desert and 80 percent lower than 1990 levels in the South Coast. *See* CDPR's *Annual Report on Volatile Organic Compound Emissions from Pesticides: Emissions for 1990–2010* (March 2012), page 3. To a large degree, the reductions in VOC emissions from pesticide use (relative to 1990 levels) in these three areas have resulted from permanent changes in land use, although CDPR's regulations still serve an important function by reducing the VOC emissions from remaining pesticide use in the areas and by establishing a regulatory mechanism to track VOC emissions from this source category that could, if necessary, provide the basis for additional regulatory measures if, for some reason, VOC emissions from pesticide use were to increase significantly over current levels.

For Ventura County, in recognition that VOC emissions from pesticide use are predominantly from fumigant use and are high enough that they could, in a given year due to fluctuations in pesticide use, violate the 20 percent emission reduction target, CDPR has submitted, and we are proposing to

approve, additional regulatory provisions for that area. These Ventura-specific provisions require CDPR to set a field fumigant VOC emissions limit in its annual VOC emissions inventory report if overall pesticide emissions (not just fumigant emissions) in the Ventura nonattainment area are found to be within five percent of or exceed the listed benchmark. The benchmark is equivalent to the 20 percent emissions reduction target called for in the 1994 Pesticide Element for the Ventura area. The Ventura-specific provisions also require the county agricultural commissioner to add conditions to field fumigation permits or take other actions to prevent the field fumigation limit from being exceeded. As such, the regulations reasonably ensure that the 20 percent emissions reduction target would be met in Ventura County.

For the San Joaquin Valley, CDPR's regulations restricting fumigant application methods and establishing requirements on CDPR to inventory and report VOC emissions from pesticide use apply just as they do in the other four nonattainment areas. While these regulations and other measures have decreased VOC emissions from pesticide use in the SJV such that current VOC emissions are approximately 18 percent less than 1990 levels, CDPR concluded that a mechanism was needed to supplement the regulations to ensure that the 12 percent emission reduction target would be met in the SJV. The supplemental mechanism chosen by CDPR is the adoption of a commitment, which we are proposing to approve in today's action, to manage VOC emissions from commercial structural and agricultural pesticide use, such that the related VOC emissions do not exceed 18.1 tons per day in the SJV. This level of emissions reflects a 12 percent emissions reduction from 1990 level of VOC emissions from pesticide use. The specific measures that CDPR would undertake to bring emissions back down to that level in the event that the annual inventory reveals that the 18.1 tons per day emissions level had been exceeded are not specified.[29] Considered in isolation, the revised commitment for San Joaquin Valley changes the form of the commitment in the 1994 Pesticide Element for the SJV but does not represent an enforceable measure for SIP purposes. However, when viewed in light of the CDPR's regulations, the combination of the commitment and fumigant regulations does meet the minimum requirements for enforceability of SIP measures and reasonably ensures that the 12 percent emissions reduction target from the 1994 Pesticide Element would be achieved in San Joaquin Valley.

For the reasons stated above, we conclude that there is no need to rescind or otherwise modify our 1997 approval of the 1994 Pesticide Element or our 2009 approval of PEST–1 notwithstanding the deficiencies in enforceability in the 1994 Pesticide Element due to the absence of an enforceable mechanism like the Wells memorandum. In short, this is because CDPR's regulations and revised commitment for the San Joaquin Valley provide the enforceable mechanism that would otherwise be lacking in the 1994 Pesticide Element. If EPA approves the regulations and commitment, as proposed herein, then the 1994 Pesticide Element would be fulfilled. If, after consideration of comments, EPA concludes that the regulations and commitment do not meet the applicable CAA requirements, then the decision regarding EPA's previous actions on the 1994 Pesticide Element would need to be reconsidered.

V. Proposed Actions and Opportunity for Public Comment

For the reasons discussed above, EPA is proposing to approve under CAA section 110(k)(3) the revisions to the California SIP Pesticide Element submitted by CARB on October 12, 2009 and August 2, 2011 and to incorporate them into the California's federally-enforceable SIP. We are deferring action on the set of regulations submitted by CARB August 2, 2011 related to incorporating requirements related to methyl iodide into the fumigant regulations.

Based on the proposed approval of these SIP revisions, EPA does not plan to rescind or modify the Agency's prior approvals of the Pesticide Element because the Agency has concluded that the revisions fulfill the commitments of the original Pesticide Element, thus obviating the need to address the deficiencies in enforceability of those original commitments.

We encourage the public to comment on these proposals. Comments will be accepted for 30 days following publication of the proposal in the **Federal Register**. The deadline and a list of options for submitting comments is provided at the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

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 action merely proposes to approve state law as meeting Federal requirements and does not propose to 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 action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249; November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and

[29] CDPR has presented options for these measures. *See* CDPR presentation ''Volatile Organic Compound Emissions from Pesticides: Options for Reducing Non-Fumigant Emissions'' September 2011 and November 2011, which can be found at *http://www.cdpr.ca.gov/docs/emon/vocs/vocproj/nonfum_options_091611.pdf http://www.cdpr.ca.gov/docs/emon/vocs/vocproj/nonfum_options_prec_111811.pdf.*

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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 13, 2012.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2012–9850 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2012–0087; FRL–9663–5]

Direct Final Approval of Hospital/Medical/Infectious Waste Incinerators State Plan for Designated Facilities and Pollutants: Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, through direct final rulemaking, Illinois' revised State Plan to control air pollutants from Hazardous/Medical/Infectious Waste Incinerators (HMIWI). The Illinois Environmental Protection Agency submitted the revised State Plan on November 8, 2011 and supplemented it on December 28, 2011, following the required public process. The revised State Plan is consistent with Emission Guidelines promulgated by EPA on October 6, 2009. This approval means that EPA finds that the revised State Plan meets applicable Clean Air Act requirements for subject HMIWI units. Once effective, this approval also makes the revised State Plan Federally enforceable.

DATES: Comments must be received on or before May 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0087, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: nash.carlton @epa.gov.*
- *Fax:* (312) 886–6030.
- *Mail:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–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: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's 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: April 9, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–9711 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2012–0086; FRL–9663–3]

Direct Final Approval of Hospital/Medical/Infectious Waste Incinerators State Plan for Designated Facilities and Pollutants: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, through direct final rulemaking, Indiana's revised State Plan to control air pollutants from Hazardous/Medical/Infectious Waste Incinerators (HMIWI). The Indiana Department of Environmental Management submitted the revised State Plan on December 19, 2011, following the required public process. The revised State Plan is consistent with Emission Guidelines promulgated by EPA on October 6, 2009. This approval means that EPA finds that the revised State Plan meets applicable Clean Air Act requirements for subject HMIWI units. Once effective, this approval also makes the revised State Plan Federally enforceable.

DATES: Comments must be received on or before May 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0086, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: nash.carlton@epa.gov.*
3. *Fax:* (312) 886–6030.
4. *Mail:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Carlton T. Nash, Chief, Toxics and Global Atmosphere Section, Air Toxics and Assessment Branch (AT–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: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's 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: April 9, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–9722 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[IB Docket No. 11–133; DA 12–573]

Foreign Ownership Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the International Bureau, on behalf of the Commission, seeks further comment on an approach to policies and procedures that apply to foreign ownership of common carrier radio station licensees pursuant to the Communications Act of 1934, as amended (''the Act''). It seeks comment because this approach was not discussed in the Notice of Proposed Rulemaking initiating this docket or in the comments filed to date in response to the Notice of Proposed Rulemaking.

DATES: Comments shall be filed May 15, 2012. Reply comments shall be filed May 25, 2012.

ADDRESSES: All pleadings are to reference IB Docket No. 11–133. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

In addition, one copy of each pleading must be sent to each of the following:

(1) The Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, *www.bcpiweb.com;* telephone: (800) 378–3160, fax: (202) 488–5563;

(2) James Ball, Chief, Policy Division, International Bureau, 445 12th Street SW., Room 7–A760, Washington, DC 20554; email: *james.ball@fcc.gov;*

(3) Howard Griboff, Deputy Chief, Policy Division, International Bureau, 445 12th Street SW., Room 7–A662, Washington, DC 20554; email: *howard.griboff@fcc.gov;*

(4) Kathleen Collins, Attorney-Advisor, Policy Division, International Bureau, 445 12th Street SW., Room 7–A515, Washington, DC 20554; email: *kathleen.collins@fcc.gov.*

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or via its Web site, *http://www.bcpiweb.com.*

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system

available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

FOR FURTHER INFORMATION CONTACT: Kathleen Collins, Attorney-Advisor, Policy Division, International Bureau at (202) 418–1474 or *kathleen.collins @fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 12–573, released on April 11, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or via its Web site, *http://www.bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0411/DA-12-573A1.pdf.* To request the document in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

In *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended,* IB Docket No. 11–133, Notice of Proposed Rulemaking, FCC 11–121, 26 FCC Rcd 11703 (2011) (*Section 310(b)(4) NPRM*), the Commission sought comment on proposals to revise and simplify the policies and procedures that apply to foreign ownership of common carrier and aeronautical radio station licensees pursuant to section 310(b)(4) of the Act. Although the Commission did not specifically seek comment on its policies and procedures relating to section 310(b)(3), several commenters asked the Commission to find that all ''indirect'' foreign interests in a common carrier licensee should be governed under section 310(b)(4), rather than section 310(b)(3). They are concerned that applying section 310(b)(3) to ''indirect'' foreign interests in common carrier licensees may limit the flexibility of foreign investors in structuring their investments. Commenters also state that applying section 310(b)(3) to foreign interests in a licensee held through an intervening U.S.-organized entity that does not control the licensee (which commenters term ''indirect non-controlling'' foreign interests) is inconsistent with the U.S. commitments made in the World Trade Organization (WTO) Basic Telecom Agreement. Commenters state that a determination that section 310(b)(3) does not apply in this situation would be one of the ''most helpful actions'' the Commission could take to further this proceeding's goals of reducing unnecessary regulatory barriers to foreign investment that can benefit innovation, economic growth, and employment in the United States.

By this Public Notice, the International Bureau seeks public comment on an approach not specifically raised by the comments to date. In particular, we invite comment on the legal and policy implications of forbearing under section 10 of the Act, 47 U.S.C. 160, from applying section 310(b)(3) to certain foreign interests in common carrier licensees if—contrary to the comments discussed above—section 310(b)(3) is interpreted as applying to foreign interests in a broadcast, common carrier or aeronautical licensee held through an intervening U.S.-organized entity that itself holds non-controlling equity and voting interests in the licensee.[1] Section 10 provides that the Commission shall forbear from applying any regulation or any provision of the Act to a telecommunications carrier if the Commission determines that: (1) Enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. 160.

Under a forbearance approach, the Commission might forbear from applying section 310(b)(3) to foreign interests held in a common carrier licensee, through a U.S.-organized entity that does not control the licensee, that would exceed 20 percent of the licensee's equity interests and/or 20 percent of its voting interests, where the Commission finds the particular foreign interests to be consistent with the foreign ownership policies the Commission applies under section 310(b)(4) of the Act. The Commission would not grant forbearance when applying section 310(b)(3) to broadcast, aeronautical fixed, and aeronautical en route licenses, as these services are not telecommunications services to which section 10 forbearance applies. Foreign ownership of broadcasting licenses, moreover, raises distinct policy issues, *see Section 310(b)(4) NPRM,* 26 FCC Rcd at 11704, n.3, and is not subject to the WTO Basic Telecom Agreement.

We seek comment on this general approach. We specifically seek comment on whether a forbearance approach would satisfy the three requirements of section 10 of the Act. We further request comment on whether this forbearance approach would permit the Commission to authorize greater than 20 percent foreign interests held in a common carrier licensee, through a U.S.-organized entity that does not control the licensee, when those interests would be consistent with the public interest under the policy framework established by section 310(b)(4) and the *Foreign Participation Order,* 12 FCC Rcd 23891 (1997).[2] We ask whether such a forbearance approach would treat all ''indirect'' foreign interests similarly (whether through a controlling or non-controlling

[1] There is Commission precedent that has applied section 310(b)(4) where a foreign government, entity or individual holds interests in a U.S.-organized entity that itself *controls* a broadcast, common carrier, or aeronautical radio station licensee, and section 310(b)(3) where a foreign government, entity or individual holds interests in a licensee through a U.S.-organized entity that has *non-controlling* interests in the licensee. *See, e.g., Wilner & Scheiner I,* 103 F.C.C. 2d 511, 521–24, paragraphs 17–22 & nn. 44–56 (1985), *recon., Wilner & Scheiner II,* 1 FCC Rcd 12 (1986); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC,* WT Docket No. 08–95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17545–46, paragraph 231 & nn. 799–803, 17547, paragraph 237 (2008). Commenters assert there is contrary precedent.

[2] The section 310(b)(4) policy framework employs an open entry standard for foreign investment from WTO Member countries in U.S. basic telecommunications markets. In the *Foreign Participation Order,* which adopted this standard, the Commission concluded, pursuant to the discretionary authority granted to the Commission in section 310(b)(4), that the public interest would be served by permitting greater investment by foreign individuals and entities from WTO Member countries in the U.S.-organized entities that control common carrier and aeronautical radio licensees. *See Foreign Participation Order,* 12 FCC Rcd at 23891–97, paragraphs 1–12, 23935–42, paragraphs 97–118. The Commission adopted a rebuttable presumption by which it presumes that foreign investment from WTO Member countries does not pose competitive concerns in the U.S. market *See also Section 310(b)(4) NPRM,* 26 FCC Rcd at 11705, paragraph 2, nn.4–5. The language of section 310(b)(3) does not include the public interest test set forth in section 310(b)(4). 47 U.S.C. 310(b)(3).

U.S. organized entity), as requested by commenters.

We further seek public comment on whether forbearance from application of section 310(b)(3) in this context, if adopted by the Commission, should apply procedures like those used when licensees seek Commission approval to exceed the 25 percent foreign ownership benchmark in section 310(b)(4). If that approach were applied, it would require licensees to file a petition for declaratory ruling when seeking Commission approval of foreign interests held in a common carrier licensee, through an intervening U.S. entity that does not control the licensee, that would exceed 20 percent of the equity interests and/or 20 percent of the voting interests in the licensee. The Commission would place the petition on notice for public comment and forward the petition to the Executive Branch for review.[3] Following conclusion of the public notice and comment process, the Commission would issue a declaratory ruling, consistent with its section 310(b)(4) policy framework, as to whether the foreign investment would be consistent with the public interest.[4] If the ruling is affirmative (*i.e.,* the Commission determines that such investment comports with the public interest), the Commission would forbear from applying the section 310(b)(3) restrictions that would otherwise prohibit the foreign investment.

We ask in particular that interested parties who contend that the forbearance proposals discussed above would or would not adequately address national security, law enforcement, or public safety concerns, or that they would advance or conflict with U.S. trade policy, explain their positions in detail and provide support for their conclusions. In addition, if the Commission alters in this docket the policies and procedures that apply to section 310(b)(4), should it apply those same revisions to its public interest review under any section 310(b)(3) forbearance approach that also is adopted?

We further seek comment on modifications to these proposals, or alternative forbearance approaches, that parties may want the Commission to consider.

Federal Communications Commission.

Mindel De La Torre,

Chief, International Bureau.

[FR Doc. 2012–9623 Filed 4–23–12; 8:45 am]

BILLING CODE 6712–01–P

[3] In assessing the public interest, the Commission takes into account the record developed in each particular case and accords deference to the expertise of Executive Branch agencies in identifying and interpreting issues of concern related to national security, law enforcement, foreign policy and trade policy. *Foreign Participation Order,* 12 FCC Rcd at 23919–21, paragraphs 61–66.

[4] The Commission, or the International Bureau on delegated authority, in granting a section 310(b)(4) declaratory ruling: (1) Authorizes the named foreign investors from WTO Member countries to hold specified equity and voting interests in the U.S. parent that controls the licensee; (2) includes provisions and limitations to accommodate future changes in foreign ownership of the U.S. parent and to prohibit non-WTO investment from exceeding 25 percent of the U.S. parent's equity and/or voting interests; and (3), on a case-by-case basis, imposes specific conditions that respond to concerns raised by the Executive Branch in particular proceedings with respect to potential effects of the proposed foreign investment on U.S. national security, law enforcement, and public safety. *Section 310(b)(4) NPRM,* 26 FCC Rcd at 11712, paragraph 15.

Notices

Federal Register
Vol. 77, No. 79
Tuesday, April 24, 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

Submission for OMB Review; Comment Request

April 18, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Experimental Economic Research.

OMB Control Number: 0536–NEW.

Summary of Collection: The primary function of the Economic Research Service (ERS) is to provide economic and social science research, analysis, and to disseminate data under the authority of 7 U.S.C. 2204 and Section 17 of 7 U.S.C. 2026. ERS is requesting a generic clearance in order to respond quickly to emerging issues and data collection needs.

Need and Use of the Information: Information obtained from randomized comparison studies (lab and field techniques) will be used to develop and calibrate models of behavior. ERS uses behavioral models to estimate a variety of policy outcomes for instance the level of farmer participation in voluntary conservation programs under alternative contract terms or changes in the nutritional quality of meals chosen when healthy items are displayed more prominently. The quality of research that ERS can provide to its stakeholders will be decreased if ERS cannot conduct the requested studies or if studies are conducted less frequently.

Description of Respondents: Individuals or households.

Number of Respondents: 5,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,900.

Ruth Brown,

Departmental Information Collection Clearance Officer

[FR Doc. 2012–9773 Filed 4–23–12; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0013]

Notice of Request for a New Information Collection (Laboratories)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a new information collection regarding laboratories that conduct testing associated with FSIS regulatory programs.

DATES: Comments on this notice must be received on or before June 25, 2012.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- Mail, including CD–ROMs, etc.: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- Hand- or courier-delivered submittals: Deliver to Patriots Plaza 3, 355 E. Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2012–0013. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street, Room 8–164, Washington, DC 20250–3700 between 8 a.m. and 4:30 p.m., Monday through Friday.

For Additional Information: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Laboratories.

OMB Control Number: 0583–00xx.

Type of Request: New.

Abstract: FSIS has been delegated the authority to exercise the functions of the

Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and correctly labeled.

FSIS is requesting the approval of two different forms to collect information for two distinct laboratory programs.

FSIS will use the PEPRL–F–0008.04 form as a self-assessment audit checklist to collect information related to the quality assurance/quality control procedures in place at in-plant and private laboratories participating in the Pasteurized Egg Product Recognized Laboratory (PEPRLab) program (9 CFR 590.580). FSIS will use the data collected in the desk audit of existing labs or the appraisal of a new applicant.

Any non-Federal laboratory that is applying for the FSIS Accredited Laboratory program will need to complete an Application for FSIS Accredited Laboratory Program form (9 CFR 439). State or private laboratories need only submit the application once for entry into the program. FSIS will use the information collected by the form to help access the laboratory applying for admission to the FSIS Accredited Laboratory program.

FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden: FSIS estimates that it will take respondents an average of 0.96 hours per year to complete a laboratory form.

Respondents: Laboratories.

Estimated Number of Respondents: 25.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 24 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; (202)720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent both to FSIS, at the addresses provided above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on April 18, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–9852 Filed 4–23–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0015]

Retail Exemptions Adjusted Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the dollar limitations on the amount of meat and meat food products and poultry and poultry products that a retail store can sell to hotels, restaurants, and similar institutions without disqualifying itself for exemption from Federal inspection requirements. In accordance with FSIS' regulations, for calendar year 2012, the dollar limitation for meat and meat food products is being increased from $61,900 to $67,300 and for poultry products from $50,200 to $51,700. FSIS is changing the dollar limitations from calendar year 2011 based on price changes for these products evidenced by the Consumer Price Index.

DATES: Effective Date: This notice is effective April 24, 2012.

FOR FURTHER INFORMATION CONTACT: John O'Connell, Policy Issuances Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 6083 South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700; telephone (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide a comprehensive statutory framework to ensure that meat, meat food products, poultry, and poultry products prepared for commerce

are wholesome, not adulterated, and properly labeled and packaged. The statutes include an exception from the provisions requiring inspection of the preparation or processing of meat, meat food, poultry, and poultry products when the preparation or processing produces products in normal retail quantities, and the operations are of the type that are traditionally and usually conducted at retail stores and restaurants (21 U.S.C. 661(c)(2) and 454(c)(2)). FSIS's regulations (9 CFR 303.1(d) and 381.10(d)) elaborate on the conditions where these exemptions apply to retail operations involving the preparation or processing of meat, meat food, poultry, and poultry products.

Sales to Hotels, Restaurants, and Similar Institutions

Under these regulations, sales to hotels, restaurants, and similar institutions (other than household consumers) disqualify a store for the exemption if the product sales exceed either of two maximum limits: 25 percent of the dollar value of total product sales or the calendar year dollar limitation set by the Administrator. The dollar limitation is adjusted automatically during the first quarter of the calendar year if the Consumer Price Index (CPI), published by the Bureau of Labor Statistics, shows an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted dollar limitations in the **Federal Register**. (See 9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*).)

The CPI for 2011 reveals an annual average price increase for meat and meat food products at 8.8 percent and for poultry products at 2.9 percent. When rounded to the nearest $100, the dollar limitation for meat and meat food products increased by $5,400, and the dollar limitation for poultry products increased by $1,500. Because the dollar limitation of meat, meat food products, poultry, and poultry products increased by more than $500, FSIS is increasing the dollar limitation on sales to hotels, restaurants, and similar institutions to $67,300 for meat and meat food products and to $51,700 for poultry and poultry products for calendar year 2012, in accordance with 9 CFR 303.1(d)(2)(iii)(*b*) and 381.10 (d)(2)(iii)(*b*).

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal Register_Notices/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*.

Options range from recalls to export information to regulations, directives and notices.

Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: April 18, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–9813 Filed 4–23–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: 2012 Notice call for nominations.

SUMMARY: The National Urban and Community Forestry Advisory Council, (NUCFAC) will be filling four positions that will expire at the end of December 2012. Interested applicants may download a copy of the application and position descriptions from the U.S. Forest Service's Urban and Community Forestry Web site: *www.fs.fed.us/ucf/*.

DATES: Nomination(s) must be ''received'' (not postmarked) by May 31, 2012.

ADDRESSES: Nomination applications by courier should be addressed to: Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 1400 Independence Avenue SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Please submit electronic nomination(s) to: *nucfac_ucf_proposals@fs.fed.us.* The subject line should read: 2012 NUCFAC Nominations.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, 1400 Independence Avenue SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Facsimiles will not be accepted as official nominations. Email or courier service is recommended. Regular mail submissions must be screened by the agency and may delay the receipt of the application up to a month.

A total of four positions will be filled. The following four positions will serve a 3-year term from January 1, 2013, to December 31, 2015:

- One of two members representing a national non-profit forestry and/or conservation citizen organization;
- A member representing city/town government;
- One of two members representing academic institutions with an expertise in urban and community forestry activities;

• Not officers or employees of any government body with a population of less than 50,000 and has experience and is active in urban and community forestry.

Dated: April 16, 2012.

James E. Hubbard,

Deputy Chief, State & Private Forestry.

[FR Doc. 2012–9828 Filed 4–23–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Financial Report (QFR) Program.

OMB Control Number: 0607–0432.

Form Number(s): QFR–200(MT), QFR–201(MG), QFR–300(S).

Type of Request: Revision of a currently approved collection.

Burden Hours: 115,111.

Number of Respondents: 12,574.

Average Hours per Response: 2 hours and 17 minutes.

Needs and Uses: The QFR program has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. The program currently collects and publishes financial data for the manufacturing, mining, wholesale trade, retail trade, information, and professional, scientific, and technical services (except legal) sectors. The survey is a principal economic indicator that provides financial data essential to calculation of key U.S. Government measures of national economic performance. The importance of this data collection is reflected by the granting of specific authority to conduct the program in Title 13 of the United States Code, Section 91, which requires that financial statistics of business operations be collected and published quarterly. Public Law 109–79, Section 91 extended the authority of the Secretary of Commerce to conduct the QFR program through September 30, 2015.

The QFR is planning to expand the scope of collection to include, along with corporations currently surveyed, additional service sectors. The expanded collection will include the real estate and rental and leasing (except lessors of nonfinancial intangible assets), administrative and support and waste management and remediation services, health care and social assistance, and accommodation and food services. We plan to begin collecting data for these service sectors beginning with the collection of data for fourth quarter of 2012. Services represent the largest block of industries in the Gross Domestic Product (GDP), about 55 percent of the economy. By expanding into these four service sectors, the QFR program can begin providing statistics on the financial results and position for important parts of the economy for which no current and systematically collected data are now available.

The survey forms used to conduct the QFR are: QFR–200 (MT) Long Form (manufacturing, mining, wholesale trade, and retail trade); QFR–201 (MG) Short Form (manufacturing); and the QFR–300 (S) Long Form (services).

Affected Public: Business or other for-profit.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 91.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: April 17, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–9734 Filed 4–23–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1823]

Reorganization and Expansion of Foreign-Trade Zone 109 Under Alternative Site Framework, Jefferson County, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the County of Jefferson, New York, grantee of Foreign-Trade Zone 109, submitted an application to the Board (FTZ Docket 70–2011, filed 11/07/2011) for authority to reorganize and expand under the ASF with a service area of Jefferson County, New York, adjacent to the Alexandria Bay U.S. Customs and Border Protection port of entry, FTZ 109's existing Sites 1 and new Sites 3 and 4 would be categorized as magnet sites, and existing Site 2 would be removed from the zone project;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 70110, 11/10/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 109 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to an ASF sunset provision for magnet sites that would terminate authority for Site 3 if not activated by April 30, 2017 and Site 4 if not activated by April 30, 2020.

Signed at Washington, DC, this 16th day of April 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–9823 Filed 4–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1824]

Reorganization of Foreign-Trade Zone 226 Under Alternative Site Framework Merced County, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Board of Supervisors of the County of Merced, grantee of Foreign-Trade Zone 226, submitted an application to the Board (FTZ Docket 84–2011, filed 12/23/2011) for authority to reorganize under the ASF with a service area which includes portions of Fresno, Kings, Madera, Mariposa, Merced, Stanislaus and Tulare Counties, California as its service area, as described in the application, within and adjacent to the Fresno U.S. Customs and Border Protection port of entry, and FTZ 226's existing Sites 1, 2, 9, 10 and 11 would be categorized as magnet sites, existing Site 8 would be categorized as a usage-driven site, Sites 3, 4, 6, 7, 12 and 13 would be deleted and acreage reduced at existing Site 1;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 81912–81913, 12/29/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 226 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to five-year ASF sunset provisions for magnet sites that would terminate authority for Sites 2, 9 10 and 11 if not activated by April 30, 2017, and to a three-year sunset provision for usage-driven sites that would terminate authority for Site 8 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by April 30, 2015.

Signed at Washington, DC, this 16th day of April 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–9821 Filed 4–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1821]

Voluntary Termination of Foreign-Trade Subzone 9D, Maui Pineapple Company, Ltd., Kahului, Maui, HI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) hereby adopts the following order:

Whereas, on April 25, 1986, the Board issued a grant of authority to the State of Hawaii (grantee of FTZ 9) authorizing the establishment of Foreign-Trade Subzone 9D at the Maui Pineapple Company, Ltd., facility in Kahului, Maui, Hawaii (Board Order 329, 51 FR 16367, 05/02/1986);

Whereas, the State of Hawaii has advised that zone procedures are no longer needed at the facility and requested voluntary termination of Subzone 9D (FTZ Docket 14–2012); and,

Whereas, the request has been reviewed by the FTZ Staff and U.S. Customs and Border Protection officials, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 9D, effective this date.

Signed at Washington, DC, this 16th day of April 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–9824 Filed 4–23–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–828]

Stainless Steel Butt-Weld Pipe Fittings From Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 22, 2011, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings (SSBW pipe fittings) from Italy.[1] This review covers two respondent companies and the period of review is from February 1, 2010, through January 31, 2011. We invited interested parties to comment on the preliminary results but received no comments. Therefore, our final results remain unchanged from the preliminary results of review.

DATES: *Effective Date:* April 24, 2012.

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2011, the Department published the preliminary results of the current administrative review on SSBW pipe fittings from Italy in the **Federal Register**. *See Preliminary Results.* In these results, we preliminarily determined that the respondent Filmag Italia SRL (Filmag) had no reviewable transactions during the period of review. With respect to the respondent Tectubi Raccordi S.p.A. (Tectubi), we determined that it and two of its affiliates, Raccordi Forgiati S.r.l. (Raccordi) and Allied International S.r.l. (Allied) should be treated as a single entity for purposes of calculating a dumping margin pursuant to the provisions of 19 CFR 351.401(f) and consequently, we calculated a preliminary dumping margin based on the sales information reported by Tectubi for all three companies.

[1] *See Stainless Steel Butt-Weld Pipe Fittings From Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination*, 76 FR 79651 (December 22, 2011) (*Preliminary Results*).

We invited parties to comment on the preliminary results of review but received no comments and did not receive any requests for a hearing.

Period of Review

The period of review is February 1, 2010, through January 31, 2011.

Scope of the Order

For purposes of the order, the product covered is certain stainless steel, butt-weld pipe fittings. SSBW pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and ''commodity'' and ''specialty'' fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The butt-weld fittings subject to the order are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Butt-weld fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by the order.

The order does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The butt-weld fittings subject to the order is currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Determination of No Shipments

As noted in the *Preliminary Results*, Filmag stated that it had no sales of subject merchandise during the period of review in response to our antidumping questionnaire and we were able to confirm with U.S. Customs and Border Protection (CBP) that the company had no entries of subject merchandise during this period. Based on this evidence, we preliminarily determined that Filmag had no reviewable transactions during the period of review. We further found that if, in the final results, we continued to find that Filmag had no reviewable transactions of subject merchandise, we would instruct CBP to liquidate any existing entries of merchandise produced by Filmag but exported by other parties at the all-others rate.[2] Because we have no basis to find otherwise, we continue to find that Filmag had no reviewable transactions of subject merchandise during the period of review for the final results of review. Furthermore, we continue to find that it is more consistent with our May 6, 2003, ''automatic assessment'' clarification [3] not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Filmag and issue appropriate instructions to CBP based on our final results. *See* the ''Assessment Rates'' section of this notice below.

Final Results of Review

We determine that the following weighted-average dumping margins exist for the period February 1, 2010, through January 31, 2011:

Manufacturer/exporter	Weighted average margins (percent)
Tectubi Raccordi S.p.A./ Raccordi Forgiati S.r.l./Allied International S.r.l.	0.00
Filmag Italia SRL	*

* No shipments or sales subject to this review. The firm does not have an individual rate from a prior segment of the proceeding.

Assessment Rates

We will instruct CBP to apply a dumping margin of zero percent to all entries of subject merchandise during the period of review that were produced by Tectubi or Raccordi and exported and imported by Tectubi.[4]

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Assessment of Antidumping Duties.* This clarification will apply to entries of subject merchandise during the period of review produced by Tectubi, Raccordi and Filmag for which they did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate of 26.59 percent, established in the less-than-fair-value investigation of the order,[5] if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue assessment instructions to CBP 15 days after publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, consistent with section 751(a)(2)(C) of the Act: (1) For subject merchandise manufactured and exported by the collapsed Tectubi companies (*i.e.*, Tectubi, Raccordi and Allied), the cash deposit rate will be zero; (2) for previously reviewed or investigated companies other than the collapsed Tectubi companies, the cash-deposit rate will continue to be the company-specific rate published for the most-recent period; (3) if the exporter is not a firm covered in this review, the prior review, or the investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash-deposit rate will be the all-others rate of 26.59 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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 doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative

[2] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989 (September 17, 2010).

[3] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*).

[4] Although we found it appropriate to collapse the sales information reported by Tectubi, Raccordi and Allied for our margin analysis, all subject merchandise under review was produced by Tectubi or Raccordi, exported by Tectubi and imported by Tectubi.

[5] *See Antidumping Duty Orders: Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines*, 66 FR 11257, 11258 (February, 23, 2001).

protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 17, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–9819 Filed 4–23–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–853]

Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 7, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on citric acid and certain citrate salts from Canada. The review covers one manufacturer/exporter of the subject merchandise: Jungbunzlauer Canada Inc. (JBL Canada). The period of review (POR) is May 1, 2010, through April 30, 2011.

No interested party submitted comments on the preliminary results. We have made no changes to the margin calculation for the final results of this review. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for JBL Canada is listed below in the ''Final Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4007 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers one manufacturer/exporter of the subject merchandise: JBL Canada.

On February 7, 2012, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on citric acid and certain citrate salts from Canada. *See Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 6061 (February 7, 2012) (*Preliminary Results*).

We invited parties to comment on the preliminary results of the review. No interested party submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of this order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of this order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of this order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of this order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Period of Review

The POR is May 1, 2010, through April 30, 2011.

Final Results of the Review

We determine that a weighted-average dumping margin exists for JBL Canada for the period May 1, 2010, through April 30, 2011, as follows:

Manufacturer/exporter	Percent margin
Jungbunzlauer Canada Inc	2.34

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). Pursuant to 19 CFR 356.8(a), the Department intends to issue appropriate appraisement instructions for the respondent subject to this review directly to CBP 41 days after the date of publication of the final results of this review.

For those sales where JBL Canada reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer. For those sales where the respondent did not know the entered value or importer of its U.S. sales, we calculated customer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the per-unit duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(1), we calculated customer-specific *ad valorem* ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or

above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 23.21 percent, the all-others rate made effective by the LTFV investigation. *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders,* 74 FR 25703 (May 29, 2009). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: April 17, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–9826 Filed 4–23–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Amended Final Results of the Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 24, 2012.

FOR FURTHER INFORMATION CONTACT: Ricardo Martinez Rivera, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4532.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2012, the Department of Commerce (''Department'') published the final results of the second administrative review of the antidumping duty order on certain steel nails (''steel nails'') from the People's Republic of China (''PRC'').[1] On March 5, 2012, certain mandatory and separate rate respondents, as well as Itochu Building Products Co., Inc. (''IBP''),[2] and Stanley[3] filed timely allegations that the Department made ministerial errors in the *Final Results* and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors. On March 12, 2012, Petitioner[4] submitted comments rebutting the errors alleged by IBP *et al.* and Stanley. No other party in this proceeding submitted comments on the Department's final margin calculations.

Scope of the Order

The merchandise covered by the order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails include, but are not limited to, nails made of round wire and nails that are cut. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and have a variety of finishes, heads, shanks, point types, shaft lengths and shaft diameters. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, whether by electroplating or hot dipping one or more times),

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[1] *See Certain Steel Nails from the People's Republic of China: Final Results and Final Rescission of the Second Antidumping Duty Administrative Review,* 77 FR 12556 (March 1, 2012) and accompanying Issues and Decision Memorandum (''*Final Results*'').

[2] Certified Products International Inc., Chiieh Yungs Metal Ind. Corp., Huanghua Jinhai Hardware Products Co., Ltd., Tianjin Jinghai County Hongli Industry & Business Co., Ltd. (''Hongli''), Tianjin Jinchi Metal Products Co., Ltd. (''Jinchi''), Shangdong Dinglong Import & Export Co., Ltd., Tianjin Zhonglian Metals Ware Co., Ltd., Hengshui Mingyao Hardware & Mesh Products Co., Ltd., Huanghua Xionghua Hardware Products, Shanghai Jade Shuttle Hardware Tools Co., Ltd., Shanghai Yueda Nails Industry Co., Ltd., Shanxi Tianli Industries Co., Ltd., China Staple Enterprise (Tianjin) Co., Ltd., Qidong Liang Chyuan Metal Industry Co., Ltd., Romp (Tianjin) Hardware Co., Ltd., CYM (Nanjing) Ningquan Nail Manufacture Co., Ltd. a.k.a. CYM (Nanjing), Nail Manufacture Co., Ltd., Shanxi Pioneer Hardware Industrial Co., Ltd., and Mingguang Abundant Hardware Productions Co., Ltd. (collectively ''IBP *et al.*'').

[3] The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc./Stanley Fastening Systems, LP (collectively ''Stanley'').

[4] Mid Continent Nail Corporation.

phosphate cement, and paint. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted shank styles. Screw-threaded nails subject to the order are driven using direct force and not by turning the fastener using a tool that engages with the head. Point styles include, but are not limited to, diamond, blunt, needle, chisel and no point. Finished nails may be sold in bulk, or they may be collated into strips or coils using materials such as plastic, paper, or wire. Certain steel nails subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55, 7317.00.65 and 7317.00.75.

Excluded from the scope of the order are steel roofing nails of all lengths and diameter, whether collated or in bulk, and whether or not galvanized. Steel roofing nails are specifically enumerated and identified in ASTM Standard F 1667 (2005 revision) as Type I, Style 20 nails. Also excluded from the scope are the following steel nails: (1) Non-collated (*i.e.,* hand-driven or bulk), two-piece steel nails having plastic or steel washers (caps) already assembled to the nail, having a bright or galvanized finish, a ring, fluted or spiral shank, an actual length of 0.500″ to 8″, inclusive; and an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual washer or cap diameter of 0.900″ to 1.10″, inclusive; (2) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a bright or galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 4″, inclusive; an actual shank diameter of 0.1015″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; (3) Wire collated steel nails, in coils, having a galvanized finish, a smooth, barbed or ringed shank, an actual length of 0.500″ to 1.75″, inclusive; an actual shank diameter of 0.116″ to 0.166″, inclusive; and an actual head diameter of 0.3375″ to 0.500″, inclusive; and (4) Non-collated (*i.e.,* hand-driven or bulk), steel nails having a convex head (commonly known as an umbrella head), a smooth or spiral shank, a galvanized finish, an actual length of 1.75″ to 3″, inclusive; an actual shank diameter of 0.131″ to 0.152″, inclusive; and an actual head diameter of 0.450″ to 0.813″, inclusive.

Also excluded from the scope of the order are corrugated nails. A corrugated nail is made of a small strip of corrugated steel with sharp points on one side. Also excluded from the scope of the order are fasteners suitable for use in powder-actuated hand tools, not threaded and threaded, which are currently classified under HTSUS 7317.00.20 and 7317.00.30. Also excluded from the scope of the order are thumb tacks, which are currently classified under HTSUS 7317.00.10.00.

Also excluded from the scope of the order are certain brads and finish nails that are equal to or less than 0.0720 inches in shank diameter, round or rectangular in cross section, between 0.375 inches and 2.5 inches in length, and that are collated with adhesive or polyester film tape backed with a heat seal adhesive. Also excluded from the scope of the order are fasteners having a case hardness greater than or equal to 50 HRC, a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Amended Final Results of the Review

The Tariff Act of 1930, as amended (''Act''), defines a ''ministerial error'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' *See* section 751(h) of the Act; *see also* 19 CFR 351.224(e). As explained in the memorandum accompanying this notice,[5] we do not find that any of the errors alleged by IBP *et al.* or Stanley are ministerial errors within the meaning of section 751(h) of the Act and 19 CFR 351.224(e). However, in the course of analyzing IBP *et al.*'s allegations of ministerial errors, the Department found that it inadvertently miscalculated Jinchi's importer-specific assessments rates, even though no party had commented on this fact. Therefore, in accordance with section 751(h) of the Act, we have determined that we made a ministerial error in our calculation of Jinchi's importer-specific assessment rates for the *Final Results.* We note that correcting this error does not change any of the weighted-average margins from the *Final Results.* For a detailed discussion of this ministerial error, as well as the Department's analysis of the allegations of ministerial errors, *see* the Ministerial Error Memorandum.

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

Amended Final Results of the Review

The weighted-average dumping margins for the period of review are as follows:

Exporter	Weighted average margin (percent)
(1) The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc./Stanley Fastening Systems, LP	3.80
(2) Tianjin Jinghai County Hongli Industry & Business Co	47.76
(3) Tianjin Jinchi Metal Products Co., Ltd	78.27
(4) Dezhou Hualude Hardware Products Co., Ltd	19.30
(5) Hengshui Mingyao Hardware & Mesh Products Co., Ltd	19.30
(6) Huanghua Jinhai Hardware Products Co., Ltd	19.30
(7) Huanghua Xionghua Hardware Products Co., Ltd	19.30
(8) Koram Panagene Co., Ltd	19.30
(9) Qingdao D & L Group Ltd.Co., Ltd	19.30
(10) Romp (Tianjin) Hardware Co., Ltd	19.30
(11) Shandong Dinglong Import & Export Co., Ltd	19.30

[5] *See* Memorandum to Gary Taverman, from James C. Doyle, regarding ''Second Antidumping Duty Administrative Review of Certain Steel Nails from the People's Republic of China: Ministerial Error Allegations Memorandum,'' dated concurrently with this notice (''Ministerial Error Memorandum'').

Exporter	Weighted average margin (percent)
(12) Shanghai Curvet Hardware Products Co., Ltd	19.30
(13) Shanghai Jade Shuttle Hardware Tools Co., Ltd	19.30
(14) Shanghai Yueda Nails Industry Co., Ltd	19.30
(15) Shanxi Tianli Industries Co., Ltd	19.30
(16) Tianjin Lianda Group Co., Ltd	19.30
(17) Tianjin Universal Machinery Imp & Exp Corporation	19.30
(18) Tianjin Zhonglian Metals Ware Co., Ltd	19.30
(19) PRC-wide Entity	118.04

Those companies not eligible for a separate rate will be considered part of the PRC-wide entity.[6]

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the amended final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Stanley, Hongli, Jinchi, and the Separate Rate Applicants, the cash deposit rate will be their respective rates established in the amended final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 118.04 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: April 18, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–9827 Filed 4–23–12; 8:45 am]

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[6] These companies include: (1) Aironware (Shanghai) Co., Ltd.; (2) Beijing Daruixing Global Trading Co., Ltd.; (3) Beijing Daruixing Nail Products Co., Ltd.; (4) Beijing Hong Sheng Metal Products Co., Ltd.; (5) Beijing Tri-Metal Co., Ltd.; (6) China Silk Trading & Logistics Co., Ltd.; (7) Chongqing Hybest Tools Group Co., Ltd.; (8) Faithful Engineering Products Co., Ltd.; (9) Handuk Industrial Co., Ltd.; (10) Hong Kong Yu Xi Co., Ltd.; (11) Huanghua Huarong Hardware Products Co., Ltd.; (12) Jinding Metal Products Ltd.; (13) Kyung Dong Corp.; (14) Nanjing Dayu Pneumatic Gun Nails Co., Ltd.; (15) Rizhao Handuck Fasteners Co., Ltd.; (16) Senco-Xingya Metal Products(Taicang) Co., Ltd.; (17) Shandong Minmetals Co., Ltd.; (18) Shanghai Chengkai Hardware Product Co., Ltd.; (19) Shanghai Seti Enterprise International Co., Ltd.; (20) Shanxi Tianli Enterprise Co., Ltd.; (21) Shouguang Meiqing Nail Industry Co., Ltd.; (22) Sinochem Tianjin Imp & Exp Shenzhen Corp.; (23) Superior International Australia Pty Ltd.; (24) Suzhou Xingya Nail Co., Ltd.; (25) Tianjin Jurun Metal Products Co., Ltd.; (26) Wintime Import & Export Corporation Limited of Zhongshan; (27) Wuxi Qiangye Metalwork Production Co., Ltd.; (28) Xuzhou CIP International Group Co., Ltd.; (29) Yitian Nanjing Hardware Co., Ltd.; and (30) Zhongshan Junlong Nail Manufactures Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Oil Country Tubular Goods From the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 24, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–6231, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2011, the Department of Commerce (''the Department'')

published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on oil country tubular goods from the People's Republic of China covering 53 companies for the period November 17, 2009, through April 30, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011). The POR was corrected to May 19, 2010, through April 30, 2011 in *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011) at footnote four. The preliminary results of review are currently due no later than April 30, 2012.

Extension of Time Limit of Preliminary Results

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. We determined that completion of the preliminary results of this review within the 245-day period is not practicable because the Department requires additional time to analyze information pertaining to the respondents' sales practices, factors of production, and affiliations, and to issue supplemental questionnaires and review the responses. Therefore, on January 19, 2012, the Department extended the time period for completion of the preliminary results of this review by 90 days until April 30, 2012. *See Oil Country Tubular Goods From the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review,* 77 FR 2700 (January 19, 2012). We have subsequently determined that we require additional time to complete these preliminary results. As a result, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by an additional 30 days until May 30, 2012.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 13, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–9825 Filed 4–23–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC005

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. This EFP would allow commercial fishing vessels to temporarily possess and scientifically sample fish caught during normal commercial fishing operations that would otherwise be required to be immediately discarded for the purpose of characterizing the bycatch of the Southern New England sea scallop fishery.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before May 9, 2012.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nero.efp@noaa.gov.* Include in the subject line ''Comments on Fisheries Specialists 2012 Scallop RSA EFP.''
- *Mail:* Daniel S. Morris, Acting Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Fisheries Specialists EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Christopher Biegel, Fishery Management Specialist, 978–281–9112, *Christopher.Biegel@noaa.gov.*

SUPPLEMENTARY INFORMATION: Fisheries Specialists, a fisheries research company, submitted a complete application for an EFP on March 5, 2012, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would authorize four vessels to temporarily possess and scientifically sample fish caught during commercial fishing operations that would otherwise be required to be immediately discarded.

The requested exemptions from size and possession limits are in support of a project that proposes to characterize bycatch in the Southern New England scallop fishery. This project is titled ''Bycatch Characterization in the Southern New England Sea Scallop Fishery,'' and has been selected to be funded under the 2012 scallop research set-aside (RSA) program. Because catch sampling of bycatch will occur during commercial fishing operations, Fisheries Specialists requested temporary exemptions from size and possession limits of potential bycatch species. Aside from these exemptions, fishing activity would be conducted under normal commercial fishing practices and the associated Federal regulations. The exemptions would not include species protected under the Endangered Species Act. Limited Access General Category (LAGC) vessels will land catch in accordance with the conditions of the Federal permits held by the individual vessel and any prohibited catch will be discarded after sampling.

Fisheries Specialists will be placing trained scientific observers aboard LAGC vessels to collect bycatch data during the course of normal commercial fishing operations. The observers will conduct four days of sampling each month for 12 months for a total of 48 sampling days between April 2012 and May 2012, in open areas offshore of Massachusetts and Rhode Island in the Southern New England/Mid-Atlantic (SNE/MA) management area, with a focus on statistical area 539.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 19, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–9816 Filed 4–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB169

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for eight new scientific research permits, four research permit renewals, and three permit modifications.

SUMMARY: Notice is hereby given that NMFS has received 15 scientific research permit application requests relating to Pacific salmon, the southern distinct population segment of pacific green sturgeon, and three species of rockfish from the Puget Sound/Georgia Basin. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on May 24, 2012.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by email to *nmfs.nwr.apps@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (ph.: 503–231–2314), Fax: 503–230–5441, email: *Robert.Clapp@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Puget Sound (PS); threatened lower Columbia River (LCR); endangered upper Columbia River (UCR); threatened Snake River (SR) spring/sum (spr/sum); threatened SR fall;

Steelhead (*O. mykiss*): threatened PS; threatened LCR; threatened UCR; threatened SR; threatened middle Columbia River (MCR).

Chum salmon (*O. keta*): Threatened Hood Canal (HC) summer-run, threatened Columbia River (CR).

Coho salmon (*O. kisutch*): Threatened LCR, threatened Oregon Coast (OC).

Sockeye salmon (*O. nerka*): Threatened Ozette Lake (OL); endangered SR.

Rockfish: Puget Sound/Georgia Basin (PS/GB) bocaccio (*Sebastes paucispinis*); PS/GB canary rockfish (*Sebastes pinniger*), and PS/GB yelloweye rockfish (*Sebastes ruberrimus*).

Pacific green sturgeon (*Acipenser medirostris*): Threatened SDPS.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1386—6R

The Washington Department of Ecology (WDOE) is seeking to renew for five years a research permit that currently allows them to take juvenile and adult LCR Chinook salmon, PS Chinook salmon, SR spring/summer-run Chinook salmon, SR fall-run Chinook salmon, UCR spring-run Chinook salmon, CR chum salmon, HC summer-run chum salmon, LCR coho salmon, OL sockeye salmon, LCR steelhead, MCR steelhead, PS steelhead, SR steelhead, and UCR steelhead. The WDOE conducts various research projects to characterize toxic contaminants in resident freshwater fish across the state of Washington. The purpose of the research is to investigate the occurrence and concentrations of toxic contaminants in non-anadromous freshwater fish tissue, sediment, and water from sites throughout Washington. WDOE conducts this research in order to meet Federal and state regulations. The Federal Clean Water Act requires that all waters in the state be assessed in this manner. This research would benefit listed species by identifying toxic contaminants present in fish and thereby help inform pollution control actions such as removing and reducing toxic contaminant sources. The WDOE proposes to capture fish using backpack and boat electrofishing, beach seines, block, fyke, and gill nets, and angling. All captured salmon and steelhead would be either released immediately or held temporarily in an aerated live well to help them recover before being released. The researchers do not propose to kill any of the listed fish being captured, but a small number may die as an unintended result of the activities.

Permit 1465—2R

The Idaho Department of Environmental Quality (IDEQ) is seeking to renew their permit to annually take juvenile threatened SR steelhead, threatened SR fall Chinook salmon, threatened SR spr/sum Chinook salmon, and endangered SR sockeye salmon during the course of two research projects designed to ascertain the condition of many Idaho streams. The purposes of the research are to (a) determine whether aquatic life is being properly supported in Idaho's rivers, streams, and lakes, and (b) assess the overall condition of Idaho's surface waters. The fish would benefit from the research because the data it produces would be used to inform decisions about how and where to protect and improve water quality in the state. The researchers would use backpack- and boat-electrofishing equipment to capture the fish. They would then be weighed and measured (some may be anesthetized to limit stress) and released. The IDEQ does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 13381—2R

The Northwest Fisheries Science Center (NWFSC) is seeking to renew their permit to annually take natural

juvenile SR spring/summer Chinook salmon and SR steelhead in various places in the Salmon River drainage in Idaho and at Little Goose and Lower Granite Dams on the lower Snake River. The purpose of the research is to continue monitoring parr-to-smolt survival and outmigration behavior in SR wild spring/summer Chinook salmon populations from Idaho. Steelhead juveniles that are inadvertently collected would also be tagged to help supplement an ongoing Idaho Department of Fish and Game study. The research will benefit the fish by continuing to supply managers with the information they need to budget water releases at hydropower facilities in ways designed to help protect migrating juvenile salmonids. The information gained would also be used to build long-term data sets on parr-to-smolt migration behavior and survival rates. This information, coupled with water quality, weather, and climate data, is intended to provide a foundation for understanding these populations' life histories—the knowledge of which is critical to building effective recovery actions. The listed fish would be captured (using seines, dip nets, and electrofishing), PIT-tagged, and released. A portion of these fish would also be recaptured at a smolt bypass facility, anesthetized, weighed, measured, and released. The researchers do not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 13382—2R

The NWFSC is seeking to renew for five years a permit that currently allows them to annually take juvenile threatened SR spr/sum Chinook salmon and natural, juvenile threatened SR steelhead at various places in the Snake River in Idaho and in various streams of Southeast Washington and Northeast Oregon. The activities under this permit have been under way for more than 10 years—first under Permit 1406 and then under the current version of Permit 13382. Under the permit, the listed fish would be variously captured (using seines, dip nets, traps, and electrofishing), anesthetized, tissue sampled, weighed, measured, and released.

The purpose of the research is to continue monitoring the effects of supplementation among steelhead spring/summer Chinook salmon populations in Idaho. The research would benefit the fish by continuing to supply managers with the information they need to use hatchery programs to conserve listed species. The researchers do not intend to kill any of the fish being captured, but some may die as an unintended result of the process.

Permit 15205—2M

The KWIAHT Center for the Historical Ecology of the Salish Sea (KWIAHT) is seeking to modify a 5-year research permit that currently allows them to take juvenile PS Chinook salmon at sampling sites near Lopez and Waldron islands in the San Juan Island archipelago in Puget Sound. The purpose of this research is to measure prey quantity and quality for juvenile Chinook and other salmonids when they congregate annually in the San Juan Islands basin. This research would benefit PS Chinook salmon by analyzing the importance of terrestrial prey to juvenile wild Chinook during their neritic life history stage. The KWIAHT proposes to use beach seines to capture the fish. The fish would be captured, anesthetized, measured, fin-clipped, sampled for stomach contents, allowed to recover, and released. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 16142—2M

The Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO) are seeking to modify their 5-year permit that currently allows them to capture, handle, and release juvenile MCR steelhead in the John Day River, Oregon. The current purpose of the research is to monitor anadromous fish response to habitat restoration projects throughout the John Day Basin. The CTWSRO are seeking to expand upon that research by adding juvenile mark/recapture studies and adult spawning surveys in various drainages in the John Day River Basin for the purpose of determining adult return success and making juvenile abundance estimates. This new project would establish baseline estimates at 10 sampling locations and then resample those sites to evaluate the impact restoration projects have on juvenile Chinook and steelhead abundance. The research would continue to benefit the fish by helping managers determine the most effective ways to restore habitat.

Under the expanded research, the researchers would set up survey reaches at each site and use block nets at the upstream and downstream boundaries to temporarily curtail fish movement. In those reaches, fish would be collected using backpack electrofishing equipment or seine nets. Once the fish are collected, they would be placed in an aerated bucket and anesthetized. They would then be counted, measured, weighed, marked with a caudal fin clip, allowed to recover, and released back into the sampling reach. A second fish sampling event (using the same collection methods) would be conducted within 24 hours of each initial survey. The researchers would use these two samples to estimate fish abundance and density. The surveys would be conducted at the same locations on an annual basis in order to assess population trends. The researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

Permit 16298—2M

The Shoshone-Bannock Tribes (SBT) are seeking to modify their 5-year permit to annually take juvenile and adult SR spr/sum Chinook and juvenile SR steelhead in Bear Valley Creek, Idaho. The purpose of the research is to estimate fish abundance, smolt-to-adult return rates, and adult productivity in Bear Valley Creek with a high degree of accuracy. The researchers are seeking to continue generating information that may be used widely throughout the Salmon River subbasin. The work will benefit fish by giving managers key information about population status in the Salmon River subbasin which, in turn, will be used to inform recovery plans and land- and fish-management decisions. The SBT would count and monitor adult spr/sum Chinook at a video station and they would handle, measure, and tissue sample juvenile SR spr/sum Chinook and steelhead at a screw trap. They would also do some harvest monitoring (creel surveys) and spawning ground surveys. The researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

Permit 16433

The Washington Department of Fish and Wildlife (WDFW) is seeking a 5-year permit to annually take UCR steelhead and Chinook and MCR steelhead while conducting resident fish studies in portions of the mainstem Columbia River. They would conduct two studies under the permit. The first is the Rocky Reach Project Resident Fish Study. The intent of this project is to provide baseline data about resident fish (i.e., their relative abundance and species composition) in the area of Rocky Reach Dam. The sampling will provide baseline data for managers to identify potential changes in the local fish assemblages over time and it would benefit listed fish by helping managers

run recreational fisheries in the least harmful manner possible. The second project is the Priest Rapids Predator Index. Its purpose is to study northern pikeminnow populations in the area around Priest Rapids Dam and, in many cases, remove those predators. The research would benefit listed salmonids because the pikeminnow is a salmonid predator and monitoring and curtailing their population is likely to result in fewer salmon being eaten in the areas where the pikeminnow reside.

The surveys would be conducted using boat electrofishing equipment, fyke nets, tangle nets, and pop-nets in the littoral zones of the Columbia River near Rocky Reach and Priest Rapids Dams. Any juvenile listed salmonids captured during the research would be sampled for biological information and released as quickly as possible. If adult listed salmonids are seen, the electrofishing equipment would be turned off and the fish allowed to escape. The researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

Permit 16838

The WDFW is seeking a 2-year research permit to annually take juvenile and adult PS Chinook salmon. Sampling sites would be located in Lake Cushman on the North Fork of the Skokomish River. The purpose of the study is to quantify the Lake Cushman Reservoir fish species composition, distribution, growth, condition, pathology, toxicology, and life history characteristics and determine how fish community structure relates to reservoir productivity. This research would benefit PS Chinook salmon by increasing our understanding the Lake Cushman fish community and the threats it faces before a fish ladder is constructed that would allow anadromous fish passage to the lake. The WDFW proposes to capture fish using boat electrofishing and gill nets. All Chinook salmon would be held in portable net pens or aerated live wells, measured, weighed, sampled for scales (up to five fish from each size class for aging) and pelvic fin clips (<1 mm in size), and release. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities. If any Chinook salmon are killed, they would be collected for toxicology and pathology analysis.

Permit 16994

The Alaska Fisheries Science Center (AFSC) is seeking a 3-year research permit to annually take juvenile and adult PS Chinook salmon, PS steelhead, Southern green sturgeon, and PS/GB bocaccio. The AFSC researchers may also take PS/GB canary rockfish and PS/GB yelloweye rockfish—species for which there are currently no ESA take prohibitions. The sampling sites would primarily be located near Agate Pass (adjacent to the Kitsap Peninsula) but may occur throughout the Puget Sound. The objective of the study is to use a series of common egg- and larva garden rearing experiments to assess the evidence for adaptive genetic variation among pacific cod. These experiments would be augmented by extensive genomic scans to identify the functional genes involved in localized adaptation. The research would benefit listed rockfish by providing genetic information to help increase our understanding of the species. The AFSC proposes to capture adult cod using hook and line by jigging gear with barbless hooks and knotless landing nets in shallow water (< 35m) near Agate Pass. Pot trap gear may also be employed at the same depths. All Chinook salmon, steelhead, and sturgeon would be immediately released at the capture site. If listed rockfish are captured, the researchers would remove a small portion of fin tissue for genetics studies and return the fish to the water via rapid submersion techniques. If an individual of these species is captured dead or deemed nonviable, it would be retained for genetic analyses. The researchers do not propose to kill any of the listed fish being captured, but a small number may die as an unintended result of the activities.

Permit 17043

The University of Washington (UW) is seeking a 2-year research permit to annually take juvenile and adult PS Chinook salmon, HC summer-run chum salmon, and PS steelhead. The UW researchers may also take PS/GB canary rockfish and PS/GB yelloweye rockfish—species for which, there are currently no ESA take prohibitions. Sampling would take place in Hood Canal. The purposes of the study are to: (1) Describe the magnitude and mechanisms by which hypoxia affects upper trophic level organisms in Hood Canal and (2) document these key processes and track the ecological effects of hypoxia with the goal of evaluating and improving corrective actions. The research would benefit rockfish and salmonids by helping managers better understand the ecological damage caused by hypoxia in Hood Canal and thus improving mitigation measures. The UW proposes to capture fish using a Marinovich mid-water trawl. Once the tow is completed, the catch would be brought on board a research vessel and placed into a seawater-filled holding tank. All salmon and steelhead deemed viable would be immediately released at the capture site. Dead or nonviable salmon and steelhead would be measured for length and weight and sampled for otoliths, stomach contents, and tissues. If listed rockfish are captured, the researchers would remove a small portion of fin tissue for genetics studies and return the fish to the water via rapid submersion techniques. If an individual of these species is captured dead or deemed nonviable, it would be retained for genetic analyses. The researchers do not propose to kill any of the listed fish being captured, but a small number may die as an unintended result of the activities.

Permit 17062

The NWFSC is seeking a 2-year research permit to annually take juvenile PS Chinook salmon, PS steelhead, and PS/GB bocaccio. The researchers may also take PS/GB canary rockfish and PS/GB yelloweye rockfish—species for which there are currently no ESA take prohibitions. Sampling would take place in the San Juan Islands region just north of Orcas Island. The purpose of the study is to monitor the movement patterns of yelloweye and canary rockfish using acoustic telemetry. The research would benefit rockfish by increasing our understanding of the connectivity (or lack thereof) between rockfish populations in the Puget Sound and populations on the outer coast. The NWFSC proposes to capture fish using hook and line equipment at depths of 50–100 meters during slack tides. Fish would slowly be reeled to the surface to reduce barotrauma. All Chinook salmon and steelhead would be immediately released at the capture site. Canary and yelloweye rockfish would have acoustic transmitters surgically placed in their peritoneal cavities. All captured ESA-listed rockfish would have a small portion of their fin tissue removed for genetics studies and be returned to the water via rapid submersion techniques. If an individual of these species is captured dead or deemed nonviable, it would be retained for genetic analysis. The researchers do not propose to kill any of the listed fish being captured, but a small number may die as an unintended result of the activities.

Permit 17109

R2 Resource Consultants (R2RC) are seeking a 3-year research permit to annually take juvenile PS Chinook

salmon and PS steelhead. Sampling sites would be located in the Lake Washington Ship Canal between the Ballard Locks and Shilshole Bay. The purpose of the study is to identify the spatial and temporal distribution of bull trout in the Lake Washington Ship Canal and in the nearshore waters of Shilshole Bay. The research would benefit listed fish by improving management decisions regarding operations at the Hiram Chittenden Locks, as well as by providing valuable information on the overall picture of bull trout populations and their life histories in Puget Sound. The researchers propose to use beach seines to capture the fish. All Chinook salmon and steelhead would be immediately released at the capture. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 17214

The U.S. Fish and Wildlife Service (FWS) is seeking a 1-year research permit to annually take juvenile PS Chinook salmon and PS steelhead. The sampling would take place in Dean Creek, Washington (a tributary flowing into Sequim Bay). The purpose of the study is to determine fish species presence and distribution in Dean Creek and its environs; this information would be used to inform the Dungeness Wildlife Refuge comprehensive conservation plan. The research would benefit listed salmonids by identifying and prioritizing management activities designed to protect fish species in this stream. The FWS proposes capturing fish by using backpack electrofishing equipment. Fish would be collected with dip nets, enumerated, allowed to recover in aerated water, and released back into their capture locations. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 17222

The Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO) are seeking a 5-year permit to annually take MCR steelhead during the course of research designed to determine the feasibility of PIT-tagging juvenile summer/fall Chinook (a non-listed species) in the Deschutes River, Oregon. The purpose of the research is to generate population metrics such as juvenile growth rates, smolt-to-adult return ratios, size/condition at emigration, etc. This information would be used to develop performance indicators for monitoring the fishes' status and trends. This research would benefit listed species by helping managers develop a picture of river health and salmonid population trends in the Deschutes River. That information, in turn, would be used in recovery planning efforts and generally incorporated into resource management decisions that may affect the Deschutes River. The researchers intend to use seines to capture the fish and all captured MCR steelhead will be released immediately. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: April 19, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–9866 Filed 4–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB168

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of two applications for scientific research and enhancement permits.

SUMMARY: Notice is hereby given that NMFS has received two scientific research and enhancement permit application requests relating to salmonids listed under the Endangered Species Act (ESA). The proposed research activities are intended to increase knowledge of the species and to help guide management and conservation efforts. The applications and related documents may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm*. These documents are also available upon written request or by appointment by contacting NMFS by phone (916) 930–3600 or fax (916) 930–3629.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on May 24, 2012.

ADDRESSES: Written comments on either application should be submitted to the Protected Resources Division, NMFS, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814. Comments may also be submitted via fax to (916) 930–3629 or by email to *FRNpermitsSAC.SR@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Amanda Cranford, Sacramento, CA (ph.: 916–930–3706, email: *Amanda.Cranford@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened California Central Valley steelhead (*Oncorhynchus mykiss*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), and threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits(50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the applications listed in this notice should set out the specific reasons why a hearing on the application(s) would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 14808

The California Department of Fish and Game (CDFG) is requesting a 5-year scientific research and enhancement permit to take juvenile California

Central Valley steelhead, juvenile Central Valley spring-run Chinook salmon, juvenile Sacramento River winter-run Chinook salmon, and juvenile Southern Distinct Population Segment North American green sturgeon associated with research activities at two different sites in the upper Sacramento River. Application 14808 was previous noticed in the **Federal Register** (75 FR 14134) with a 30 day comment period from March 24, 2010, to April 23, 2010. No comments were received for this application, however due to substantial changes to the sampling locations and the amount take NMFS decided to publish the revised notice for public comment. In the studies described below, researchers do not expect to kill any natural origin listed fish but a small number, up to two percent, may die as an unintended result of the research activities. A sub-sample of hatchery produced winter-run Chinook salmon (up to 40 per day) may experience intentional (directed) mortality and be retained by CDFG for coded wire tag retrieval and reading.

Monitoring efforts are conducted in order to compile information on timing, composition (species/race), and relative abundance of emigrating juvenile Chinook salmon and Central Valley steelhead from the upper Sacramento River system into the Sacramento-San Joaquin Delta. This information provides an early warning of salmonid movement into the Delta, enabling the implementation of adaptive management practices to protect juveniles as they enter and pass through the Delta.

Sampling will occur through the use of paired 8-foot rotary screw traps at two different sites along the upper Sacramento River. The first site, located near the town of Knights Landing (river mile (RM) 88.5) will be sampled beginning in October and continue through June of the following year. Traps will be fished continuously and checked once every 24 hours unless conditions warrant more frequent sampling. Captured salmonids will be: Anesthetized, handled (including fork length and wet weight measurements), allowed to recover, and released back into the river with the exception of up to 40 adipose fin clipped Chinook salmon that will be retained for coded wire tag processing. Sampling at Tisdale Weir (RM 120) will follow the same methods as described above, however sampling will occur year round from January through December.

Permit 13791

The U.S. Fish and Wildlife Service (USFWS) is requesting a 3-year scientific research and enhancement permit to take juvenile California Central Valley steelhead, juvenile Central Valley spring-run Chinook salmon, juvenile Sacramento River winter-run Chinook salmon, and juvenile Southern Distinct Population Segment North American green sturgeon associated with research activities at monitoring sites in the Sacramento River basin and the Sacramento-San Joaquin Delta. Application 13791 was previously noticed in the **Federal Register** (73 FR 70622) with a 30-day comment period from November 21, 2008, to December 22, 2008. No comments were received for this application, however due to substantial changes in the sampling procedures and the amount take NMFS decided to publish the revised notice for public comment. In the studies described below, researchers do not expect to kill any natural origin listed fish but a small number, up to three percent, may die as an unintended result of the research activities. All hatchery origin Chinook salmon with clipped adipose fins are assumed to be implanted with a coded wire tag. In order to retrieve and read these tags, all adipose fin clipped Chinook salmon captured during sampling will be sacrificed and retained for processing.

The Stockton Fish and Wildlife Office's Delta Juvenile Fish Monitoring Program (DJFMP) monitors the abundance, temporal and spatial distribution, and survival of juvenile salmonids and other fishes occurring within the lower Sacramento and San Joaquin Rivers and the San Francisco Estuary. The Breach III Project documents the occurrence and habitat use of ESA-listed fishes within Liberty Island, a tidally influenced freshwater marsh currently undergoing passive restoration, located within the San Francisco Estuary. The fish monitoring data collected by the DJFMP and the Breach III Project are intended to provide basic biological and population information on fishes of management concern, including the ESA listed winter- and spring-run Chinook salmon and Central Valley steelhead. Further, data can be used by natural resource managers to evaluate the effectiveness of water operations, aquatic habitat restoration, and fish management practices within the San Francisco Estuary and its watershed. As a result, take of ESA listed salmonids will likely occur while sampling using a variety of methodologies (e.g. fyke nets, multi-mesh gill nets, larval fish trawls, mid-water trawls, Kodiak trawls, and beach seines). Captured fish will be identified to species or race, measured for fork length to the nearest millimeter, and released back into the sampled location. Scale samples will also be taken from a sub-sample of natural origin Chinook salmon to assist the University of California, Davis with their genetic research in the Yolo Bypass.

Dated: April 19, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–9859 Filed 4–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA929

Marine Mammals; Photography Permit File No. 17032

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Shane Moore, Moore & Moore Films, Box 2980, 1203 Melody Creek Lane, Jackson, WY 83001 to conduct commercial/educational photography in Alaska.

ADDRESSES: The permit and related documents are available for review 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

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Joselyd Garcia-Reyes, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On January 13, 2012, notice was published in the **Federal Register** (77 FR 2037) that a request for a permit for commercial/educational photography had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 17032 authorizes Mr. Moore to film gray (*Eschrichtius robustus)* and killer (*Orcinus orca*) whales in the eastern Aleutian Islands, primarily near Ikatan Bay and along the Ikatan Peninsula on the south side of Unimak Island, Alaska. The purpose of the project is to document killer whales hunting gray whales migrating through False Pass and Unimak Pass and to record the behavior of marine animals in the presence of a gray whale carcass. Filming will occur between April and June of each year. A maximum of 35 killer whales and 10 gray whales could be closely approached annually. Footage will be obtained from vessel-mounted cameras, a polecam that may be submerged next to the boat, and, as the opportunity arises, from a remotely operated video camera in an underwater housing placed on the sea floor near a gray whale carcass. Footage will be used for a television program about predators and the challenges they face. The permit will expire on April 15, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: April 18, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–9857 Filed 4–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB132

Takes of Marine Mammals Incidental to Specified Activities; Russian River Estuary Management Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Sonoma County Water Agency (SCWA) to incidentally harass, by Level B harassment only, three species of marine mammals during estuary management activities conducted at the mouth of the Russian River, Sonoma County, California.

DATES: This authorization is effective for the period of one year, from April 21, 2012, through April 20, 2013.

ADDRESSES: A copy of the IHA and related documents are available by writing to Tammy Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Supplemental documents provided by SCWA may also be found at the same address: Report of Activities and Monitoring Results (July 2009 to December 2011); Russian River Estuary Outlet Channel Adaptive Management Plan; and Feasibility of Alternatives to the Goat Rock State Beach Jetty for Managing Lagoon Water Surface Elevations—A Study Plan. NMFS' Environmental Assessment (2010) and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act, are available at the same site. Documents cited in this notice, including NMFS' Biological Opinion (2008) on the effects of Russian River management activities on salmonids, may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is published in the **Federal Register** to provide public notice and initiate a 30-day comment period.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and other means of effecting the least practicable adverse impact (i.e., mitigation) and requirements pertaining to monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by Level B harassment as defined below. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. If authorized, the IHA would be effective for one year from date of issuance.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

NMFS received an application on January 27, 2012, from SCWA for issuance of an IHA for the taking, by Level B harassment only, of marine mammals incidental to ongoing activities conducted in management of the Russian River estuary in Sonoma County, California. SCWA was first issued an IHA, valid for a period of one year, on April 1, 2010 (75 FR 17382), and was subsequently issued a second IHA for incidental take associated with the same activities on April 21, 2011 (76 FR 23306). Management activities include management of a naturally-

formed barrier beach at the mouth of the river in order to minimize potential for flooding of properties adjacent to the Russian River estuary and enhance habitat for juvenile salmonids, and biological and physical monitoring of the estuary. Flood control-related breaching of barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for salmonids listed as threatened and endangered under the Endangered Species Act (ESA), occurs only from May 15 through October 15 (hereafter, the ''lagoon management period''). All estuary management activities are conducted by SCWA in accordance with a Reasonable and Prudent Alternative (RPA) included in NMFS' Biological Opinion (BiOp) for Water Supply, Flood Control Operations, and Channel Maintenance conducted in the Russian River watershed (NMFS, 2008). Species known from the haul-out at the mouth of the Russian River include the harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*).

Description of the Specified Activity

Breaching of naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment (e.g., bulldozer, excavator) and increased human presence. As a result, pinnipeds hauled out on the beach may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Numbers of harbor seals, the species most commonly encountered at the haul-out, have been recorded extensively since 1972 at the haul-out near the mouth of the Russian River.

The estuary is located about 97 km (60 mi) northwest of San Francisco in Sonoma County, near Jenner, California (see Figure 1 of SCWA's application). The Russian River watershed encompasses 3,847 km^2 (1,485 mi^2) in Sonoma, Mendocino, and Lake Counties. The mouth of the Russian River is located at Goat Rock State Beach; the estuary extends from the mouth upstream approximately 10 to 11 km (6–7 mi) between Austin Creek and the community of Duncans Mills (Heckel 1994). The proposed action involves management of the estuary to prevent flooding while avoiding adverse modification to critical habitat for ESA-listed salmonids. During the lagoon management period only, this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon, which will reduce flooding while maintaining appropriate conditions for juvenile salmonids. Additional breaches of barrier beach may be conducted for the sole purpose of reducing flood risk.

There are three components to SCWA's ongoing estuary management activities: (1) Lagoon outlet channel management, during the lagoon management period only, required to accomplish the dual purposes of flood risk abatement and maintenance of juvenile salmonid habitat; (2) traditional artificial breaching, with the sole objective of flood risk abatement; and (3) physical and biological monitoring in and near the estuary, required under the terms of the BiOp, to understand response to water surface elevation management in the estuary-lagoon system. In addition to these ongoing management activities, SCWA will conduct new monitoring work at the mouth of the Russian River during the period of this IHA. This additional activity comprises a plan to study the effects of a historical, dilapidated jetty on the formation and maintenance of the Russian River estuary, as required under RPA 2 of the 2008 BiOp. Through several phases from 1929-1948, the jetty and associated seawall, roadway, and railroad were constructed, reinforced and then abandoned by various entities. The plan for study of the jetty is described in greater detail in SCWA's 'Feasibility of Alternatives to the Goat Rock State Beach Jetty for Managing Lagoon Water Surface Elevations—A Study Plan' (ESA PWA, 2011a), available online (see **ADDRESSES**).

SCWA's estuary management activities generally involve the use of heavy equipment and increased human presence on the beach, in order to excavate and maintain an outlet channel from the lagoon to the ocean or to conduct artificial breaching. Pupping season for harbor seals at the mouth of the Russian River typically peaks during May. However, pupping is known to begin in March and may continue through the end of June; pupping season for harbor seals is conservatively defined here as March 15 to June 30. During pupping season, management events may occur over a maximum of two consecutive days per event and all estuary management events on the beach must be separated by a minimum no-work period of one week. The use of heavy equipment and increased human presence has the potential to harass hauled-out marine mammals by causing movement or flushing into the water. Mitigation and monitoring measures described later in this document are designed to minimize this harassment to the lowest practicable level.

Equipment (e.g., bulldozer, excavator) is off-loaded in the parking lot of Goat Rock State Park and driven onto the beach via an existing access point. Personnel on the beach will include up to two equipment operators, three safety team members on the beach (one on each side of the channel observing the equipment operators, and one at the barrier to warn beach visitors away from the activities), and one safety team member at the overlook on Highway 1 above the beach. Occasionally, there will be two or more additional people on the beach (SCWA staff or regulatory agency staff) to observe the activities. SCWA staff will be followed by the equipment, which will then be followed by an SCWA vehicle (typically a small pickup truck, to be parked at the previously posted signs and barriers on the south side of the excavation location).

Lagoon Outlet Channel Management

Active management of estuarine/lagoon water levels commences following the first closure of the barrier beach during this period. When this happens, SCWA monitors lagoon water surface elevation and creates an outlet channel when water levels in the estuary are between 4.5 and 7.0 ft (1.4–2.1 m) in elevation. Management practices will be incrementally modified over the course of the lagoon management period in an effort to improve performance in meeting the goals of the BiOp while preventing flooding.

Ideally, initial implementation of the outlet channel would produce a stable channel for the duration of the lagoon management period. However, the sheer number of variables and lack of past site-specific experience likely preclude this outcome, and succeeding excavation attempts may be required. The precise number of excavations would depend on uncontrollable variables such as seasonal ocean wave conditions (e.g., wave heights and lengths), river inflows, and the success of previous excavations (e.g., the success of selected channel widths and meander patterns) in forming an outlet channel that effectively maintains lagoon water surface elevations. Based on lagoon management operations under similar conditions at Carmel River, and expectations regarding how wave action and sand deposition may increase beach height or result in closure, it is predicted that up to three successive outlet channel excavation events, at increasingly higher beach elevations, may be necessary to produce

a successful outlet channel. In the event that an outlet channel fails through breaching (i.e., erodes the barrier beach and forms a tidal inlet), SCWA would resume adaptive management of the outlet channel's width, slope, and alignment in consultation with NMFS and the California Department of Fish and Game (CDFG), only after ocean wave action naturally reforms a barrier beach and closes the river's mouth during the lagoon management period.

Implementation and Maintenance—Upon successful construction of an outlet channel, adaptive management, or maintenance, may be required for the channel to continue achieving performance criteria. In order to reduce disturbance to seals and other wildlife, as well as beach visitors, the amount and frequency of mechanical intervention will be minimized. As technical staff and maintenance crews gain more experience with implementing the outlet channel and observing its response, maintenance is anticipated to be less frequent, with events of lesser intensity. During pupping season, machinery may only operate on up to two consecutive working days, including during initial construction of the outlet channel. In addition, SCWA must maintain a one week no-work period between management events during pupping season, unless flooding is a threat, to allow for adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach. SCWA seeks to avoid conducting management activities on weekends (Friday-Sunday) in order to reduce disturbance of beach visitors. In addition, activities are to be conducted in such a manner as to effect the least practicable adverse impacts to pinnipeds and their habitat as described later in this document (see ''Mitigation'').

Artificial Breaching

The estuary may close naturally throughout the year as a result of barrier beach formation at the mouth of the Russian River. Although closures may occur at any time of the year, the mouth usually closes during the spring, summer, and fall (Heckel 1994; Merritt Smith Consulting 1997, 1998, 1999, 2000; SCWA and Merritt Smith Consulting 2001). Closures result in lagoon formation in the estuary and, as water surface levels rise, flooding may occur. For decades, artificial breaching has been performed in the absence of natural breaching, in order to alleviate potential flooding of low-lying shoreline properties near the town of Jenner. Artificial breaching, as defined here, is conducted for the sole purpose of reducing flood risk, and thus is a different type of event, from an engineering perspective, than are the previously described lagoon management events. Artificial breaching activities occur in accordance with the BiOp, and primarily occur outside the lagoon management period (i.e., artificial breaching would primarily occur from October 16 to May 14). However, if conditions present unacceptable risk of flooding during the lagoon management period, SCWA may artificially breach the sandbar a maximum of two times during that period. Implementation protocol would follow that described previously for lagoon outlet channel management events, with the exception that only one piece of heavy equipment is likely to be required per event, rather than two.

Physical and Biological Monitoring

SCWA is required by the BiOp and other state and federal permits to collect biological and physical habitat data in conjunction with estuary management. Monitoring requires the use of boats and nets in the estuary, among other activities, and will require activities to occur in the vicinity of beach and river haul-outs (see Figure 4 of SCWA's application); these monitoring activities have the potential to disturb pinnipeds. The majority of monitoring is required under the BiOp and occurs approximately during the lagoon management period (mid-May through October or November), depending on river dynamics. Beach topographic surveys occur year-round.

Jetty Study

The jetty study will analyze the effects of the jetty on beach permeability and sand storage and transport. These physical processes are affected by the jetty, and, in turn, may affect seasonal water surface elevations and flood risk. Evaluating and quantifying these linkages will inform the development and evaluation of management alternatives for the jetty. The study involves delineation of two study transects perpendicular to the beach barrier (see Figure 5 of SCWA's application), with six water seepage monitoring wells constructed (three per transect). In addition, geophysical surveys will be conducted in order to better understand the characteristics of the barrier beach substrate and the location and composition of buried portions of the jetty and associated structures. Once the initial geophysical surveys have been completed, additional surface electromagnetic profiles will be collected along the barrier beach in order to explore how the jetty impacts beach seepage relative to the natural beach berm.

Comments and Responses

NMFS published a notice of receipt of SCWA's application and proposed IHA in the **Federal Register** on March 16, 2012 (77 FR 15722). During the 30-day comment period, NMFS received a letter from the Marine Mammal Commission (MMC). The MMC recommended that NMFS issue the requested authorization, subject to inclusion of the proposed mitigation and monitoring measures as described in NMFS' notice of proposed IHA and the application. All measures proposed in the initial **Federal Register** notice are included within the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species that may be harassed incidental to estuary management activities are the harbor seal, California sea lion, and the northern elephant seal. None of these species are listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. NMFS presented a more detailed discussion of the status of these stocks and their occurrence in the action area in the notice of the proposed IHA (77 FR 15722, March 16, 2012).

Potential Effects of the Specified Activity on Marine Mammals

NMFS provided a detailed discussion of the potential effects of the specified activity on marine mammals in the notice of the proposed IHA (77 FR 15722, March 16, 2012). A summary of anticipated effects is provided below.

A significant body of monitoring data exists for pinnipeds at the mouth of the Russian River. Pinnipeds have co-existed with regular estuary management activity for decades, as well as with regular human use activity at the beach, and are likely habituated to human presence and activity. Nevertheless, SCWA's estuary management activities have the potential to harass pinnipeds present on the beach. During breaching operations, past monitoring has revealed that some or all of the seals present typically move or flush from the beach in response to the presence of crew and equipment, though some may remain hauled-out. No stampeding of seals—a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus—

has been documented since SCWA developed protocols to prevent such events in 1999. While it is likely impossible to conduct required estuary management activities without provoking some response in hauled-out animals, precautionary mitigation measures, described later in this document, ensure that animals are gradually apprised of human approach. Under these conditions, seals typically exhibit a continuum of responses, beginning with alert movements (e.g., raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed seals typically re-occupy the haul-out within minutes to hours of the stimulus. In addition, eight other haul-outs exist nearby that may accommodate flushed seals. In the absence of appropriate mitigation measures, it is possible that pinnipeds could be subject to injury, serious injury, or mortality, likely through stampeding or abandonment of pups.

California sea lions and northern elephant seals, which have been noted only infrequently in the action area, have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous other sites. For example, monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2011). In the unlikely event that either of these species is present during management activities, they would be expected to display a minimal reaction to maintenance activities—less than that expected of harbor seals.

Although the Jenner haul-out is not known as a primary pupping beach, harbor seal pups have been observed during the pupping season; therefore, NMFS has evaluated the potential for injury, serious injury or mortality to pups. There is a lack of published data regarding pupping at the mouth of the Russian River, but SCWA monitors have observed pups on the beach. No births were observed during monitoring in 2010–11, but were inferred based on signs indicating pupping (e.g., blood spots on the sand, birds consuming possible placental remains). Pup injury or mortality would be most likely to occur in the event of extended separation of a mother and pup, or trampling in a stampede. As discussed previously, no stampedes have been recorded since development of appropriate protocols in 1999. Any California sea lions or northern elephant seals present would be independent juveniles or adults; therefore, analysis of impacts on pups is not relevant for those species. Pups less than one week old are characterized by being up to 15 kg, thin for their body length, or having an umbilicus or natal pelage.

Similarly, the period of mother-pup bonding, critical time needed to ensure pup survival and maximize pup health, is not expected to be impacted by estuary management activities. Harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.,* 2002; Burns *et al.,* 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. Although pupping season is defined as March 15–June 30, the peak of pupping season is typically concluded by mid-May, when the lagoon management period begins. As such, it is expected that most mother-pup bonding would likely be concluded as well. The number of management events during the months of March and April has been relatively low in the past, and the breaching activities occur in a single day over several hours. In addition, mitigation measures described later in this document further reduce the likelihood of any impacts to pups, whether through injury or mortality or interruption of mother-pup bonding.

Therefore, based on a significant body of site-specific monitoring data, harbor seals are unlikely to sustain any harassment that may be considered biologically significant. Individual animals would, at most, flush into the water in response to maintenance activities but may also simply become alert or move across the beach away from equipment and crews. NMFS has determined that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (i.e., less than one day) and limited intensity (i.e., temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see ''Mitigation'' for more details). Further, the continued, and increasingly heavy, use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

Anticipated Effects on Habitat

NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (77 FR 15722, March 16, 2012). SCWA's estuary management activities will result in temporary physical alteration of the Jenner haul-out. With barrier beach closure, seal usage of the beach haul-out declines, and the three nearby river haul-outs may not be available for usage due to rising water surface elevations. Breaching of the barrier beach, subsequent to the temporary habitat disturbance, will likely increase suitability and availability of habitat for pinnipeds. Biological and water quality monitoring will not physically alter pinniped habitat. In summary, there will be temporary physical alteration of the beach. However, natural opening and closure of the beach results in the same impacts to habitat; therefore, seals are likely adapted to this cycle. In addition, the increase in rearing habitat quality has the goal of increasing salmon abundance, ultimately providing more food for seals present within the action area.

Summary of Previous Monitoring

SCWA complied with the mitigation and monitoring required under the previous authorization. In accordance with the 2011 IHA, SCWA submitted a Report of Activities and Monitoring Results, covering the period of July 2009 through December 2011. Under the 2011 IHA, SCWA did not conduct any estuary management events, but did conduct associated biological and physical monitoring. During the course of these activities, SCWA did not exceed the take levels authorized under the 2011 IHA. NMFS provided a detailed description of previous monitoring results in the notice of the proposed IHA (77 FR 15722, March 16, 2012).

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

SCWA will continue the following mitigation measures, as implemented during the previous IHA, designed to minimize impact to affected species and stocks:

• SCWA crews will cautiously approach the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede—a particular concern during pupping season.

• SCWA staff will avoid walking or driving equipment through the seal haul-out.

• Crews on foot will make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly at the top of the sandbar, again preventing sudden flushes.

• During breaching events, all monitoring will be conducted from the overlook on the bluff along Highway 1 adjacent to the haul-out in order to minimize potential for harassment.

• A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

In addition, SCWA will continue mitigation measures specific to pupping season (March 15–June 30), as implemented in the previous IHA:

• SCWA will maintain a 1 week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.

• If a pup less than 1 week old is on the beach where heavy machinery will be used or on the path used to access the work location, the management action will be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA will consult with NMFS and CDFG to determine the appropriate course of action. SCWA will coordinate with the locally established seal monitoring program (Stewards' Seal Watch) to determine if pups less than 1 week old are on the beach prior to a breaching event.

• Physical and biological monitoring will not be conducted if a pup less than 1 week old is present at the monitoring site or on a path to the site.

Equipment will be driven slowly on the beach and care will be taken to minimize the number of shutdowns and start-ups when the equipment is on the beach. All work will be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out. Boats operating near river haul-outs during monitoring will be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

NMFS has carefully evaluated the applicant's mitigation measures as proposed and considered their effectiveness in past implementation, to determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures includes consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Injury, serious injury, or mortality to pinnipeds would likely result from startling animals inhabiting the haul-out into a stampede reaction, or from extended mother-pup separation as a result of such a stampede. Long-term impacts to pinniped usage of the haul-out could result from significantly increased presence of humans and equipment on the beach. To avoid these possibilities, NMFS and SCWA have developed the previously described mitigation measures. These are designed to reduce the possibility of startling pinnipeds, by gradually apprising them of the presence of humans and equipment on the beach, and to reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present and by setting limits on the frequency and duration of events during pupping season. During the past twelve years of flood control management, implementation of similar mitigation measures has resulted in no known stampede events and no known injury, serious injury, or mortality. Over the course of that time period, management events have generally been infrequent and of limited duration. Based upon the SCWA's record of management at the mouth of the Russian River, as well as information from monitoring SCWA's implementation of the improved mitigation measures as prescribed under the previous IHA, NMFS has determined that the mitigation measures included in the final IHA provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The applicant has developed a Pinniped Monitoring Plan which describes the proposed monitoring efforts. The purpose of this monitoring plan, which is carried out collaboratively with the Stewards of the Coasts and Redwoods (Stewards) organization, is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. SCWA has designed the plan both to satisfy the requirements of the IHA, and to address the following questions of interest:

1. Under what conditions do pinnipeds haul out at the Russian River estuary mouth at Jenner?

2. How do seals at the Jenner haul-out respond to activities associated with the construction and maintenance of the lagoon outlet channel and artificial breaching activities?

3. Does the number of seals at the Jenner haul-out significantly differ from historic averages with formation of a summer (May 15 to October 15) lagoon in the Russian River estuary?

4. Are seals at the Jenner haul-out displaced to nearby river and coastal haul-outs when the mouth remains closed in the summer?

In summary, monitoring includes the following:

Baseline Monitoring

Seals at the Jenner haul-out are counted twice monthly for the term of the IHA. This baseline information will provide SCWA with details that may help to plan estuary management activities in the future to minimize pinniped interaction. This census begins at local dawn and continues for 8 hours. All seals hauled out on the beach are counted every 30 minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using high powered spotting scopes. Monitoring may conclude for the day if weather conditions affect visibility (e.g., heavy fog in the afternoon). Counts are scheduled for 2 days out of each month, with the intention of capturing a low and high tide each in the morning and afternoon. Depending on how the sandbar is formed, seals may haul out in multiple groups at the mouth. At each

30-minute count, the observer indicates where groups of seals are hauled out on the sandbar and provides a total count for each group. If possible, adults and pups are counted separately.

In addition to the census data, disturbances of the haul-out are recorded. The method for recording disturbances follows those in Mortenson (1996). Disturbances will be recorded on a three-point scale that represents an increasing seal response to the disturbance. The time, source, and duration of the disturbance, as well as an estimated distance between the source and haul-out, are recorded. It should be noted that only responses falling into Mortenson's Levels 2 and 3 (i.e., movement or flight) will be considered as harassment under the MMPA. Weather conditions are recorded at the beginning of each census. These include temperature, percent cloud cover, and wind speed (Beaufort scale). Tide levels and estuary water surface elevations are correlated to the monitoring start and end times.

In an effort towards understanding possible relationships between use of the Jenner haul-out and nearby coastal and river haul-outs, several other haul-outs on the coast and in the Russian River estuary are monitored as well. The peripheral haul-outs are visited for 10-minute counts twice during each baseline monitoring day. All pinnipeds hauled out were counted from the same vantage point(s) at each haul-out using a high-powered spotting scope or binoculars.

Estuary Management Event Monitoring

Activities associated with artificial breaching or initial construction of the outlet channel, as well as the maintenance of the channel that may be required, will be monitored for disturbances to the seals at the Jenner haul-out. A 1-day pre-event channel survey will be made within 1–3 days prior to constructing the outlet channel. The haul-out will be monitored on the day the outlet channel is constructed and daily for up to the maximum 2 days allowed for channel excavation activities. Monitoring will also occur on each day that the outlet channel is maintained using heavy equipment for the duration of the lagoon management period. Monitoring will correspond with that described under the ''Baseline'' section previously, with the exception that management activity monitoring duration is defined by event duration, rather than being set at 8 hours. On the day of the management event, pinniped monitoring begins at least 1 hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least 1 hour after the crew and equipment leave the beach.

In an attempt to understand whether seals from the Jenner haul-out are displaced to coastal and river haul-outs nearby when management events occur, other nearby haul-outs are monitored concurrently with event monitoring. This provides an opportunity to qualitatively assess whether these haul-outs are being used by seals displaced from the Jenner haul-out. This monitoring will not provide definitive results regarding displacement to nearby coastal and river haul-outs, as individual seals are not marked, but is useful in tracking general trends in haul-out use during disturbance. As volunteers are required to monitor these peripheral haul-outs, haul-out locations may need to be prioritized if there are not enough volunteers available. In that case, priority will be assigned to the nearest haul-outs (North Jenner and Odin Cove), followed by the Russian River estuary haul-outs, and finally the more distant coastal haul-outs.

For all counts, the following information will be recorded in thirty minute intervals: (1) Pinniped counts, by species; (2) behavior; (3) time, source and duration of any disturbance; (4) estimated distances between source of disturbance and pinnipeds; (5) weather conditions (e.g., temperature, wind); and (5) tide levels and estuary water surface elevation.

Monitoring During Pupping Season—As described previously, the pupping season is defined as March 15 to June 30. Baseline, lagoon outlet channel, and artificial breaching monitoring during the pupping season will include records of neonate (pups less than 1 week old) observations. Characteristics of a neonate pup include: body weight less than 15 kg; thin for their body length; an umbilicus or natal pelage present; wrinkled skin; and awkward or jerky movements on land. SCWA will coordinate with the Seal Watch monitoring program to determine if pups less than 1 week old are on the beach prior to a water level management event.

If, during monitoring, observers sight any pup that might be abandoned, SCWA will contact the NMFS stranding response network immediately and also report the incident to NMFS' Southwest Regional Office and NMFS Office of Protected Resources within 48 hours. Observers will not approach or move the pup. Potential indications that a pup may be abandoned are no observed contact with adult seals, no movement of the pup, and the pup's attempts to nurse are rebuffed.

Reporting

SCWA is required to submit a report on all activities and marine mammal monitoring results to the Office of Protected Resources, NMFS, and the Southwest Regional Administrator, NMFS, 90 days prior to the expiration of the IHA if a renewal is sought, or within 90 days of the expiration of the permit otherwise. This annual report will also be distributed to California State Parks and Stewards, and would be available to the public on SCWA's Web site. This report will contain the following information:

- The number of seals taken, by species and age class (if possible);
- Behavior prior to and during water level management events;
- Start and end time of activity;
- Estimated distances between source and seals when disturbance occurs;
- Weather conditions (e.g., temperature, wind, etc.);
- Haul-out reoccupation time of any seals based on post activity monitoring;
- Tide levels and estuary water surface elevation; and
- Seal census from bi-monthly and nearby haul-out monitoring.

The annual report includes descriptions of monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures. SCWA will report any injured or dead marine mammals to NMFS' Southwest Regional Office and NMFS Office of Protected Resources.

Estimated Take by Incidental Harassment

NMFS is authorizing SCWA to take harbor seals, California sea lions, and northern elephant seals, by Level B harassment only, incidental to estuary management activities. These activities, involving increased human presence and the use of heavy equipment and support vehicles, are expected to harass pinnipeds present at the haul-out through behavioral disturbance only. In addition, monitoring activities prescribed in the BiOp may result in harassment of additional individuals at the Jenner haul-out and at the three haul-outs located in the estuary. Estimates of the number of harbor seals, California sea lions, and northern elephant seals that may be harassed by the activities is based upon the number of potential events associated with Russian River estuary management activities and the average number of individuals of each species that are present during conditions appropriate to the activity. As described previously in

this document, monitoring effort at the mouth of the Russian River has shown that the number of seals utilizing the haul-out declines during bar-closed conditions. Tables 1 and 2 detail the total number of authorized takes. Methodology of take estimation was discussed in detail in NMFS' notice of proposed IHA (77 FR 15722, March 16, 2012). Please note that the take estimates provided in NMFS' notice of proposed IHA (Tables 5–6 in that document) contained several errors, which are corrected here.

TABLE 1—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Number of animals expected to occur [a]	Number of events [b c]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)		
Implementation: 105 [d]	Implementation: 3	Implementation: 315
Maintenance and Monitoring: May: 103 June: 100 July: 105 Aug: 17 Sept: 19 Oct: 22	Maintenance: May: 1 June–Sept: 4/month Oct: 1 Monitoring: June–Sept: 2/month Oct: 1	Maintenance: 1,089 Monitoring: 504 Total: 1,908
Artificial Breaching		
Oct: 22 Nov: 11 Dec: 45 Jan: 96 Feb: 89 Mar: 146 Apr: 173 May: 103	Oct: 2 Nov: 2 Dec: 2 Jan: 1 Feb: 1 Mar: 1 Apr: 1 May: 1 11 events maximum	Oct: 44 Nov: 22 Dec: 90 Jan: 96 Feb: 89 Mar: 146 Apr: 173 May: 103 Total: 763
Topographic and Geophysical Beach Surveys		
Jan: 96 Feb: 89 Mar: 146 Apr: 131 May: 119 June: 134 July: 237 Aug: 108 Sept: 36 Oct: 36 Nov: 90 Dec: 45	1 topographic survey/month 2 geophysical surveys/month, Sep–Dec; 1/month, July–Aug, Jan–Feb Surveys considered to have potential for take of 10 percent of animals present	Jan: 20 Feb: 18 Mar: 15 Apr: 13 May: 12 June: 13 July: 48 Aug: 22 Sept: 12 Oct: 12 Nov: 27 Dec: 15 Total: 227
Biological and Physical Habitat Monitoring in the Estuary		
1 [e]	65	65
Total		2,963

[a] For lagoon outlet channel management and artificial breaching events occurring from April through November, average daily number of animals is from observations at the mouth of the Russian River during breaching events (i.e., bar-closed conditions). For artificial breaching events occurring from December through March, and for all topographic and geophysical beach surveys, average daily number of animals is from observations at Russian River mouth during bar-open conditions, 2009–11.

[b] For implementation of the lagoon outlet channel, an event is defined as a single, two-day episode. It is assumed that the same individual seals would be hauled out during a single event. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities.

[c] Number of events for artificial breaching derived from historical data. The average number of events for each month was rounded up to the nearest whole number; estimated number of events for December was increased from one to two because multiple closures resulting from storm events have occurred in recent years during that month. These numbers likely represent an overestimate, as the average annual number of events is six.

[d] Although implementation could occur at any time during the lagoon management period, the highest daily average from any month during the lagoon management period was used.

[e] Based on past experience, SCWA expects that no more than one seal may be present, and thus have the potential to be disturbed, at each of the three river haul-outs.

TABLE 2—ESTIMATED NUMBER OF CALIFORNIA SEA LION AND ELEPHANT SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Species	Number of animals expected to occur	Number of events	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)			
California sea lion (potential to encounter once per event)	1	3	3
Northern elephant seal (potential to encounter once per event)	1	3	3
Artificial Breaching			
California sea lion (potential to encounter once per event, Sept–Apr)	1	10	10
Northern elephant seal (potential to encounter once per event, Dec–May)	1	7	7
Topographic and Geophysical Beach Surveys			
California sea lion (potential to encounter once per event, Sept–Apr)	1	18	18
Northern elephant seal (potential to encounter once per event, Dec–May)	1	10	10
Biological and Physical Habitat Monitoring in the Estuary			
California sea lion (potential to encounter once per month, Sept–Apr)	1	8	8
Total			
California sea lion			37
Elephant seal			20

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In determining whether or not authorized incidental take will have a negligible impact on affected species stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of Level B harassment take that may occur. Although SCWA's estuary management activities may harass pinnipeds hauled out at the mouth of the Russian River, as well as those hauled out at several locations in the estuary during recurring monitoring activities, impacts are occurring to a small, localized group of animals. No mortality or injury is anticipated, nor will the action result in long-term impacts such as permanent abandonment of the haul-out. Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment on the beach. However, breaching the sandbar has been shown to increase seal abundance on the beach, with seals quickly re-inhabiting the haul-out following cessation of activity. In addition, the implementation of the lagoon management plan may provide increased availability of prey species (salmonids). No impacts are expected at the population or stock level.

No pinniped stocks known from the action area are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity; populations of California sea lions and northern elephant seals in California are also considered healthy.

The number of animals authorized to be taken for each species of pinnipeds can be considered small relative to the population size. There are an estimated 34,233 harbor seals in the California stock, 238,000 California sea lions, and 124,000 northern elephant seals in the California breeding population. Based on extensive monitoring effort specific to the affected haul-out and historical data on the frequency of the specified activity, NMFS is authorizing take, by Level B harassment only, of 2,963 harbor seals, 37 California sea lions, and 20 northern elephant seals, representing 8.7, 0.02, and 0.02 percent of the populations, respectively. However, this represents an overestimate of the number of individuals harassed over the duration of the proposed IHA, because the take estimates include multiple instances of harassment to a given individual.

California sea lion and elephant seal pups are not known to occur within the action area and thus will not be affected by the specified activity. The action is not likely to cause injury or mortality to any harbor seal pup, nor will it impact mother-pup bonding. The peak of harbor seal pupping season occurs during May, when few management activities are anticipated. However, the pupping season has been conservatively defined as March 15–June 30 for mitigation purposes, and any management activity that is required during pupping season will be delayed in the event that a pup less than one week old is present on the beach. As described previously in this document, harbor seal pups are precocious, and mother-pup bonding is likely to occur within minutes. Delay of events will further ensure that mother-pup bonding is not likely to be interfered with.

Based on the foregoing analysis, behavioral disturbance to pinnipeds at the mouth of the Russian River will be of low intensity and limited duration. To ensure minimal disturbance, SCWA will implement the mitigation measures described previously, which NMFS has determined will serve as the means for effecting the least practicable adverse effect on marine mammals stocks or populations and their habitat. NMFS finds that SCWA's estuary management activities will result in the incidental take of small numbers of marine

mammals, and that the authorized number of takes will have no more than a negligible impact on the affected species and stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are no ESA-listed marine mammals found in the action area; therefore, no consultation under the ESA is required. As described elsewhere in this document, SCWA and the Corps consulted with NMFS under section 7 of the ESA regarding the potential effects of their operations and maintenance activities, including SCWA's estuary management program, on ESA-listed salmonids. As a result of this consultation, NMFS issued the Russian River Biological Opinion (NMFS, 2008) and RPA, which prescribes modifications to SCWA's estuary management activities.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of an IHA to SCWA. NMFS signed a Finding of No Significant Impact (FONSI) on March 30, 2010. NMFS has reviewed SCWA's application and determined that there are no substantial changes to the proposed action and that there are no new direct, indirect, or cumulative effects to the human environment resulting from renewal of an IHA to SCWA. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and reaffirms the existing FONSI for this action. The existing EA and FONSI for this action are available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Determinations

NMFS has determined that the impact of conducting the specific estuary management activities described in this notice and in the IHA request in the specific geographic region in Sonoma County, California may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to SCWA to conduct estuary management activities in the Russian River from the period of April 21, 2012, through April 20, 2013, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 17, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–9863 Filed 4–23–12; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), has submitted a public information collection request (ICR) entitled AmeriCorps Member Application Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Thomas Howard, Jr., at (202) 606–6697 or email to *toward@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on February 3, 2012. This comment period ended April 3, 2012. No public comments were received from this Notice.

Description: The Corporation is seeking approval of the AmeriCorps Member Application Form which is used by individuals to apply to serve in an AmeriCorps program.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Member Application Form.

OMB Number: 3045–0054.

Agency Number: None.

Affected Public: Applicants to serve in AmeriCorps.

Total Respondents: 225,000.

Frequency: Ongoing.

Average Time per Response: 1.25 hours.

Estimated Total Burden Hours: 281,250.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: April 16, 2012.

Idara Nickelson,

Chief Program Officer.

[FR Doc. 2012–9807 Filed 4–23–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors, Department of Defense.

ACTION: Meeting notice.

SUMMARY: In accordance with 10 U.S.C. 9355 and 41 CFR 102–3.150, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting in Capitol Building House Visitor Center Conference Room 200 in Washington, DC on May 11, 2012. The meeting will begin at 10:15 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include the Superintendent's Update; an Air Force and US Defense Strategy Briefing; a Character Update; the USAFA 501(c) Organizations Brief; a USAFA Diversity Budget Update; and a Subcommittee Out-brief. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, one session of this meeting shall be closed to the public because they will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force address detailed below at any time. However, if a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific personnel to make oral presentations before the BoV. In accordance with 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

FOR FURTHER INFORMATION CONTACT: For additional information or to attend this BoV meeting, contact Capt Bobby Hale, Chief of Holm Center Programs, Commissioning Programs Division, AF/A1DO, 1500 Perimeter Road, Suite 4750, Joint Base Andrews, MD 20762–6604, (240) 612–6252.

Henry Williams, Jr.,

DAF, Acting Air Force Federal Register Liaison Office.

[FR Doc. 2012–9791 Filed 4–23–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Application for New Awards; Advanced Placement (AP) Test Fee Program—Reopening the AP Test Fee Fiscal Year 2012 Competition

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education.

ACTION: Notice reopening the AP Test Fee fiscal year 2012 competition.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.330B.

SUMMARY: On February 15, 2012, we published in the **Federal Register** (77 FR 8848) a notice inviting applications for the AP Test Fee fiscal year (FY) 2012 competition (February 15 notice). That notice established an April 6, 2012, deadline for eligible applicants to apply for funding under this program.

We are reopening the competition to eligible applicants because additional funds have become available. The February 15 notice stated that for FY 2012, the Department expected to award $19,962,200 in new grants under this program. Based on the anticipated number of applicants and other information available to the Department, we expected this amount to be sufficient to pay up to $38 per advanced placement exam for up to three exams per low-income student.

An additional $4,750,000 in FY 2012 funds have become available. Based on the anticipated number of applicants and other information available to the Department, we expect the new total amount of funds available for awards, $24,712,200, to be sufficient to pay the full cost of each advanced placement exam, with no limitation on the number of exams per low-income student.

We are reopening the FY 2012 competition to give eligible applicants an opportunity to submit revised applications that reflect the new total amount of funds available for new awards.

All information in the February 15, notice for this competition remains the same, except for the changes in funding described above and the following changes to **DATES**.

DATES: Applications Available: April 24, 2012.

Deadline for Transmittal of Applications: May 4, 2012.

Deadline for Intergovernmental Review: July 3, 2012.

Note: Applications for grants under the AP Test Fee program, CFDA number 84.330B, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us. For information about how to submit your application electronically, please refer to Electronic Submission of Applications in the February 15 notice.

FOR FURTHER INFORMATION CONTACT: Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue SW., room 3E224, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by email: *Francisco.Ramirez@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program person listed in this section.

Electronic Access to This Document: The official version of this document is

the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 6534.

Dated: April 19, 2012.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–9855 Filed 4–23–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–60–004.
Applicants: Progress Energy, Inc., Duke Energy Corporation.
Description: Applicants submit response to FERC 4/10/12 letter requesting additional information regarding Applicants' 3/26/12 compliance filing.
Filed Date: 04/13/2012.
Accession Number: 20120416–0038.
Comment Date: 5 p.m. ET 4/25/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–57–000.
Applicants: Cayuga Operating Company, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Cayuga Operating Company, LLC.
Filed Date: 4/13/12.
Accession Number: 20120413–5289.
Comments Due: 5 p.m. ET 5/4/12.

Docket Numbers: EG12–58–000.
Applicants: Somerset Operating Company, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Somerset Operating Company, LLC.
Filed Date: 4/13/12.
Accession Number: 20120413–5291.
Comments Due: 5 p.m. ET 5/4/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–496–020; ER99–3658–006; ER08–444–006.
Applicants: Northeast Utilities Service Company, Select Energy, Inc., NSTAR Electric Company.
Description: Notice of Non-Material Change in Circumstances of Northeast Utilities Operating Companies, *et al.*
Filed Date: 4/16/12.
Accession Number: 20120416–5112.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: ER11–2741–002.
Applicants: CPV Batesville, LLC.
Description: Supplement to Market Power Update of CPV Batesville, LLC.
Filed Date: 3/21/12.
Accession Number: 20120321–5067.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: ER11–4486–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits tariff filing per 35.19a(b): Filing of a Refund Report to be effective N/A.
Filed Date: 4/16/12.
Accession Number: 20120416–5127.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: ER12–799–000.
Applicants: Nevada Solar One, LLC.
Description: Supplement to Request for Determination of Category 1 Status in Compliance with Order No. 697.
Filed Date: 4/6/12.
Accession Number: 20120406–5085.
Comments Due: 5 p.m. ET 4/27/12.

Docket Numbers: ER12–1316–001.
Applicants: Silver State Solar Power North, LLC.
Description: Silver State Solar Power North LLC Baseline Tariff Amendment to be effective 3/25/2012.
Filed Date: 4/13/12.
Accession Number: 20120413–5249.
Comments Due: 5 p.m. ET 5/4/12.

Docket Numbers: ER12–1504–001.
Applicants: Cimarron Windpower II, LLC.
Description: Amendment of Effective Date to be effective 4/19/2012.
Filed Date: 4/13/12.
Accession Number: 20120413–5286.
Comments Due: 5 p.m. ET 5/4/12.

Docket Numbers: ER12–1551–000.
Applicants: Vermont Electric Power Company.
Description: Notice of Cancellation of Rate Schedule 234 of Vermont Electric Power Company.
Filed Date: 4/16/12.
Accession Number: 20120416–5114.
Comments Due: 5 p.m. ET 5/7/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–34–000.
Applicants: El Paso Electric Company.
Description: Application of El Paso Electric Company for Authorization under Section 204 of the Federal Power Act.
Filed Date: 4/13/12.
Accession Number: 20120413–5301.
Comments Due: 5 p.m. ET 5/4/12.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–54–010.
Applicants: PacifiCorp.
Description: PacifiCorp's annual informational filing on assessments and distributions of operational penalties.
Filed Date: 04/16/2012.
Accession Number: 20120416–5148.
Comment Date: 5 p.m. ET 5/7/12.

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 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9780 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–93–000.
Applicants: AES Eastern Energy, LP, AES Somerset, LLC, AES CAYUGA LLC, Somerset Cayuga Holding Company, Inc.

Description: Section 203 Joint Application of AES Eastern Energy, L.P., AES Somerset, LLC, AES Cayuga, LLC and Somerset Cayuga Holding Company, Inc.

Filed Date: 4/13/12.

Accession Number: 20120413–5308.

Comments Due: 5 p.m. ET 5/4/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1338–001.

Applicants: Southern Indiana Gas and Electric Company.

Description: Triennial Market-Based Rate Update Supplemental Filing of Southern Indiana Gas and Electric Company, Inc.

Filed Date: 4/16/12.

Accession Number: 20120416–5296.

Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: ER12–1174–001.

Applicants: Cross Border Energy LLC.

Description: Baseline Market-Based Rate Tariff to be effective 11/21/2009.

Filed Date: 4/17/12.

Accession Number: 20120417–5075.

Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: ER12–1527–000.

Applicants: ETC Endure Energy LLC.

Description: ETC Endure Energy LLC submits tariff filing per 35.13(a)(2)(iii: Normal Filing to be effective 2/29/2012.

Filed Date: 4/17/12.

Accession Number: 20120417–5096.

Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: ER12–1552–000.

Applicants: Southwest Power Pool, Inc.

Description: Revisions to Attachments H and T to Implement Balanced Portfolio Transfers to be effective 6/1/2012.

Filed Date: 4/16/12.

Accession Number: 20120416–5180.

Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: ER12–1553–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA and Service Agreement SCE–TDBU with SCE–PPD, PPD–SPVP 027 (I–210–3) Project to be effective 4/18/2012.

Filed Date: 4/17/12.

Accession Number: 20120417–5109.

Comments Due: 5 p.m. ET 5/8/12.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–37–005.

Applicants: Louisville Gas & Electric Company.

Description: Report of Louisville Gas and Electric Company, *et al.*

Filed Date: 4/17/12.

Accession Number: 20120417–5081.

Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: OA08–111–004.

Applicants: Portland General Electric Company.

Description: Annual Informational Filing on Operational Penalty Assessments and Distributions as Required by Order Nos. 890 and 890–A of Portland General Electric Company.

Filed Date: 4/17/12.

Accession Number: 20120417–5088.

Comments Due: 5 p.m. ET 5/8/12.

Docket Numbers: OA12–4–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado Annual Report of Penalty Assessments and Distributions in Accordance with Order Nos. 890 and 890–A.

Filed Date: 4/13/12.

Accession Number: 20120413–5311.

Comments Due: 5 p.m. ET 5/4/12.

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 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9781 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC11–46–000]

Ameren Corporation; Notice of Filing

Take notice that on March 30, 2011, Ameren Corporation (Ameren) submitted final accounting entries in accordance with the Commission's June 17, 2010 order in Docket No. EC10–52–000 and Part 33 of the Commission's regulations (18 CFR part 33), regarding (1) the merger of Central Illinois Light Company and Illinois Power Company with and into Central Illinois Public Service Company to form Ameren Illinois Company, and (2) the distribution of AmerenEnergy Resources Generating stock to Ameren and the subsequent contribution by Ameren of AmerenEnergy Resources Generating stock to Ameren Energy Resources. Additionally, on May 17, 2011 and April 16, 2012, Ameren submitted additional information regarding Ameren Illinois Company's accounting and rate treatment of goodwill.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 18, 2012.

Dated: April 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9787 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–112–000]

Southern Natural Gas Company, L.L.C.; Notice of Filing

Take notice that on April 5, 2012, Southern Natural Gas Company, L.L.C. (Southern), 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209, filed an application, pursuant to Section 7(b) of the Natural Gas Act (NGA), for authorization to abandon in place 19.57 miles of its 24-inch North Main Loop Line and appurtenant facilities (Abandoned Segment) located in Calhoun and Cleburne Counties, Alabama. Also, Southern, pursuant to Section 7(c) of the NGA, requests a certificate of public convenience and necessity authorizing Southern to construct, install, and operate a 2.25 mile, 3-inch diameter lateral off of Southern's North Main Line. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Southern states that it experienced a wrinkle bend failure on its North Main Loop Line. In response to a Corrective Action Order issued by the Southern Region of the Pipeline and Hazardous Materials Safety Administration, and Southern's testing and analysis; Southern has identified for abandonment in-place of 19.57 miles of pipeline and appurtenant facilities. Southern also states that the 2.25 mile lateral will be constructed parallel with the Abandoned Segment and provide sufficient capacity to continue serving its existing firm customer at the Heflin Gate Meter Station. The cost of the proposed project is estimated to be $2,203,000.

Any questions regarding the application are to be directed to Patricia S. Francis, Associate General Counsel, Southern Natural Gas Company, L.L.C., 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209; phone number (205) 325–3813; email: *Glenn.Sheffield@elpaso.com*.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 8, 2012.

Dated: April 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9765 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC12–53–000]

Kern River Gas Transmission Company; Notice of Filing

Take notice that on March 29, 2012, Kern River Gas Transmission Company (Kern River) submitted a request for authorization to retroactively adjust the amount of allowance for funds used during construction (AFUDC) capitalized as a component of the construction costs of its Apex Expansion project (Apex), by recording AFUDC on the Apex project as though it was compounded monthly during construction as opposed to semiannually in accordance with Commission policy.[1] Additionally, Kern River requests authorization to compound AFUDC on current and prospective projects on a monthly basis.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 17, 2012.

Dated: April 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9764 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2161–032]

Wausau Paper Mills, LLC; Notice of Final Land Management Plan and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed

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[1] *See Amendments to Uniform System of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C, and D) to Provide for the Determination of Rate for Computing Allowance for Funds Used During Construction and Revisions of Certain Schedule Pages of FPC Reports,* Order No. 561, 57 FPC 608 (1977), *reh'g denied,* Order No. 561–A, 59 FPC 1340 (1977), *order on clarification,* 2 FERC P 61,050 (1978).

with the Commission and is available for public inspection:

a. *Application Type:* Final Land Management Plan.

b. *Project No:* 2161–032.

c. *Date Filed:* August 1, 2011, and supplemented November 14, 2011.

d. *Applicant:* Wausau Paper Mills, LLC.

e. *Name of Project:* Rhinelander Hydroelectric Project.

f. *Location:* The upper Wisconsin River in Oneida County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Tim Hasbargen, Wausau Paper Mills, LLC, 515 Davenport St., Rhinelander, Wisconsin 54501–3328; (715) 369–4181.

i. *FERC Contact:* Patricia A. Grant, (312) 596–4435; *patricia.grant@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 17, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–2161–032) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Pursuant to the requirements of Article 410 of the license, Wausau Paper Mills, LLC developed and filed a final Land Management Plan (LMP) for the Rhinelander project, utilizing its original LMP, filed June 26, 1998, Volume III, Appendix E.2 of its license application, for finalizing the plan. The proposed final LMP includes provisions regarding buffer zones, protection of wetland areas, land and timber management practices, and public access.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2161) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9763 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40

CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Communication date	Presenter or requester
Prohibited		
1. IS12–160–000/IS12–165–000	3–7–12	Commission Staff.[1]
2. CP11–515–000	3–9–12	John Odland.[2]
3. CP12–72–000	3–15–12	Michelle D. Sweet.
4. CP11–515–000	3–16–12	John Odland.[3]
5. CP11–515–000	3–22–12	Janice O'Keefe.[4]
6. P–11858–000	3–26–12	Timothy Maw, CMCA.
Exempt:		
1. CP11–161–000	11–24–11	Commission Staff.[5]
2. CP11–161–000	3–2–11	Commission Staff.[6]
3. CP11–14–000	3–13–12	Commission Staff.[7]
4. CP12–19–000/CP12–20–000	3–14–12	Commission Staff.[8]
5. CP07–52–000	3–15–12	Commission Staff.[9]
6. P–459–000	3–20–12	Hon. Vicky Hartzler.
7. CP12–11–000	3–20–12	Commission Staff.[10]
8. P–459–000	3–21–12	Hon. Roy Blunt
9. CP12–11–000	3–26–12	Commission Staff.[11]
10. CP12–18–000	3–27–12	L. Girth, US Dept. Interior.
11. CP11–128–000	3–27–12	Hon. Kristen E. Gillibrand.
12. P–13417–000	4–5–12	Hon. Ron Johnson.
13. ER11–4081–000/AD12–1–000	4–9–12	Minnesota PUC.[12]
14. ER12–1177–000	4–9–12	Todd A. Snitchler.[13]
15. CP11–128–000	4–9–12	Hon. Brian Higgins & Hon. Kathleen C. Hochul.

[1] Email record.
[2] Email record.
[3] Email record.
[4] Letter sent to each of the Commissioners.
[5] Email record, covering the period of 11/24/11 to 2/22/12.
[6] Meeting with Commission Staff.
[7] Telephone record.
[8] Email record.
[9] Telephone record.
[10] Telephone record.
[11] Telephone record.
[12] Letter signed by all Commissioners of the Minnesota Public Utilities Commission.
[13] Letter signed by the Chairman of the Ohio Public Utilities Commission.

Dated: April 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9779 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the Midwest Independent Transmission System Operator, Inc. (MISO):

MISO Advisory Committee—April 18, 2012.

Order 1000—Right of First Refusal Task Team—April 26, 2012.

The above-referenced meeting will be held at: MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER12–715, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–309, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–56, *FirstEnergy Service Company.*

Docket No. EL11–30, *E.ON Climate & Renewables North America, LLC* v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL12–24–000, *Pioneer Transmission LLC* v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL12–28–000, *Xcel Energy Services Inc.* v. *American Transmission Company, LLC*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy Markets Regulation, Federal Energy

Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: April 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–9782 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

Joint Inter-Regional Planning Task Force/Electric System Planning Working Group

April 23, 2012, 11 a.m.–3 p.m., Local Time;

May 31, 2012, 10 a.m.–4 p.m., Local Time;

June 26, 2012, 10 a.m.–4 p.m., Local Time;

July 10, 2012, 10 a.m.–4 p.m., Local Time;

July 24, 2012, 10 a.m.–4 p.m., Local Time;

August 6, 2012, 10 a.m.–4 p.m., Local Time;

August 28, 2012, 10 a.m.–4 p.m., Local Time;

September 24, 2012, 10 a.m.–4 p.m., Local Time.

The above-referenced meetings will be held at: NYISO's offices, Rensselaer, NY.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.nyiso.com.*

The discussions at the meetings described above may address matters at issue in the following proceeding:

Docket No. ER08–1281, *New York Independent System Operator, Inc.*

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: April 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–9766 Filed 4–23–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2011–0795; FRL–9516–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; General Administrative Requirements for Assistance Programs (Renewal); EPA ICR No. 0938.18

AGENCY: Environmental Protection Agency.

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 24, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2011–0795, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, 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: Alexandra Raver, Office of Grants and Debarment, National Policy, Training and Compliance Division, Mail Code: 3903R, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–5296; fax number: (202) 565–2470; email address: *Raver.Alexandra@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 October 19, 2011 (76 FR 64942), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment during the comment period, which is addressed in the ICR. 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–OARM–2011–0795, which is available for online viewing at www.regulations.gov, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 Office of Environmental Information Docket is 202–566–1752.

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: General Administrative Requirements for Assistance Programs (Renewal).

ICR numbers: EPA ICR No. 0938.18, OMB Control Number 2030–0020.

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: The information is collected from applicants/recipients of EPA assistance to monitor adherence to the programmatic and administrative

requirements of the Agency's financial assistance program. It is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). 40 CFR part 30, ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' includes the management requirements for potential grantees from non-profit organizations. 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' includes the management responsibilities for potential State and local government grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. This renewal request also incorporates reporting and audit requirements associated with assistance programs funded under the American Recovery and Reinvestment Act (ARRA) of 2009 (previously approved under Emergency ICR Number 2351.01). This ICR combines all of these requirements under OMB Control Number 2030–0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars A–21, A–87, A–102, A–110, A–122, and A–133, which set forth the pre-award, post-award, and after-the-grant requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 24 hours per respondent. 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: Applicants and recipients of EPA assistance agreements.

Estimated Number of Respondents: 8,391.

Frequency of Response: On occasion, quarterly or semiannually, and annually.

Estimated Total Annual Hour Burden: 205,365.

Estimated Total Annual Cost: $11,071,840. This includes an estimated labor cost of $11,071,840 and $0 for annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 70,768 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase resulted from the incorporation of reporting and audit requirements for program areas under which grants were funded for the ARRA, addition and elimination of some grant forms as well as updates to the estimated number of respondents, the annual submissions per respondent, and the burden hours for completion of the grant forms under the ICR.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9798 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0034; FRL 9516–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Voluntary Aluminum Industrial Partnership (VAIP) (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 24, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0034, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket Information Center, 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: Sally Rand, Climate Change Division, Office of Atmospheric Programs (6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9739; fax number: 202–343–2202; email address: *rand.sally@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 February 16, 2012 (77 FR 9233), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0034, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public

viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Voluntary Aluminum Industrial Partnership (VAIP) (Renewal).

ICR numbers: EPA ICR No. 1867.05, OMB Control No. 2060–0411.

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: EPA's Voluntary Aluminum Industrial Partnership (VAIP) was initiated in 1995 and is an important voluntary program contributing to the overall reduction in emissions of greenhouse gases. This program focuses on reducing direct greenhouse gas emissions including perfluorocarbon (PFC) and carbon dioxide (CO_2) emissions from the production of primary aluminum. Six of the seven U.S. producers of primary aluminum participate in this program. PFCs are very potent greenhouse gases with global warming potentials several thousand times that of carbon dioxide, and they persist in the atmosphere for thousands of years. CO_2 is emitted from consumption of the carbon anode. The Partnership effectively promotes the adoption of emission reduction technologies and practices associated with decreasing the frequency and duration of anode effects. Participants voluntarily agree to designate a VAIP liaison, and to undertake and share information on technically feasible and cost-effective actions to reduce PFC and direct CO_2 emissions. The information contained in the annual reports of VAIP members is used by EPA to assess the success of the program in achieving its goals and to advance Partner efforts to reduce greenhouse gas emissions.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 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: Primary Production of Aluminum.

Estimated Number of Respondents: 6.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 240.

Estimated Total Annual Cost: $22,668, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 393 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is attributable in part to implementation of the EPA Mandatory Reporting of Greenhouse Gases Rule (74 FR 56260) which requires reporting of greenhouse gas (GHG) data and other relevant information from large sources and suppliers in the United States. The regulation includes primary aluminum production and because emissions reporting shifted from a voluntary to a mandatory activity, companies are no longer required to track, assess and submit emissions data under the VAIP. There is also one less participating company due to their cessation of primary aluminum production.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9812 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0078; FRL–9516–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Landfill Methane Outreach Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 24, 2012.

ADDRESSES: Submit your comments, referencing Docket ID number EPA–HQ–OAR–2003–0078, to (1) EPA on line using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Air and Radiation Docket, mail code 22821T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB by mail at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Victoria Ludwig, Climate Change Division, Office of Atmospheric Programs, 6207J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9291; fax number: 202–343–2202; email address: *ludwig.victoria@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 27, 2012 (77 FR 4297), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OAR–2003–0078, which is available for online viewing at *www.regulations.gov,* or in-person

viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744 and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and 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: Landfill Methane Outreach Program (Renewal).

ICR Numbers: EPA ICR Number 1849.06, OMB Control Number 2060–0446.

ICR Status: This ICR is scheduled to expire on 04/30/2012. 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, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Landfill Methane Outreach Program (LMOP), created by EPA as part of the Climate Change Action Plan, is a voluntary program designed to encourage and facilitate the development of environmentally and economically sound landfill gas (LFG) energy projects across the United States in order to reduce methane emissions from landfills. LMOP does this by educating local governments and communities about the benefits of LFG recovery and use; building partnerships between state agencies, industry, energy service providers, local communities, and other stakeholders interested in developing this valuable resource in their community; and providing tools to evaluate LFG energy potential. LMOP signs voluntary Memoranda of Understanding (MOU) with these organizations to enlist their support in promoting cost-effective LFG utilization. The information collection includes completion and submission of the MOU, and annual completion and submission of information forms that include basic information on LFG energy projects with which the organizations are involved as an effort to update the LMOP Landfill and Landfill Gas Energy Project Database. The information collection is to be utilized to maintain up-to-date data and information about LMOP Partners and LFG energy projects with which they are involved. The data will also be used by the public to assess LFG energy project development opportunities in the United States. In addition, the information collection will assist LMOP in evaluating the reduction of methane emissions from landfills. Responses to the information collection are voluntary.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours for each respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, and 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: Landfill owners and operators (both public and private), LFG energy project developers, manufacturers and suppliers of LFG energy equipment, utilities, industries using LFG energy, state agencies involved in energy, air pollution, economic development and solid waste management, and non-profits involved in the solid waste management, public works, local government and renewable energy sectors.

Estimated Total Number of Potential Respondents: 1,220 existing Partners plus 113 new Partners per year.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 4,216 hours.

Estimated Total Annual Cost: $334,332, which includes $334,298 in labor costs and $34 for operational and maintenance costs.

Changes in the Estimates: There is a decrease of 1,671 hours in the total estimated annual respondent burden compared with the burdens identified in the existing ICR approved by OMB. The existing approved ICR included a one-time, large-scale outreach to 1,000 additional landfill owners and operators. This activity and group of entities are not included in the scope of this ICR renewal, resulting in the overall decreases in total hours and hours per respondent. This change is the result of a program change. However, in the last approved ICR, Energy Partners were not requested to update landfill gas energy project data, and under this renewal, Energy Partners will be requested to provide updates on their involvement in these projects. Also, there has been growth in the number of overall Partners since the last renewal. These changes offset the magnitude of the overall burden decrease. There have been no major changes in how the information forms or MOU are dispersed or collected since the last renewal. LMOP has previously implemented simplifications and other changes to increase the efficiency of its ICR process.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–9810 Filed 4–23–12; 8:45 am]

BILLING CODE 6560–50–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 25, 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: 3060–0489.

Title: Section 73.37, Applications for Broadcast Facilities, Showing Required.

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: 365 respondents; 365 responses.

Estimated Hours per Response: 1 hour.

Frequency of Response: 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.

Total Annual Burden: 365 hours.

Total Annual Cost: $1,331,250.

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: 47 CFR 73.37(d) requires an applicant for a new AM broadcast station, or for a major change in an authorized AM broadcast station, to make a satisfactory showing that objectionable interference will not result to an authorized AM station as a condition for its acceptance if new or modified nighttime operation by a Class B station is proposed. 47 CFR 73.37(f) requires applicants seeking facilities modification that would result in spacing that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model I facilities. FCC staff use the data to ensure that objectionable interference will not be caused to other authorized AM stations.

OMB Control Number: 3060–0727.

Title: Section 73.213, Grandfathered Short-Spaced Stations.

Form Number(s): Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated time per response: 0.5 hours—0.83 hours.

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 Section 154(i), 55(c)(1), 302 and 303 of the Communications Act of 1934, as amended.

Total annual burden: 20 hours.

Total annual costs: $3,750.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.213 requires licensees of grandfathered short-spaced FM stations seeking to modify or relocate their stations to provide a showing demonstrating that there is no increase in either the total predicted interference area or the associated population (caused or received) with respect to all grandfathered stations or increase the interference caused to any individual stations. Applicants must demonstrate that any new area predicted to lose service as a result of interference has adequate service remaining. In addition, licensees are required to serve a copy of any application for co-channel or first-adjacent channel stations proposing predicted interference caused in any area where interference is not currently predicted to be caused upon the licensee(s) of the affected short-spaced station(s). Commission staff uses the data to determine if the public interest will be served and that existing levels of interference will not be increased to other licensed stations. Providing copies of application(s) to affected licensee(s) will enable potentially affected parties to examine the proposals and provide them an opportunity to file informal objections against such applications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–9726 Filed 4–23–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). 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 burden

for 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 OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 25, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–1126.

Title: Section 10.350, Testing Requirements for the Commercial Mobile Alert System (CMAS).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and not-for-profit institutions.

Number of Respondents: 145 respondents; 1,752 responses.

Estimated Time per Response: .000694 hours (2.5 seconds).

Frequency of Response: Monthly and on occasion reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 621(b)(3) and 621(d) of the Communications Act of 1934, as amended.

Total Annual Burden: 2 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission is seeking an extension of this information collection in order to obtain the full three year approval from OMB. There is no change to the reporting requirements and/or recordkeeping requirement.

As required by the Warning, Alert and Response Network (WARN) Act, Public Law 109–347, the Federal Communications Commission adopted final rules to establish a Commercial Mobile Alert System (CMAS), under which Commercial Mobile Service (CMS) providers may elect to transmit emergency alters to the public, see *Second Report and Order and Further Notice of Proposed Rulemaking,* FCC 08–164. In order to ensure that the CMAS operates efficiently and effectively, the Commission requires participating CMS providers to receive required monthly test messages initiated by the Federal alert Gateway Administrator, to test their infrastructure and internal CMAS delivery systems by distributing the monthly message to their CMAS coverage area, and to log the results of the test. The Commission also requires period testing of the interface between the Federal Alert Gateway and each CMS Provider Gateway to ensure the availability and viability of both gateway functions. The CMS Provider Gateways must send an acknowledgement to the Federal Alert Gateway upon receipt of these interface test messages.

The Commission, the Federal Alert Gateway and participating CMS providers will use this information to ensure the continued functioning of the CMAS, thus complying with the WARN Act and the Commission's obligation to promote the safety of life and property through the use of wire and radio communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–9727 Filed 4–23–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, April 26, 2012 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of April 12, 2012

Draft Advisory Opinion 2012–07: Feinstein for Senate

Draft Advisory Opinion 2012–08: Repledge

Draft Advisory Opinion 2012–09: Points for Politics, LLC

Draft Advisory Opinion 2012–10: Greenberg Quinlan Rosner Research, Inc.

Draft Advisory Opinion 2012–11: Free Speech

Draft Advisory Opinion 2012–12: Dunkin' Brands, Inc.

Draft Advisory Opinion 2012–13: Physicians Hospitals of America

Draft Advisory Opinion 2012–14: Shaun McCutcheon

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–9861 Filed 4–20–12; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 9, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *William David Major, Jimmy M. Agee, Larry W. Keller, M. Dale McCulloch, and Joe Wayne Hardy, all of Lebanon, Tennessee; James S. Short, Mt.*

Juliet, Tennessee; John H. Jordan, Clinton, Tennessee; David E. Davenport and Kenneth W. Victory, both of Smyrna, Tennessee; James A. Campbell, Nashville, Tennessee; William Kent Coleman, Murfreesboro, Tennessee; and Bruce G. Davis, Franklin, Tennessee; collectively acting in concert to acquire voting shares of The Community Bank of East Tennessee, Clinton, Tennessee.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Sheldon B. Lubar, individually, and as part of a group acting in concert, with Marianne S. Lubar, both of River Hills, Wisconsin; David J. Lubar, Fox Point, Wisconsin; Susan Lubar Solvang, and Joan P. Lubar,* both of Mequon, Wisconsin; to acquire control of Ixonia Bancshares, Inc., and thereby to indirectly acquire control of ISB Community Bank, both in Ixonia, Wisconsin.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Steinhardt Capital Investors, LLLP, Steinhardt Capital Management, LLC, and David R. Steinhardt and Michael H. Steinhardt,* all of New York, New York; to gain control of Mackinac Financial Corporation, and thereby indirectly gain control of MBank, both in Manistique, Michigan.

2. *William Victor Eckles,* Blue Earth, Minnesota; to retain control of FNB Bancshares, Inc., and thereby indirectly retain control of First Bank Blue Earth, both in Blue Earth, Minnesota.

D. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Mark Bain, Lubbock, Texas, individually, as co-trustee of the RMB 2012 Family Trust; trustee of the Ray Mark Bain 2007 Trust; and trustee of the Ray Mark Bain Children's Trusts; Michael Lewis Bain, Canyon, Texas, individually, as co-trustee of the RMB 2012 Family Trust; trustee of the Michael L. Bain 2007 Trust, and trustee of the Michael L. Bain Children's Trusts; Nancy Bain Seybert, Perryton, Texas, individually, as trustee of the Nancy Bain Seybert 2007 Trust; and trustee of the Nancy Bain Seybert Children's Trusts; Ray M. Bain and Barbara June Bain, both of Dimmitt, Texas;* collectively a group acting in concert, to control, retain, and acquire voting shares of Plains Bancorp, Inc., Dimmitt, Texas, and thereby indirectly control, retain, and acquire voting shares of First United Bank, both in Dimmitt, Texas.

Board of Governors of the Federal Reserve System, April 19, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–9792 Filed 4–23–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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 18, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Northeast Indiana Bancorp, Inc.,* Huntington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Federal Savings Bank, Huntington, Indiana.

Board of Governors of the Federal Reserve System, April 19, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–9793 Filed 4–23–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council Meeting; Notice of Sunshine Act Meeting

TIME AND DATE: 9 a.m. (Eastern Time) April 30, 2012.

PLACE: 10th Floor Training Room, 77 K Street NE., Washington, DC 20002.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the Minutes of the March 26, 2012 Board Member Meeting
2. Approval of the Minutes of the November 15, 2011 ETAC Meeting
3. Monthly Participant Activity Report
4. Legislative Report
5. Discussion on Automatically Increasing Participant Contributions
6. Quarterly Investment Policy Review
7. Discussion of International Fund Index
8. Vendor Financial Review
9. Annual Financial Audit Report
10. Participant Survey Report
11. Update on Deployment of Roth Feature

Parts Closed to the Public

12. Security

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: April 20, 2012.

Megan G. Grumbine,

Deputy General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2012–9966 Filed 4–20–12; 4:15 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for the information collection requirements contained in the Pay-Per-Call Rule (Rule). That clearance expires on May 31, 2012 (OMB Control No. 3084–0102).

DATES: Comments must be received by May 24, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by

following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Gary Ivens, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2330.

SUPPLEMENTARY INFORMATION:

Title: Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 (''Pay-Per-Call Rule''), 16 CFR part 308.

OMB Control Number: 3084–0102.

Type of Review: Extension of a currently approved collection.

Abstract: The existing reporting and disclosure requirements of the Pay-Per-Call Rule are mandated by the TDDRA to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

On February 1, 2012, the Commission sought comment on the information collection requirements in the Pay-Per-Call Rule. 77 FR 5017. No comments were received. As required by OMB regulations, 5 CFR Part 1320, the FTC is providing this second opportunity for public comment.

Likely Respondents: Telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities.

Estimated Annual Hours Burden: 2,379,796 hours (21+ 2,379,775).

Reporting: 21 hours for reporting by common carriers.

Disclosure: 2,379,775 hours [(49,680 hours for advertising by vendors + 50,635 hours for preamble disclosure which applies to every pay-per-call service + 16,560 burden hours for telephone-billed charges in billing statements (applies to vendors; applies to common carriers if acting as billing entity) + 7,800 burden hours for dispute resolution procedures in billing statements (applies to billing entities) + 2,255,100 hours for disclosures related to consumers reporting a billing error (applies to billing entities).

Estimated Annual Cost Burden: $130,263,530 (solely relating to labor costs).[1]

Request For Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 24, 2012. Write ''Pay-Per-Call Rule: FTC File No. R611016'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *, '' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/ppcrulepra2,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Pay-Per-Call Rule: FTC File No. R611016'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 24, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments

[1] Non-labor (e.g., capital/other start-up) costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (e.g., business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotext to which cost or other disclosures are added, etc.). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule's requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the annual burden hour and cost estimates provided below (where such costs are labor-related), or are otherwise included in the ordinary cost of doing business (regarding non-labor costs).

instead should be sent by facsimile to (202) 395–5167.

Willard K. Tom,

General Counsel.

[FR Doc. 2012–9853 Filed 4–23–12; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MG–2012–02; Docket No. 2012–0002; Sequence 9]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Public Advisory Meeting

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2). This notice provides the schedule and agenda for the May 9, 2012, meeting of the Green Building Advisory Committee Meeting (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: *Effective date:* April 24, 2012.

Meeting date: The meeting will be held on Wednesday, May 9, 2012, starting at 9:30 a.m. Eastern time, and ending no later than 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Governmentwide Policy, General Services Administration, 1275 First Street NE., Room 633D, Washington, DC 20417, telephone (202) 219–1121 (note: this is not a toll-free number). Additional information about the Committee is available on-line at *http://www.gsa.gov/portal/content/121999.*

Contact Ken Sandler at (202) 219–1121 to register to comment during the meeting's 30 minute public comment period. Registered speakers/organizations will be allowed 5 minutes and will need to provide written copies of their presentations. Requests to comment at the meeting must be received by 5 p.m. Eastern time, Monday, May 7. Written comments may be provided to Mr. Sandler at *ken.sandler@gsa.gov* until Monday, May 21. Please contact Mr. Sandler at the email address above to obtain meeting materials.

SUPPLEMENTARY INFORMATION:

Background

The Green Building Advisory Committee will provide advice to GSA as specified in Public Law 110–140, as a mandatory Federal advisory committee. Under this authority, the Committee will advise GSA on the rapid transformation of the Federal building portfolio to sustainable technologies and practices. The Committee will focus primarily on reviewing strategic plans, products and activities of the Office of Federal High-Performance Green Buildings and providing advice regarding how the Office can most effectively accomplish its mission.

Agenda: *Wednesday, May 9, 2012.*

- Introductions and plans for today's meeting
- Green building certification system review report
- High Performance Green Building Demonstration project at Fort Carson, Colorado
- Updates on other current priority projects of GSA's Office of Federal High-Performance Green Buildings
- 30 minute public comment period for individuals pre-registered per instructions above. Each individual will be able to speak for no more than 5 minutes.
- Closing comments

Meeting Access: The Committee will convene its meeting at: US Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004. Persons attending meetings in the Access Board's conference space are requested to refrain from using perfume, cologne, and other fragrances (see *http://www.access-board.gov/about/policies/fragrance.htm* for more information).

Dated: April 18, 2012.

John C. Thomas,

Deputy Director, Office of Committee and Regulatory Management, General Services Administration.

[FR Doc. 2012–9805 Filed 4–23–12; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990-new; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Evaluation of the effectiveness of an educational interactive video on research integrity—OMB No. 0990-New- Office of Research Integrity.

Abstract: The Office of Research Integrity (ORI) proposes to conduct a web based survey evaluation study of the effectiveness of an educational interactive video on research integrity. This study is web-based survey of research faculty/instructors, Research Integrity Officers (RIOs) and Research Administrators' perceptions of the effectiveness of this educational interactive video.

The study seeks to answer two questions: (a) Do researchers feel that this DVD would enhance their teaching of research integrity issues? (b) Will researchers use this DVD in future research methodology or ethics courses? Both hypotheses will be tested with a customer satisfaction type survey. A portion of the survey will collect data on respondent demographics to enable subanalyses on important subpopulations. Participants will be research instructors/faculty, Research Integrity Officers (RIOs) and Research Administrators) who have experience with the ORI educational programs or who may have experience with RCR programs in the near future. The information to be collected will be used by the ORI to help gain additional

insight regarding the effectiveness of this educational interactive video, and determining whether it meets our customers' needs and ORI's mission and goals.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Research Integrity Officers (RIOs), Research Administrators, Faculty/Instructors	6000	1	21/60	2100

Keith A. Tucker,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2012–9768 Filed 4–23–12; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Fitness, Sports, and Nutrition; Correction

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of the President's Council on Fitness, Sports, and Nutrition.

ACTION: Notice; Correction.

SUMMARY: The Department of Health and Human Services published a notice in the **Federal Register** on April 13, 2012 to announce the May 1, 2012 meeting of the President's Council on Fitness, Sports, and Nutrition. The meeting was scheduled to be held at 200 Independence Avenue, Room 800, SW., Washington, DC 20201. The location of the meeting has changed.

FOR FURTHER INFORMATION CONTACT: Ms. Shellie Pfohl, Executive Director, President's Council on Fitness, Sports, and Nutrition, Suite 560 Tower Building, 1101 Wootton Parkway, Rockville, MD 20852, (240) 276–9866.

Correction

In the **Federal Register** of April 13, 2012, Vol. 77, No. 72, on page 22321, in the first column, correct the **ADDRESSES** caption to read:

ADDRESSES: Verizon Center, 601 F Street NW., Washington, DC 20004.

Dated: April 16, 2012.

Shellie Y. Pfohl,

Executive Director, President's Council on Fitness, Sports, and Nutrition.

[FR Doc. 2012–9799 Filed 4–23–12; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1444–NC]

Medicare and Medicaid Programs; Announcement of Application From a Hospital Requesting Waiver for Organ Procurement Service Area

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: A hospital has requested a waiver of statutory requirements that would otherwise require the hospital to enter into an agreement with its designated Organ Procurement Organization (OPO). The request was made in accordance with section 1138(a)(2) of the Social Security Act (the Act). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 25, 2012.

ADDRESSES: In commenting, please refer to file code CMS–1444–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1444–NC, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Department of Health and Human Services, Attention: CMS–1444–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kwana Johnson, (410) 786–3171.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of

the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement only with its designated OPO to identify potential donors.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to submit comments during the 60-day comment period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

As permitted by 42 CFR 486.308(e), the following hospital has requested a waiver in order to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located:

Transplant Institute at Methodist Le Bonheur Healthcare of Memphis, Tennessee, is requesting a waiver to work with: Tennessee Donor Services, 1600 Hayes Street, Suite 300, Nashville, TN 37203.

The Hospital's Designated OPO is: Mid-South Transplant Foundation, Inc., 8001 Centerview Parkway, Suite 302, Memphis, TN 38018.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: April 18, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–9977 Filed 4–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: TANF Quarterly Financial Report, ACF–196.

OMB No.: 0970–0247.

Description: This information collection is authorized under Section 411(a)(3) of the Social Security Act. This request is for renewal of approval to use the Administration for Children and Families' (ACF) 196 form for periodic financial reporting under the Temporary Assistance for Needy Families (TANF) program. States participating in the TANF program are required by statute to report financial data on a quarterly basis. This form meets the legal standard and provides essential data on the use of Federal funds. Failure to collect the data would seriously compromise ACF's ability to monitor program expenditures, estimate funding needs, and to prepare budget submissions required by Congress. Financial reporting under the TANF program is governed by 45 CFR part 265. This renewal removes columns for reporting Emergency Contingency Fund and Supplemental Grant expenditures, as those funding streams are no longer available, and includes a requirement to

provide an addendum to the fourth quarter report to describe estimates used in deriving any expenditures reported in any category.

Respondents: TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	51	4	8	1,632

Estimated Total Annual Burden Hours: 1,632.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–9759 Filed 4–23–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Small-Molecule Modulators of Lipid Storage for Treatment of Obesity, Atherosclerosis, Metabolic Syndrome and Lipid Storage Diseases

Description of Technology: Lipid droplets are key organelles involved in lipid homeostasis. In normal physiology, these droplets are formed in response to elevated fatty acid levels, and are broken down when needed for energy production. Imbalances in lipid homeostasis trigger compensatory alterations in metabolism that can lead to diseases such as obesity, atherosclerosis, and metabolic syndrome. There are also a number of inherited lipid storage diseases that result in harmful buildup of various lipids, such as Gaucher disease, Fabry disease, and others. Reducing the accumulation of lipid droplets is a promising potential strategy for treatment of such disorders.

This technology describes three novel structural classes of small-molecule compounds that significantly reduce the accumulation of lipid droplets. These compounds hold promise for the treatment of diseases associated with aberrant lipid deposition.

Potential Commercial Applications:

- Treatment of inherited metabolic diseases such as Gaucher disease, Fabry disease, and Tay Sachs disease.
- Treatment of obesity and metabolic disease.
- Treatment of atherosclerosis.

Competitive Advantages: Modulation of lipid droplet accumulation is a novel mechanism for treatment of lipid storage diseases.

Development Stage:

- Early-stage
- In vitro data available

Inventors: Matthew Boxer et al. (NCATS).

Intellectual Property: HHS Reference No. E–277–2011/0—U.S. Provisional Patent Application No. 61/562,894 filed 22 Nov 2011.

Licensing Contact: Tara L. Kirby, Ph.D.; 301–435–4426; *tarak@mail.nih.gov*.

A Broadly Neutralizing Human Anti-HIV Monoclonal Antibody (10E8) Capable of Neutralizing Most HIV–1 Strains

Description of Technology: This Human Anti-HIV Monoclonal Antibody (10E8) has great potential to provide passive protection from infection, as a therapeutic vaccine, or as a tool for the development of vaccine immunogens. 10E8 is one of the most potent HIV-neutralizing antibodies isolated thus far and it can potently neutralize up to 98% of genetically diverse HIV–1 strains. 10E8 is specific to the membrane-proximal external region (MPER) of the HIV envelope protein, GP41. It is anticipated that 10E8 could be used in combination with another human anti-HIV–1 monoclonal antibody to provide an antibody response that neutralizes nearly all strains of HIV–1. Additionally, 10E8 is a useful tool for the design of vaccine immunogens that can elicit an adaptive immune response to produces 10E8 like antibodies. This technology also includes monoclonal antibodies from the same germ line as 10E8.

Potential Commercial Applications:

- Passive protection to prevent HIV infection
- Passive protection to prevent mother-to-infant HIV transmission
- Topical microbicide to prevent HIV infection
- Gene-based vectors for anti-gp41 antibody expression
- Therapeutic for the elimination of HIV infected cells that are actively producing virus

Competitive Advantages:

- One of the most potent Human broadly-neutralizing anti HIV antibodies isolated to date
- Broad reactivity and high affinity to most HIV–1 strains
- Activity is highly complementary to existing broadly neutralizing antibodies, such as CD4 binding site antibodies
- Capable of neutralizing all HIV–1 strains, if used in combination with another anti-HIV monoclonal antibody

Development Stage:

- Pre-clinical
- In vitro data available
- In vivo data available (animal)

Publication: In press.

Intellectual Property: HHS Reference No. E–253–2011/0—US Provisional Application No. 61/556,660 filed 07 Nov 2011.

Related Technologies:

- HHS Reference No. E–123–2005/1—PCT Application No. PCT/US2006/005613 filed 17 Feb 2006
- HHS Reference No. E–291–2008/0—US Application No. 13/057,414 filed 03 Feb 2011

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., MBA; 301–435–4507; *thalhamc@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize vaccine immunogens capable of eliciting a 10E8-like adaptive immune response. For collaboration opportunities, please contact Bill Ronnenberg at 301–451–3522 or *wronnenberg@niaid.nih.gov*.

Cytochromes P450 CYP2J and CYP2C Polyclonal Antibodies and Recombinant Proteins

Description of Technology: The National Institutes of Health announces polyclonal antibodies against mouse cytochrome P450s CYP2J and CYP2C. Cytochrome P450s catalyze the metabolism of a wide range of exogenous compounds, including drugs, industrial chemicals, environmental pollutants, and carcinogens. The 2C family of cytochrome P450 metabolizes an extensive number of drugs which include tolbutamide, S-Warfarin, mephenytoin, diazepam and taxol. Many of the P450 enzymes are also active in the NADPH-dependent oxidation of arachidonic acid to various eicosanoids found in several species. The 2J family is expressed at high levels in the heart and has been shown to metabolize both arachidonic acid and linoleic acid. The CYP2J and CYP2C subfamily members have a wide tissue distribution and may be useful as model systems for studies of cardiovascular disease, drug metabolism and toxicity.

Recombinant proteins of mouse cytochrome P450s CYP2C and CYP2J have also been expressed and can be used as controls in immunoblotting, as well as for metabolism studies.

Potential Commercial Applications:

- These antibodies can be used to study the expression of the P450s in various tissues by immunohistochemistry and immunoblotting.
- The recombinant proteins can be used as controls in immunoblotting as well as for metabolism studies.

Competitive Advantages: The CYP2J and CYP2C subfamily members have a wide tissue distribution and may be useful as model systems for studies of cardiovascular disease, drug metabolism and toxicity.

Development Stage: In vitro data available.

Inventors: Darryl C. Zeldin (NIEHS) et al.

Publications: Manuscripts in preparation.

Intellectual Property: HHS Reference No. E–153–2011/0—Research Material. Patent protection has not been pursued for this technology.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov*.

Collaborative Research Opportunity: The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize antibodies against mouse cytochrome P450s CYP2J and CYP2C. For collaboration opportunities, please contact Elizabeth M. Denholm, Ph.D. at denholme@niehs.nih.gov.

Monoclonal Antibodies Targeting Human DNA Polymerase beta, a DNA Repair Enzyme

Description of Technology: Available for licensing are monoclonal antibodies targeting human DNA polymerase beta (Pol B). Pol B is a constitutively expressed ''housekeeping'' enzyme that plays a role in base excision repair (BER), a cellular defense mechanism that repairs DNA base damage and loss. Aberrant Pol B expression is associated with genomic instability indicating that Pol B is required for DNA maintenance, replication and recombination.

These antibodies can be utilized to elucidate BER's mechanism of action and Pol B's structure and function. Moreover, the antibodies can be used to detect Pol B in samples with a variety of techniques including immunoblotting, ELISA, immunoprecipitation, and immunohistochemistry.

Potential Commercial Applications:

- Research tool to elucidate the mechanism of base excision repair
- Research reagents

Competitive Advantages: Can be utilized in a variety of applications to study Pol B.

Development Stage:

- Early-stage
- In vitro data available

Inventors: Samuel Wilson and Rajendra Prasad (NIEHS).

Publications:

1. Srivastava DK, et al. Phorbol ester abrogates up-regulation of DNA polymerase beta by DNA-alkylating agents in Chinese hamster ovary cells. J Biol Chem. 1995 Jul 7;270(27):16402–8. [PMID 7608211]
2. Singhal R, et al. DNA polymerase beta conducts the gap-filling step in uracil-initiated base excision repair in a bovine testis nuclear extract. J Biol Chem. 1995 Jan 13;270(2):949–57. [PMID 7822335]
3. Prasad R, et al. Specific interaction of DNA polymerase beta and DNA ligase I in a multiprotein base excision repair complex from bovine testis. J Biol Chem. 1996 Jul 5;271(27):16000–7. [PMID 8663274]
4. Piersen C, et al. Evidence for an imino intermediate in the DNA polymerase beta deoxyribose phosphate excision reaction. J Biol Chem. 1996 Jul 26;271(30):17811–5. [PMID 8663612]
5. Sobol R, et al. Regulated over-expression of DNA polymerase beta mediates early onset cataract in mice. DNA Repair (Amst). 2003 May 13;2(5):609–22. [PMID 12713817]
6. Poltoratsky V, et al. Down-regulation of DNA polymerase beta accompanies somatic hypermutation in human BL2 cell lines. DNA Repair (Amst). 2007 Feb 4;6(2):244–53. [PMID 17127106]

Intellectual Property: HHS Reference No. E–036–2008/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize these monoclonal antibodies. For collaboration

opportunities, please contact Elizabeth M. Denholm, Ph.D. at *denholme@niehs.nih.gov*.

Treatment of Acute and Chronic Neurological Disorders Using GLP–1, Exendin-4 and Analogs

Description of Technology: Glucagon-like peptide-1 (GLP–1) and related peptides, including exendin-4 and liraglutide, are incretin mimetics that enhance glucose-dependent insulin secretion following food ingestion as a regulator of glucose homeostasis. Exendin-4 and liraglutide are used clinically in the safe and effective treatment of type 2 diabetes to enhance insulin secretion and maintain a euglycemic state. These actions are primarily mediated at the level of the GLP–1 receptor in the pancreas; however, these compounds are known to enter the brain where the GLP–1 receptor also is expressed.

Researchers at the NIH have discovered the novel use of GLP–1 and exendin-4 analogs in the treatment of acute and chronic neurological disorders and neurodegenerative diseases. Studies conducted in extensive cell culture and in mouse models using these analogs have demonstrated significant neurotrophic and neuroprotective actions in models of several disorders, including Alzheimer's disease, Parkinson's disease, Huntington's disease, ALS, stroke, head trauma and peripheral neuropathy. These studies have now been extensively published and independently validated by other scientific groups. Furthermore, clinical studies are ongoing to evaluate the use of GLP–1 receptor agonists for the treatment of early Alzheimer's disease, Parkinson's disease and diabetic neuropathy by several groups within the US and Europe.

Potential Commercial Applications: Therapeutics for:

- Neurodegenerative diseases—Alzheimer's, Huntington's, Parkinson's, ALS
- Stroke
- Head trauma (traumatic brain injury)
- Peripheral neuropathies

Competitive Advantages:

- Compounds reduce neuronal cell death, amyloid deposition and neuroinflammation while promoting neurogenesis.
- Compounds in this class have already been shown to be safe and effective for other indications.
- Extensive in vitro and animal data are available, and clinical studies are ongoing.
- There are extensive publications in the literature, both from the inventors and independent groups.

Development Stage:

- Pre-clinical
- Clinical
- In vitro data available
- In vivo data available (animal)
- In vivo data available (human)

Inventors: Nigel Greig, Harold Halloway, Maire Doyle, Josephine Egan (all of NIA).

Publications:

1. Li Y, et al. Exendin-4 ameliorates motor neuron degeneration in cellular and animal models of amyotrophic lateral sclerosis. PLoS One. 2012;7(2):e32008. [PMID 22384126]
2. Li Y, et al. Enhancing the GLP–1 receptor signaling pathway leads to proliferation and neuroprotection in human neuroblastoma cells. J Neurochem. 2010 Jun;113(6):1621–1631. [PMID 20374430]
3. Li Y, et al. GLP–1 receptor stimulation reduces amyloid-beta peptide accumulation and cytotoxicity in cellular and animal models of Alzheimer's disease. J Alzheimers Dis. 2010;19(4):1205–1219. [PMID 20308787]
4. Li Y, et al. GLP–1 receptor stimulation preserves primary cortical and dopaminergic neurons in cellular and rodent models of stroke and Parkinsonism. Proc Natl Acad Sci USA. 2009 Jan 27;106(4):1285–1290. [PMID 19164583]
5. Martin B, et al. Exendin-4 improves glycemic control, ameliorates brain and pancreatic pathologies and extends survival in a mouse model of Huntington's disease. Diabetes. 2009 Feb;58(2):318–328. [PMID:18984744]
6. Perry T, et al. Evidence of GLP–1-mediated neuroprotection in an animal model of pyridoxine-induced peripheral sensory neuropathy. Exp Neurol. 2007 Feb;203(2):293–301. [PMID 17125767]
7. Perry T, Greig NH. Enhancing central nervous system endogenous GLP–1 receptor pathways for intervention in Alzheimer's disease. Curr Alzheimers Res. 2005 Jul;2(3):377–385. [PMID 15974903]
8. Greig NH, et al. New therapeutic strategies and drug candidates for neurodegenerative diseases: p53 and TNF-alpha inhibitors, and GLP–1 receptor agonists. Ann NY Acad Sci. 2004 Dec;1035:290–315. [PMID 15681814]
9. Perry TA, Greig NH. A new Alzheimer's disease interventive strategy: GLP–1. Curr Drug Targets. 2004 Aug;5(6):565–571. [PMID 15270203]

Listing of additional related publications available upon request.

Intellectual Property: HHS Reference No. E–049–2001/0—

- U.S. Patent 7,576,050 issued 18 Aug 2009
- U.S. Patent Application No. 12/317,042 filed 18 Dec 2008
- Foreign counterparts in Australia, Canada, Europe, India, and Japan

Licensing Contact: Tara L. Kirby, Ph.D.; 301–435–4426; *tarak@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute on Aging, Drug Design and Development Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Vio Conley at *conleyv@mail.nih.gov*.

Dated: April 18, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–9776 Filed 4–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Mouse Models

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information for the technologies listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–

3804; telephone: 301–496–7057; fax: 301–402–0220.

Smad4 Knockout (Smad4^{tm1Cxd}) Mouse Model for Developmental Biology Studies

Description of Mouse: Smad4 knockout: Smad4 is essential for epiblast proliferation, egg cylinder formation and mesoderm induction in early embryogenesis.

The TGF-beta-related superfamily plays an important role in multiple biological systems including embryogenesis. TGF-beta ligands activate specific receptors, which interact with specific Smad proteins, which in turn form a complex with a common partner, Smad4, that conveys the signal to downstream targets. Exon 8 of the *Smad4* gene was disrupted using homologous recombination in embryonic stem cells. Exon 8 encodes the C-terminal domain of *Smad4* that is essential for the formation of heteromeric complexes with the other Smads. Mice heterozygous for the Smad4 mutation are phenotypically normal. Homozygotes, however, die early in embryonic development (day E6.5–8.5). *Smad4* is required for three essential functions in early embryogenesis: epiblast proliferation, egg cylinder formation, and mesoderm induction.

Potential Commercial Application: Study of developmental biology in conjunction with compounds.

Development Status: Pre-clinical.

Developer of Mouse: Chu-Xia Deng, Ph.D. (NIDDK).

Relevant Publication: Yang X, et al. The tumor suppressor SMAD4/DPC4 is essential for epiblast proliferation and mesoderm induction in mice. Proc Natl Acad Sci U S A. 1998 Mar 31;95(7):3667–72. [PMID 9520423].

Intellectual Property: HHS Reference No. E–133–1999/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Charlene A. Sydnor, Ph.D.; 301–435–4689; *sydnorc@mail.nih.gov*.

Fgfr4 Knockout Mouse Model for Respiratory System Studies

Description of Mouse: FGFR4 knockout: Lung alveoli fail to develop normally in double mutant with FGFR4 and FGFR3 knockouts.

The fibroblast growth factor receptor 4 (*fgfr-4*) gene was inactivated by targeted disruption and homozygous recombination to study its possible role in lung development. FGFR–4 is expressed in postnatal lung, and FGFR–4 null mice have no obvious abnormalities. However, mice that are doubly homozygous for targeted disruptions of FGFR3 and FGFR4 display novel phenotypes, including pronounced dwarfism and lung abnormalities. The lungs of the double knockout mice are normal at birth, but they fail to develop secondary septae that delimit alveoli and increase the surface area of the lung. Although lung function is impaired, the double homozygous knockout mice are viable but sickly.

Potential Commercial Application: Model for the study of respiratory system and potential treatments.

Development Status: Pre-clinical.

Developer of Mouse: Chu-Xia Deng, Ph.D. (NIDDK).

Relevant Publication: Weinstein M, et al. FGFR–3 and FGFR–4 function cooperatively to direct alveogenesis in the murine lung. Development. 1998 Sep;125(18):3615–23. [PMID 9716527].

Intellectual Property: HHS Reference No. E–125–2000/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Charlene A. Sydnor, Ph.D.; 301–435–4689; *sydnorc@mail.nih.gov*.

M5 Muscarinic Receptor Knockout (Chrm5^{tm1Jwe}) Mouse Model for Neurological Studies

Description of Mouse: M5 muscarinic receptor knockout: Deficiency of M5Rs reduces drug-seeking behavior.

The five Muscarinic Acetylcholine (ACh) receptors are G-protein coupled receptors (M1R–M5R). M1R, M3R and M5R selectively couple to Gq/G11; M2R and M4R selectively couple to Gi/Go. M5R knockout mice are viable and fertile, and have no major morphological abnormalities.

M5 muscarinic ACh receptors are located in the central nervous system and may contribute to the cognitive-enhancing effects of ACh. M5R knockout mice show deficits in two hippocampus-dependent cognitive tasks, and exhibit reduced cerebral blood flow in the cerebral cortex and hippocampus, consistent with the observation that M5Rs mediate ACh-mediated dilation of cerebral blood vessels. M5R agonists or agonists for mixed M1/M5 receptors may be effective in the treatment of Alzheimer's disease and related memory disorders. The M5R knockout mutation also appears to exert a stabilizing effect on sensorimotor gating in intact mice, which is decreased in schizophrenia. Analysis of M5R knockout mice also has shown that the lack of M5Rs reduces drug-seeking behavior.

Potential Commercial Application: Mouse model for use in neurological studies.

Development Stage: Pre-clinical.

Developer of Mouse: Jürgen Wess, Ph.D. (NIDDK).

Relevant Publication: Yamada M, et al. Cholinergic dilation of cerebral blood vessels is abolished in M(5) muscarinic acetylcholine receptor knockout mice. Proc Natl Acad Sci U S A. 2001 Nov 20;98(24):14096–101. [PMID 11707605].

Intellectual Property: HHS Reference No. E–110–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Charlene A. Sydnor, Ph.D.; 301–435–4689; *sydnorc@mail.nih.gov.*

Stat5a LoxP/Stat5b LoxP (Stat5a/Stat5b^{tm2Mam}) Mouse Model for Mammopoietic and Lactogenic Signaling Studies

Description of Mouse: Conditional knockout of Stat5a and Stat5b: Combined deletion of conserved Stat5a and Stat5b in mammary epithelium at different times during pregnancy reveal multiple distinct functions.

The signal transducer and activator of transcription (STAT) family of transcription factors conveys signals from membrane receptors to the nucleus, where they activate diverse genetic programs. Stat5a and Stat5b are highly conserved proteins that are activated by many cytokines, erythropoietin, prolactin and growth hormone. Despite their similarities, they have many unique functions. Stat5a deficiency results in the loss of prolactin-dependent mammary gland development, but does not affect body growth. Inactivation of Stat5b does not adversely affect mammary development and function, but leads to severe growth retardation. To study the effects of combined deficiency of Stat 5a and 5b before and during pregnancy, loxP was added to the ends of a DNA fragment that contains the two genes which are located within a stretch of 110 kb on chromosome 11 in a head to head orientation with no other genes between them. The loxP-flanked fragment was introduced into the genome using homologous recombination, and deleted using two transgenic lines expressing Cre in mammary epithelium at different times. Deletion of Stat 5 before pregnancy prevents epithelial proliferation. Ductal characteristics are retained but differentiation into secretory alveoli does not occur. When deletion of Stat5 occurs late in pregnancy after differentiation has started, differentiation is halted and premature death occurs.

Potential Commercial Application: Mouse model to study mammopoietic and lactogenic signaling.

Development Stage: Pre-clinical.

Developer of Mouse: Lothar Hennighausen, Ph.D. (NIDDK).

Relevant Publication: Cui Y, et al. Inactivation of Stat5 in mouse mammary epithelium during pregnancy reveals distinct functions in cell proliferation, survival, and differentiation. Mol Cell Biol. 2004 Sep;24(18):8037–47. [PMID 15340066].

Intellectual Property: HHS Reference No. E–114–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Stat5a Knockout (Stat5a^{tm1Mam}) Mouse Model for Mammopoietic and Lactogenic Signaling Studies

Description of Mouse: Stat5a Knockout: Stat5a deficiency results in the loss of prolactin-dependent mammary gland development and lactogenesis.

Prolactin induces mammary gland development and lactogenesis. Binding of Prolactin to its receptor leads to the phosphorylation and activation of STAT (signal transducers and activators of transcription) proteins. Two Stat proteins, Stat5a and Stat5b, are expressed in mammary tissues during pregnancy. Stat5a null mice developed normally, and were indistinguishable from hemizygous and wild-type littermates in size, weight and fertility. Mammary lobulo-alveolar outgrowth during pregnancy was reduced and females failed to lactate after parturition. Stat5b, despite 96% similarity to Stat5a, could not compensate for the loss of Stat5a. Stat5a is the principal and obligate mediator of mammopoietic and lactogenic signaling.

Potential Commercial Application: Mouse model to study mammopoietic and lactogenic signaling.

Development Stage: Pre-clinical.

Developer of Mouse: Lothar Hennighausen, Ph.D. (NIDDK).

Relevant Publication: Liu X, et al. Stat5a is mandatory for adult mammary gland development and lactogenesis. Genes Dev. 1997 Jan 15;11(2):179–86. [PMID 9009201].

Intellectual Property: HHS Reference No. E–116–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Gs Alpha LoxP (Gnas^{tm1Lsw}) Mouse Model for Metabolism Studies

Description of Mouse: Generation of a floxed *Gnsa* gene for the G-protein G_s alpha ($G_s\alpha$) for the construction of conditional knockout mice.

The heterotrimeric G protein $G_s\alpha$ couples many receptors to adenylyl cyclase and is essential for hormone-stimulated cAMP generation. Previous mouse models with germ-line mutations in *Gnas,* the gene that encodes $G_s\alpha$ had limited usefulness in trying to decipher the role of $G_s\alpha$ pathways in specific tissues since only heterozygotes were viable and could be analyzed. Analysis was further complicated by the fact that $G_s\alpha$ is imprinted expressed in many metabolically active tissues.

$G_s\alpha$-floxed mice were generated so that the metabolic effects of $G_s\alpha$ deficiency could be examined in specific tissues. Exon1, which is specific for $G_s\alpha$, was surrounded with loxP recombination sites. Liver-specific knockouts of $G_s\alpha$ were obtained by mating the $G_s\alpha$-floxed mice with albumin promoter-Cre-transgenic mice. $G_s\alpha$ exon1 was efficiently deleted. These mice have been used successfully to generate other tissue-specfic $G_s\alpha$ knockout mice.

Potential Commercial Application: Mouse model to study metabolism.

Development Stage: Pre-clinical.

Developer of Mouse: Lee Weinstein, M.D. (NIDDK).

Relevant Publication: Chen M, et al. Increased glucose tolerance and reduced adiposity in the absence of fasting hypoglycemia in mice with liver-specific Gs alpha deficiency. J Clin Invest. 2005 Nov;115(11):3217–27. [PMID 16239968].

Intellectual Property: HHS Reference No. E–117–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Sirt6 LoxP (Sirt6$^{tm1.1Cxd}$) Mouse Model for Liver Studies

Description of Mouse: Generation of floxed Sirtuin 6 for the construction of conditional knockout mice.

The Sirtuins (Sirt1–7), a family of seven proteins related to yeast Sir2, are histone deacetylases that regulate many critical biological processes including genomic stability, adaptation to calorie restriction and aging. Mice with a targeted disruption of Sirt6 had very low levels of blood glucose (and paradoxically, low insulin levels) and died shortly after weaning. Hypoglycemia, attributed to increased sensitivity to insulin, was the major cause for lethality.

Because of the post-weaning mortality of Sirt6 null mice, liver-specific Sirt6 conditional knockout mice were constructed using Cre-Lox technology to study the effects on glucose and lipid metabolism. Hepatic-specific Sirt6 deficient mice exhibited increased glycolysis and triglyceride synthesis, resulting in the development of fatty liver. Sirt6 is a potential therapeutic target for treating fatty liver disease, the most common cause of liver dysfunction.

Potential Commercial Application: Mouse model to study the liver.

Development Stage: Pre-clinical.

Developer of Mouse: Chuxia Deng, Ph.D. (NIDDK).

Relevant Publication: Kim HS, et al. Hepatic-specific disruption of SIRT6 in mice results in fatty liver formation due to enhanced glycolysis and triglyceride synthesis. Cell Metab. 2010 Sep 8;12(3):224–36. [PMID 20816089].

Intellectual Property: HHS Reference No. E–121–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *Lauren.Nguyen-Antczak@nih.gov.*

Sirt1 LoxP (Sirt1^{tm1Cxd}) Mouse Model for Metabolism and Hepatology Studies

Description of Mouse: Generation of floxed Sirtuin 1 Exon5–Exon6 for the construction of conditional knockout mice.

Sirtuin 1 (Sirt1), a homolog of yeast Sir 2, is an NAD-dependent histone and protein deacetylase. It has a wide range of biological functions, ranging from DNA damage repair to effects on glucose metabolism. Sirt1 null mice die before birth due to chromosomal aberrations and impaired DNA damage repair. Sirt1 is thought to affect energy metabolism, but the mechanism remains poorly understood. In order to study tissue-specific metabolic effects of Sirt1, floxed Sirt1 was constructed so that exons 5 and 6 would be deleted using the Cre-Lox strategy. In contrast to a previously reported deletion of Sirt1 exon4, no truncated (and potentially active) Sirt1 forms were detected when exons 5 and 6 were deleted.

Hepatic exon 5–6 null Sirt1 mice were generated when Floxed Sirt1 exon 5 and 6 mice were mated with mice that expressed the Cre-recombinase in liver. The hepatic exon 5–6 null Sirt1 mice developed fatty liver under normal feeding conditions. This was accompanied by increased expression of the carbohydrate responsive element binding protein, which is a major

regulator of lipid synthesis. Sirt1-deficient liver also has an impaired insulin response, primarily due to reduced phosphorylation of the serine-threonine kinase Akt in the presence of insulin.

Potential Commercial Application: Mouse model to study metabolism and hepatology.

Development Stage: Pre-clinical.

Developer of Mouse: Chuxia Deng, Ph.D. (NIDDK).

Relevant Publications:

1. Wang RH, et al. Liver steatosis and increased ChREBP expression in mice carrying a liver specific SIRT1 null mutation under a normal feeding condition. Int J Biol Sci. 2010 Nov 16;6(7):682–90. [PMID 21103071].
2. Wang RH, et al. Hepatic Sirt1 deficiency in mice impairs mTorc2/Akt signaling and results in hyperglycemia, oxidative damage, and insulin resistance. J Clin Invest. 2011 Nov 1;121(11):4477–90. [PMID 21965330].

Intellectual Property: HHS Reference No. E–122–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *Lauren.Nguyen-Antczak@nih.gov.*

Fgfr3 Knockout Mouse Model for Developmental Biology Studies

Description of Mouse: FGFR3 knockout. Complete knockout of the FGFR3 gene, the gene in which missense mutants cause short statue achondroplasia, fails to restrain cartilage growth at the bone growth plate, allowing bones to elongate excessively but fail to ossify.

Endochondral ossification is a major mode of bone formation. Cartilage proliferates, undergoes hypertrophy, begins to calcify, undergoes a program of cell death, and is replaced by osteoblasts. Fibroblast Growth Factor Receptor 3 (FGFR3) is expressed in cartilage rudiments of a wide variety of bones, and dominant missense mutations in the human FGFR3 gene cause achondroplasia, a common form of human dwarfism characterized by minimal proliferation of the growth plate cartilage in long bones. To determine the effect of complete absence of FGFR3 on bone development in mice, targeted disruption of the FGFR3 gene was accomplished by homologous recombination in embryonic stem cells. Remarkably, the vertebral column and long bones of FGFR3 null mice were extremely long, suggesting that in normal development, FGFR3 restrains cartilage promotion and limits bone elongation so that the endochondral ossification program can proceed. Restraint of cartilage growth by FGFR3 provides a plausible explanation for the role of FGFR3 missense mutations in human achondroplastic dwarfs.

Potential Commercial Application: Mouse model to study developmental biology.

Development Stage: Pre-clinical.

Developer of Mouse: Chuxia Deng, Ph.D. (NIDDK).

Relevant Publication: Deng C, et al. Fibroblast growth factor receptor 3 is a negative regulator of bone growth. Cell. 1996 Mar 22;84(6):911–21. [PMID 8601314]

Intellectual Property: HHS Reference No. E–123–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *Lauren.Nguyen-Antczak@nih.gov*.

Fgfr2 Knockout (Fgfr2 ^{tm1Cxd}) Mouse Model for Developmental Biology Studies

Description of Mouse: FGFR2 knockout is an embryonic lethal mutation and blocks limb bud initiation.

Fibroblast Growth Factor Receptor 2 (FGFR2) is a high affinity receptor for several members of the FGF family. The FGFR2 gene was inactivated by deleting the entire immunoglobulin-like domain of the receptor which is critical for FGF binding and FGFR2 activity. Embryos that lack this domain die at E10–11.5 owing to a failure in chorioallantoic fusion or placental formation. The deletion also blocks limb bud initiation, establishing FGFR2 as the major receptor that mediates FGF signals during limb induction.

Potential Commercial Application: Mouse model to study developmental biology.

Development Stage: Pre-clinical.

Developer of Mouse: Chuxia Deng, Ph.D. (NIDDK).

Relevant Publication: Xu X, et al. Fibroblast growth factor receptor 2 (FGFR2)-mediated reciprocal regulation loop between FGF8 and FGF10 is essential for limb induction. Development. 1998 Feb;125(4):753–65. [PMID 9435295].

Intellectual Property: HHS Reference No. E–124–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; Lauren.Nguyen-Antczak@nih.gov.

Alb-tTA (Tg(Alb1-tTA)3123Lng) Mouse Model for Liver Function Studies

Description of Mouse: Tetracycline-responsive transcriptional activator driven by the liver-specific mouse albumin promoter (Alb-tTA).

The E. Coli tetracycline operon regulatory system was used to generate a liver-specific transcription activation system that was inhibited by tetracycline. The transcription activator was a fused protein consisting of a tetracycline repressor gene (tetR) that was only active in the presence of tetracycline and a herpes simplex virus protein (VP–16) transcription activating domain. Transcription was induced only in the absence of tetracycline (Tet-Off). A liver-specific promoter such as mouse albumin determined that the tetracycline-regulated transcriptional activator (tTA) would be expressed specifically in liver. To study the effect of the transcription activator on a target gene (for example, Simian Virus 40 (SV4) large tumor (T) antigen (TAg)) specifically in liver, Alb-tTA mice were mated with transgenic mice in which the Target gene (TAg) was controlled by the E. Coli Tetracycline Operator (Tet-O). In this example, TAg was expressed in hepatocytes in the absence of Tetracycline, leading to hepatoma formation. When the mice were treated with tetracycline, TAg was not expressed and hepatomas did not form.

Potential Commercial Application: Mouse model to liver function.

Development Stage: Pre-clinical.

Developer of Mouse: T. Jake Liang, M.D. (NIDDK).

Relevant Publication: Manickan E, et al. Conditional liver-specific expression of simian virus 40 T antigen leads to regulatable development of hepatic neoplasm in transgenic mice. J Biol Chem. 2001 Apr 27;276(17):13989–94. [PMID 11278564]

Intellectual Property: HHS Reference No. E–125–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *Lauren.Nguyen-Antczak@nih.gov*.

MUP-tTA Mouse Model for Liver Function Studies

Description of Mouse: Tetracycline-responsive transcriptional activator driven by the liver-specific mouse major urinary protein promoter (MUP-tTA).

The E. Coli tetracycline operon regulatory system was used to generate a liver-specific transcription activation system that was inhibited by tetracycline. The transcription activator was a fused protein consisting of a

tetracycline repressor gene (tetR) that was only active in the presence of tetracycline and a herpes simplex virus protein (VP–16) transcription activating domain (Tet-Off). Transcription was induced only in the absence of tetracycline (Tet-Off). A liver-specific promoter such as the mouse major urinary protein (MUP) promoter determined that the tetracycline-regulated transcriptional activator (tTA) would be expressed specifically in liver. To study the effect of the transcription activator on a target gene (for example, beta-galactosidase, LacZ) specifically in liver, MUP-tTA mice would be mated with transgenic mice in which the TAg Target gene was controlled by the E. Coli Tetracycline Operator (Tet-O). The Tet technology may require a separate license.

Potential Commercial Application: Mouse model to study liver function.

Development Stage: Pre-clinical.

Developer of Mouse: T. Jake Liang, M.D. (NIDDK).

Relevant Publication: Manickan E, et al. Conditional liver-specific expression of simian virus 40 T antigen leads to regulatable development of hepatic neoplasm in transgenic mice. J Biol Chem. 2001 Apr 27;276(17):13989–94. [PMID 11278564]

Intellectual Property: HHS Reference No. E–126–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *Lauren.Nguyen-Antczak@nih.gov*.

mEpoR Knockout/Tg(hEpoR) Mouse Model for Anemia and Renal Function Studies

Description of Mouse: mEpoR−/−hEpoR+: The mouse Erythropoietin Receptor knockout that contains a human Erythropoietin Receptor transgene can be used to define the potency of recombinant erythropoietin preparations used to treat anemia associated with chronic kidney disease.

Erythropoietin, acting by binding to Erythropoietin receptors (EpoR) on erythroid progenitor cells, is required for erythropoiesis. Absence of erythropoietin or the EpoR in mice interrupts erythropoiesis in the fetal liver and results in death at embryonic day 13.5. An 80-kb human EpoR transgene bred onto a mouse EpoR null background (provided by F. Constantini of Columbia University) restored effective erythropoiesis in the EpoR null mouse. Erythropoietin preparations made utilizing recombinant DNA technology are used in the treatment of anemia in chronic kidney disease and other critical illnesses. The mouse EpoR null mouse containing the human EpoR transgene can be used to define the potency of erythropoietin preparation in humans.

Potential Commercial Applications: Model for study of anemia and renal function and possible drug screening.

Developer of Mouse: Constance Noguchi, Ph.D. (NIDDK).

Relevant Publication: Yu X, et al. The human erythropoietin receptor gene rescues erythropoiesis and developmental defects in the erythropoietin receptor null mouse. Blood. 2001 Jul 15;98(2):475–7. [PMID 11435319].

Intellectual Property: HHS Reference No. E–127–2001/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jennifer S. Wong; 301–435–4633; *wongje@mail.nih.gov*.

Sirt3 Knockout (Sirt3$^{tm1.1Cxd}$) Mouse Model for Cardiology and Metabolism Studies

Description of Mouse: Sirt3 knockout: Sirt3 is a mitochondrial-localized tumor suppressor that maintains mitochondrial integrity and metabolism during stress. Sirt3 is a mitochondrial protein that is a member of the Sirtuin family of NAD-dependent protein deacetylases. Sirt3(−/−) mice are phenotypically normal, but exhibit many proteins whose acetylation is increased. They generate more reactive oxygen species and are more susceptible to mammary tumors than normal mice. Sirt3 is inactivated in a large percentage of human breast and ovarian cancers, suggesting that Sirt3 may be a mitochondria-localized tumor suppressor by maintaining mitochondrial integrity and efficient oxidative metabolism.

Potential Commercial Applications: Cardiology, Metabolism.

Developer of Mouse: Chuxia Deng, Ph.D. (NIDDK).

Relevant Publication: Kim HS, et al. SIRT3 is a mitochondria-localized tumor suppressor required for maintenance of mitochondrial integrity and metabolism during stress. Cancer Cell. 2010 Jan 19;17(1):41–52. [PMID 20129246].

Intellectual Property: HHS Reference No. E–119–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jennifer S. Wong; 301–435–4633; *wongje@mail.nih.gov*.

Sirt1 Knockout (Sirt1$^{tm1.1Cxd}$) Mouse Model for Oncology and Metabolism Studies

Description of Mouse: Sirt1 knockout: Sirt1, a protein deacetylase, is a tumor suppressor that promotes genome stability and regulates proteins involved in energy metabolism.

Yeast Sir2, a nicotinamide adenine dinucleotide (NAD)-dependent protein deacetylase, has been implicated in chromatin silencing, longevity and genome stability. Mammals contain a family of related deacetylases, the sirtuins, of which 7 have been identified. Sirt1 is the closest mammalian orthologue of yeast Sir 2. The Sirt1 gene in mice was disrupted by homologous recombination in embryonic stem cells. The majority of Sirt1 (−/−) embryos die between E9.5 and E14.5, displaying altered histone modification, increased chromosomal aberrations, and impaired DNA damage repair. Tumor formation was increased in mutant tissues in Sirt1(+/−): p53(+/−) double heterozygotes, indicating that full levels of Sirt1 are necessary for tumor suppression. Tumorigenesis is reduced by treatment with the polyphenol, resveratrol, which activates Sirt1. Sirt1 may act as a tumor suppressor by promoting DNA damage repair and maintaining genome integrity. Sirt1also is involved in the regulation of proteins involved in energy metabolism, and components of the circadian clock.

Potential Commercial Applications: Oncology, Metabolism.

Developer of Mouse: Chuxia Deng, Ph.D. (NIDDK).

Relevant Publication: Wang RH, et al. Impaired DNA damage response, genome instability, and tumorigenesis in SIRT1 mutant mice. Cancer Cell. 2008 Oct 7;14(4):312–23. [PMID 18835033]

Intellectual Property: HHS Reference No. E–120–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jennifer S. Wong; 301–435–4633; *wongje@mail.nih.gov*.

Stat1LoxP (Stat1^{tm1Mam}) Mouse Model for Oncology and Immunology Studies

Description of Mouse: Selective inactivation of Stat1 in mammary cells indicates that its effect as a tumor suppressor in breast is direct.

STAT1 is considered a tumor suppressor, but it is not known if this effect occurs directly in mammary cells or secondarily by disrupting interferon signaling through the JAK/STAT1 pathway to induce immune responses. ERBB2/neu-induced breast cancer appeared sooner in mice lacking STAT1 only in mammary cells than in wild-type mice, indicating that STAT1 tumor suppression was intrinsic to mammary cells and not secondary to an induced immune response.

Potential Commercial Applications: Oncology, Immunology.

Developer of Mouse: Lothar Hennighausen, Ph.D. (NIDDK).

Relevant Publication: Klover PJ, et al. Loss of STAT1 from mouse mammary epithelium results in an increased Neu-induced tumor burden. Neoplasia. 2010 Nov;12(11):899–905. [PMID 21076615].

Intellectual Property: HHS Reference No. E–111–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Mojdeh Bahar, J.D., CLP; 301–435–2950; *baharm@mail.nih.gov*.

Tg(Wap-cre)11738Mam Mouse Model for Developmental Biology Studies

Description of Mouse: Cre-recombinase under the control of the whey acidic acid protein was only detected in alveolar epithelial cells of mammary tissue during lactation, and transcription occurred at all stages of mammary development.

The Cre recombinase from bacteriophage P1 excises intervening DNA sequences located between two unidirectional lox sites positioned on the same linear DNA segment, leaving one lox site behind. Through insertion of lox sites via homologous recombination into the gene of interest and targeting Cre recombinase expression to a specific cell type using a tissue-specific promoter, it is possible to introduce predetermined deletions into the mammalian genome. To delete genes specifically from mammary gland, transgenic mice were created carrying the Cre gene under the control of the whey acidic protein (WAP) gene promoter. Expression of WAP–Cre was only detected in alveolar epithelial cells of mammary tissue during lactation. Recombination mediated by Cre under control of the WAP gene promoter was largely restricted to the mammary gland but occasionally was observed in the brain. High-level transcriptional activity of WAP-based transgenes can be obtained at every stage of mammary development.

Potential Commercial Application: Developmental Biology.

Developer of Mouse: Lothar Hennighausen, Ph.D. (NIDDK).

Relevant Publication: Wagner KU, et al. Cre-mediated gene deletion in the mammary gland. Nucleic Acids Res. 1997 Nov 1;25(21):4323–30. [PMID 9336464].

Intellectual Property: HHS Reference No. E–112–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Mojdeh Bahar, J.D., CLP; 301–435–2950; *baharm@mail.nih.gov*.

Tg(MMTV–Cre)#Mam Mouse Model for Developmental Biology, Hepatology, and Oncology Studies

Description of Mouse: Cre-recombinase under the control of mouse mammary tumor virus long terminal repeat (MMTV) was expressed in the salivary gland and mammary epithelial cells of adult mice, and induced recombination in all tissues.

The Cre recombinase from bacteriophage P1 excises intervening DNA sequences located between two unidirectional lox sites positioned on the same linear DNA segment, leaving one lox site behind. Through insertion of lox sites via homologous recombination into the gene of interest and targeting Cre recombinase expression to a specific cell type using a tissue-specific promoter, it is possible to introduce predetermined deletions into the mammalian genome. To delete genes specifically from mammary gland, transgenic mice were created carrying the Cre gene under the control of the mouse mammary tumor virus (MMTV) long terminal repeat (LTR). In adult MMTV–Cre mice, expression of the transgene was confined to striated ductal cells of the salivary gland and mammary epithelial cells in virgin and lactating mice. In contrast to WAP–Cre, however, Cre expression under control of the MMTV LR resulted in recombination in all tissues.

Potential Commercial Applications: Developmental Biology, Hepatology, Oncology.

Developer of Mouse: Lothar Hennighausen, Ph.D. (NIDDK).

Relevant Publication: Wagner KU, et al. Cre-mediated gene deletion in the mammary gland. Nucleic Acids Res. 1997 Nov 1;25(21):4323–30. [PMID 9336464].

Intellectual Property: HHS Reference No. E–113–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Mojdeh Bahar, J.D., CLP; 301–435–2950; *baharm@mail.nih.gov*.

Bcl-x LoxP (Bcl2l1$^{tm1.1Mam}$) Mouse Model for Developmental Biology Studies

Description of Mouse: Floxed Bcl-x: Conditional knockout of pro-survival Bcl-x in primordial germ cells was used to study the balance between pro-apoptotic Bax during embryogenesis.

Bcl-x is a pro-survival protein that opposes the pro-apoptotic action of Bax which interacts with mitochondria to activate the caspase 9 pathway. Mice in which the Bcl-x gene is inactivated die at E12.5. To be able to study lineage-specific activities of Bcl-x at different stages of development, the Cre-LoxP recombination system was used. Homologous recombination was used to flank the promoter, exon1, and major coding exon2 of the Bcl-x gene with loxP sites. The targeted allele contained a loxP flanked (or floxed) neomycin cassette in the Bcl-x promoter, and an additional loxP site in intron 2. Floxed Bcl-x has been used to study the balance between Bcl-x and Bax in primordial germ cells that undergo controlled levels of cell reduction due to apoptosis, the induction of hemolytic anemia and splenomegaly following conditional deletion of the Bcl-x gene from erythroid cells, the protection of hepatocytes from apoptosis and ensuing fibrotic response by Bcl-x, and the demonstration that Bcl-x is critical for the survival of dendritic cells, important regulators of immune function.

Potential Commercial Application: Developmental Biology.

Developer of Mouse: Lothar Hennighausen, Ph.D. (NIDDK).

Relevant Publication: Rucker EB 3rd, et al. Bcl-x and Bax regulate mouse primordial germ cell survival and apoptosis during embryogenesis. Mol Endocrinol. 2000 Jul;14(7):1038–52. [PMID 10894153].

Intellectual Property: HHS Reference No. E–115–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Mojdeh Bahar, J.D., CLP; 301–435–2950; *baharm@mail.nih.gov*.

UTX LoxP Mouse Model for Oncology Research

Description of Mouse: UTX-flox. Conditional knockout mice for the histone demethylase UTX (Kdm6a) conditional knockout will help understand its role as a tumor suppressor.

Di- and tri-methylations on histone H3 lysine 27 (H3K27me2 and H3K27me3) are epigenetic marks for gene repression. UTX (ubiquitously transcribed X chromosome protein), also known as Kdm6a (lysine (K)-specific demethylase 6a) is a histone demethylase that specifically removes H3K27me2 and H3K27me3. UTX knockout mice are embryonic lethal, so we have generated UTX conditional knockout mice (UTX-flox) in which exon 24 is flanked with loxP sites. UTX has been found to be a tumor suppressor gene mutated in a wide variety of human cancers. The UTX-flox mice provide a valuable tool to study how

UTX functions as a tumor suppressor and as an epigenetic regulator of gene expression.

Potential Commercial Application: Mouse model for Oncology research.

Development Stage: Pre-clinical.

Developer of Mouse: Kai Ge, Ph.D. (NIDDK).

Relevant Publication: Unpublished. Gene ID: 22289.

Intellectual Property: HHS Reference No. E–118–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Mojdeh Bahar, J.D., CLP; 301–435–2950; *baharm@mail.nih.gov*.

Dated: April 18, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–9775 Filed 4–23–12; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

ACHP Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet Thursday, May 10, 2012. The meeting will be held in the Caucus Room of the Russell Senate Office Building at Constitution and Delaware Avenues NE., Washington, DC at 8:30 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) to advise the President and Congress on national historic preservation policy and to comment upon federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-federal members appointed by the President.

Call to Order—8:30 a.m.

I. Chairman's Welcome
II. Chairman's Award
III. Chairman's Report
IV. ACHP Management Issues
  A. Credentials Committee Report and Recommendations
  B. Alumni Foundation Report
  C. Recodification of the National Historic Preservation Act
V. Forum Discussion-Federal Budget Austerity and Historic Preservation-Part II
VI. Historic Preservation Policy and Programs
  A. Building a More Inclusive Preservation Program
  B. Legislative Agenda
  C. Rightsizing Task Force Report
  D. Sustainability Task Force Report
VIII. Section 106 Issues
  A. Guidance on Coordinating and Substituting NEPA and Section 106 Compliance
  B. Section 3 Report Submission and Follow up
  C. Traditional Cultural Landscapes Forum Action Plan Implementation
  D. Section 106 Training Initiatives-Webinars
  E. Executive Order on Infrastructure Projects
  F. Post Office Closures and Disposal
IX. New Business
X. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., Room 803, Washington, DC 202–606–8503, at least seven (7) days prior to the meeting. For further information: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., #803, Washington, DC 20004.

Dated: April 18, 2012.

John M. Fowler,

Executive Director.

[FR Doc. 2012–9783 Filed 4–23–12; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0007]

Hazard Mitigation Assistance for Wind Retrofit Projects for Existing Residential Buildings

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on *Hazard Mitigation Assistance for Wind Retrofit Projects for Existing Residential Buildings*.

DATES: Comments must be received by June 25, 2012.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2012–0007, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Search for docket ID FEMA–2012–0007 and follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail/Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW., Room 835, Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Cecelia Rosenberg, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 1800 South Bell Street, Room 608, Arlington, VA 20598–3015, (phone) 202–646–3321, or email *cecelia.rosenberg@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice which can be viewed by clicking on the ''Privacy Notice'' link in the footer of *www.regulations.gov*.

Docket: The proposed policy is available in docket ID FEMA–2012–0007. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street SW., Washington, DC 20472.

II. Background

The Pre-Disaster Mitigation program (PDM) and the Hazard Mitigation Grant

Program (HMGP), authorized by sections 203 and 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.,* provide funding for eligible, feasible, and cost-effective activities that have the purpose of reducing or eliminating risks to life and property from hazards and their effects. One such activity is the implementation of wind retrofit projects to protect existing one- and two-family residential buildings (not including manufactured housing) from hurricane-force wind-related damages. FEMA has prepared a proposed Mitigation Policy to address PDM and HMGP programmatic guidelines for this project type. The policy will help ensure national consistency in the use of funds for this hazard mitigation activity. The proposed policy identifies key project requirements specific to this hazard mitigation activity including: Eligible activities and Mitigation Packages, building evaluation criteria, project application requirements, and eligible and ineligible costs. The proposed policy also provides the public, building professionals and decision-makers with direction on the implementation steps required for a complete wind retrofit project subapplication.

Thousands of existing homes in the hurricane-prone region are vulnerable to the effects of coastal high-wind events and are not designed to the same level of wind resistance required by today's codes and standards. FEMA concluded that additional technical guidance is needed to facilitate the development of hazard mitigation retrofit projects for such residential buildings. As a result, the proposed policy relies on publication FEMA P–804, *Wind Retrofit Guide for Residential Buildings,* as a guideline for these wind retrofit projects. FEMA P–804 provides the technical guidance needed to promote and properly perform wind retrofit projects for existing one- and two-family residential buildings. The publication offers a unified technical and programmatic solution to residential wind retrofit projects using three Mitigation Packages (Basic, Intermediate, and Advanced). Each successive package contains retrofit standards that increase the level of protection for wind-related damages to the building.

Authority: 42 U.S.C. 5133; 5170(c).

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–9761 Filed 4–23–12; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

[Transportation Security Administration

[Docket No. TSA–2004–19515]

Extension of Agency Information Collection Activity Under OMB Review: Air Cargo Security Requirements

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0040, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 24, 2012, 77 FR 11145. TSA has not received any comments. The collection of information that make up this ICR involve five broad categories affecting airports, passenger aircraft operators, foreign air carriers, indirect air carriers and all-cargo carriers operating under a TSA-approved security program. These five categories are: Security programs, security threat assessments (STAs), known shipper data via the Known Shipper Management System (KSMS), cargo screening reporting, and evidence of compliance recordkeeping.

DATES: Send your comments by May 24, 2012. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Susan Perkins, TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3398; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at http://www.reginfo.gov. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Air Cargo Security Requirements.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0040.

Forms(s): Aviation Security Known Shipper Verification Form, Aircraft Operator or Air Carrier Reporting Template, Security Threat Assessment Application, Aviation Security Known Shipper Verification Form.

Affected Public: The collection of information that make up this ICR involve regulated entities including airports, passenger aircraft operators, foreign air carriers, indirect air carriers and all-cargo carriers operating under a TSA-approved security program.

Abstract: TSA is seeking renewal of an expiring collection of information. Congress set forth in the Aviation and Transportation Security Act (ATSA), Pub. L. 107–71, two specific requirements for TSA in the area of air cargo security: (1) To provide for screening of all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft; and (2) to establish a system to screen, inspect, report, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft as soon as practicable. In the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law

110–53, Congress requires that 50 percent of cargo transported on passenger aircraft is screened not later than February 2009, and 100 percent of such cargo is screened not later than August 2010.

TSA must proceed with this ICR for this program in order to continue to meet the Congressional mandates and current regulations (49 CFR 1542.209, 1544.205, 1546.205, and part 1548) that enable them to accept, screen, and transport air cargo. The uninterrupted collection of this information will allow TSA to continue to ensure implementation of these vital security measures for the protection of the traveling public.

This information collection requires the ''regulated entities,'' who may include passenger and all-cargo aircraft operators, foreign air carriers, and indirect air carriers (IACs), to implement a standard security program or to submit modifications to TSA for approval, and update such programs as necessary. The regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct security threat assessments (STAs) for individuals with unescorted access to cargo, and any individual who has responsibility for screening cargo under 49 CFR parts 1544, 1546, or 1548. Aircraft operators and foreign air carriers must report the volume of accepted and screened cargo transported on passenger aircraft. Further, TSA will collect identifying information for both companies and individuals whom aircraft operators, foreign air carriers, and IACs have qualified to ship cargo on passenger aircraft. This information is primarily collected electronically via the Known Shipper Management System (KSMS). Whenever the information cannot be entered into KSMS, the regulated entity must conduct a physical visit of the shipper using the Aviation Security Known Shipper Verification Form and subsequently enter that information into KSMS. These regulated entities must also maintain records pertaining to security programs, training, and compliance. The forms used in this collection of information include the Aviation Security Known Shipper Verification Form, Cargo Reporting Template, and the Security Threat Assessment Application.

Number of Respondents: 4,890.

Estimated Annual Burden Hours: An estimated 73,567 hours.

Issued in Arlington, Virginia, on April 19, 2012.

Susan Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–9806 Filed 4–23–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–25, Extension of an Existing Information Collection Request; Comment Request

ACTION: 30–Day Notice of Information Collection Under Review: Form N–25, Request for Verification of Naturalization.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. A 60-day information collection notice was previously published in the **Federal Register** on February 16, 2012, at 77 FR 9258, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 24, 2012. This process is conducted in accordance with 5 CFR 1320.10.

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 Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, Clearance Office, 20 Massachusetts Avenue, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via email at *uscisfrcomment@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via email at *oira_submission@omb.eop.gov*.

When submitting comments by email please make sure to add OMB Control Number 1615–0049 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Request for Verification of Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–25. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Not for Profit Institutions. This form will allow U.S. Citizenship and Immigration Services (USCIS) to obtain verification from the courts that a person claiming to be a naturalized citizen has, in fact, been naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Coordination Division, Office of Policy

and Strategy, 20 Massachusetts Avenue, Washington, DC 20529, (202) 272–1470.

Dated: April 18, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–9784 Filed 4–23–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–31]

Notice of Submission of Proposed Information Collection to OMB Community Development Block Grant (CDBG) Entitlement Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The closeout instructions apply to Community Development Block Grant (CDBG) programs (State CDBG Program, CDBG Disaster Recovery Supplemental Funding, CDBG–Recovery Act (CDBG–R)) and Neighborhood Stabilization Programs (NSP) 1, 2, & 3. Section 570.509 of the CDBG regulations contains the grant closeout criteria for Entitlement jurisdictions when HUD determines, in consultation with the recipients that a grant can be closed. The State CDBG program does not have a regulatory requirement for closeouts but has relied on administrative guidance. This is also true for the NSP, CDBG Disaster Recovery and CDBG–R funding approval form. The proposed frequency of the response to the collection of information is annual to initiate the grant closeout reporting and submission of the funding approval agreement. The total annual reporting for grant closeout is estimated at 2399.34 hours for 1,621 grant recipients. The annual submission of the HUD 7082 funding approval form is estimated at 364 hours for 1,456 grant recipients.

DATES: *Comments Due Date: May 24, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0077) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Community Development Block Grant (CDBG) Entitlement Program.

OMB Approval Number: 2506–0077.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

The closeout instructions apply to Community Development Block Grant (CDBG) programs (State CDBG Program, CDBG Disaster Recovery Supplemental Funding, CDBG–Recovery Act (CDBG–R)) and Neighborhood Stabilization Programs (NSP) 1, 2, & 3. Section 570.509 of the CDBG regulations contains the grant closeout criteria for Entitlement jurisdictions when HUD determines, in consultation with the recipients that a grant can be closed. The State CDBG program does not have a regulatory requirement for closeouts but has relied on administrative guidance. This is also true for the NSP, CDBG Disaster Recovery and CDBG–R funding approval form. The proposed frequency of the response to the collection of information is annual to initiate the grant closeout reporting and submission of the funding approval agreement. The total annual reporting for grant closeout is estimated at 2399.34 hours for 1,621 grant recipients. The annual submission of the HUD 7082 funding approval form is estimated at 364 hours for 1,456 grant recipients

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,145	4		116.55		533,799

Total Estimated Burden Hours: 533,799.

Status: This is an extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 17, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–9858 Filed 4–23–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–30]

Notice of Proposed Information Collection for Public Comment Emergency Comment Request; Single Family Customer Satisfaction Survey

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 1, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; email: *OIRA Submission@omb.epo.gov;* fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: David Dwyer, Housing Program Officer, Office of Single Family Housing, Department of Housing and Urban Development, 600 East Broad Street, Richmond, VA 23219; telephone (804) 822–4819 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to the collection of information for the Single Family customer satisfaction survey.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Customer Satisfaction Survey.

Description of Information Collection: This information collection consists of a survey of users of the Department's Federal Housing Administration (FHA) primary contact center. It is designed to determine whether the Department is appropriately and adequately serving their needs. It follows HUD's commitment to use surveys to measure performance and changes in performance.

In addition to the importance HUD management places on the information provided by customers, the Federal Government mandates collecting this information through Executive Order (EO) 12862. This EO mandates that agencies survey their customers to identify the kind and quality of services they want their level of satisfaction with existing services.

FHA operates a contact center designed to provide program guidelines, insurance processing information, and consumer information. In order to evaluate the level of service that is provided to HUD/FHA clients the agency contact center management team requires the input of its clients on the performance of the customer service operation. This operation includes the contracted contact center agents, agency staff that support them, as well as the contact center self-service option available via a web-based frequently asked questions (FAQ) site. The survey includes three separate survey types:

- Internal Resolution: A five question survey to determine satisfaction with questions that required escalation from FHA Resource Center contract staff to agency staff for resolution.
- Escalated Resolution: A five question survey to determine satisfaction with questions that were resolved by contracted FHA Resource Center staff.
- Self-Service Resolution: A four question survey to determine satisfaction with questions resolved via the FHA Resource Center self-service internet site.

OMB control number: 2535–0116.

Agency Form Numbers: N/A.

Members of Affected Public: Private sector, general public, small businesses and other for profits.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response:

The charts below summarize the sampling frames, survey samples and projected number of respondents for each survey type. The estimated response rates were derived from testing of the survey instruments. Exhibit 2 shows the estimated burden per respondent and for the project overall.

Respondent group	Respondent universe (annual volume of resource center users)	Survey sample (3% of users)	Estimated response rate	Projected number of completed surveys
Escalated Resolution	239,341	7,180	0.30	2,154
Internal Resolution	603,409	18,102	0.30	5,431
Self Service Resolution	34,420	1,033	0.30	310
Total	877,170			7,895

The hourly cost per response is based on the per capita income of the United States of $26,059 (US Bureau of the Census, 2010 American Community Survey) and the corresponding hourly earnings of $12.53; the total annualized cost for completing the survey is estimated to be $4,761.40.

Number of respondents	Total burden per respondent (minutes)	Total annual burden hours	Hourly cost	Annual cost
7,895	3	395	$12.53	$4,946.22

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 17, 2012,

Colette Pollard,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2012–9862 Filed 4–23–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–29]

Notice of Proposed Information Collection for Public Comment Emergency Comment Request; Office of Housing Assistance Contract Administration Oversight, Multifamily Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: May 1, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number (2502–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; email: *OIRA Submission@omb.epo.gov* ; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Kerry Hickman, Acting Director, Office of Housing Assistance and Contract Administration Oversight (OHACAO), Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–3885 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Annual Customer Service Survey of Performance-Based Contract Administrators.

Description of Information Collection: Abstract: Performance-Based Contract Administrators (PBCAs) under contract with HUD operate in nine States, Puerto Rico and the Virgin Islands. PBCAs monitor project owners' compliance with their obligations and responsibilities under the Section 8 Program and administer Housing Assistance Payments (HAPs) to owners of properties that receive rental subsidies for low- and moderate-income eligible families. Property owners are obligated to rent a portion of their units to Section 8 eligible families; maintain decent, safe, and sanitary housing for residents; and comply with various regulations and reporting requirements. PBCAs receive a Basic Administrative Fee to administer HAP contracts within their geographic boundaries and may earn Annual Incentive Fees for customer service. The surveys of property owners and tenants that make up this data collection will be used to determine eligibility for incentive fees.

OMB Control Number: 2502–New.

Agency Form Numbers: Annual Customer Service Survey of Performance-Based

Contract Administrators.

Members of Affected Public: Section 8 Tenants, PBCAs, Property Owners.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response:

The number of burden hours is 584.90. Then number of respondents is 2750, the number of responses is 2750, the frequency of response is on occasion, and the burden of hour per response for Tenants is 217 hours and the burden of hours per response for Property Owners is 75 hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 17, 2012.

Colette Pollard,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2012–9864 Filed 4–23–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2012–N097; 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) prohibit 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 24, 2012. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by May 24, 2012.

ADDRESSES: Brenda Tapia, 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: Brenda Tapia, (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: Global Viral Forecasting Initiative, San Francisco, CA; PRT–63801A

The applicant requests a permit to import biological samples from wild and captive-born lowland gorilla, (*Gorilla gorilla gorilla*), chimpanzee (*Pan troglodytes*), drill (*Mandrillus leucophaeus*), mandrill (*Mandrillus sphinx*), collared mangabey (*Cercocebus torquatus*), and red-eared monkey (*Cercopithecus erythrotis*) for the purpose of enhancement of the survival of the species.

Applicant: Racine Zoological Society, Racine, WI; PRT–761357

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Callitrichinae
Lemuridae
Species:
Pudu (*Pudu puda*)
Siberian tiger (*Panthera tigris altaica*)
Indochinese tiger (*Panthera tigris corbetti*)
Snow leopard (*Uncia uncia*)
Black rhinoceros (*Diceros bicornis*)
White-handed gibbon (*Hylobates lar*)

Applicant: Jerry Holly, Micanopy, FL; PRT–074189

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for Grevy's zebra (*Equus grevyi*) and bontebok (*damaliscus pygargus pygargus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Miami Metrozoo, Miami, FL; PRT–681592

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Bovidae
Equidae
Felidae (*does not* include jaguar, margay or ocelot)
Hominidae
Hylobatidae
Lemuridae
Rhinocerotidae
Tapiridae
Gruidae
Psittacidae (*does not* include thick-billed parrot)
Crocodylidae (*does not* include American crocodile)
Testudinidae
Species:
Asian elephant (*Elephas maximus*)
Koala (*Phascolarctos cinereus*)
African wild dog *(Lycaon pictus)*
Andean condor (*Vultur gryphus*)
Komodo island monitor (*Varanus komodoensis*)

Applicant: Eric Meffre, New Haven, CT; PRT–187257

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Little Rock Zoological Gardens, Little Rock, AR; PRT–680316

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) for cheetah (*Acinonyx jubatus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Rare Species Conservatory Foundation, Loxahatchee, FL; PRT–756101

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for golden parakeet (*Guarouba guarouba*), red-browed amazon (*Amazona rhodocorytha*), and vinaceous parrot (*Amazona vinacea*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Safeguard Investments Ltd., Sandia, TX; PRT–68176A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), scimitar-horned oryx (*Oryx dammah*), and addax (*Addax nasomaculatus),* from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lewis Henderson, Hamilton, TX; PRT–69106A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lewis Henderson, Hamilton, TX; PRT–65816A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Pheenix Farms Exotics, Interlachen, FL; PRT–71445A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Liberty Hill Land Partnership Ltd., Liberty Hill, TX; PRT–71521A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah),* to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Liberty Hill Land Partnership Ltd., Liberty Hill, TX; PRT–71523A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Patterson Energy of Texas, LLC, Hondo, TX; PRT–71533A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah),* to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Rattlesnake Springs Ranch, Camp Verde, TX; PRT–71661A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Rattlesnake Springs Ranch, Camp Verde, TX; PRT–71660A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and red lechwe (*Kobus leche*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Edward Merritt, Fullerton, CA; PRT–71633A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Chris Pannill, Kopperl, TX; PRT–71767A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), Arabian oryx (*Oryx leucoryx*), scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Chris Pannill, Kopperl, TX; PRT–71768A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and red lechwe (*Kobus leche*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Texana Ranch, Blackwell, TX; PRT–72023A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Texana Ranch, Blackwell, TX; PRT–72025A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*), from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Hays City Ranch, Driftwood, TX; PRT–72017A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Dixon Land and Wildlife Co., Houston, TX; PRT–67537A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Arizona Tortoise Compound, Peoria, AZ; PRT–71315A

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lonny Traweek, College Station, TX; PRT–72333A

The applicant requests a permit to import a 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.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Alaska Department of Fish and Game, Fairbanks, AK; PRT–220876

The applicant requests an amendment to the permit to authorize use of harpoons for tagging and biopsy of walrus (*Odobenus rosmarus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of the 5-year period of the issued permit.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2012–9804 Filed 4–23–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L14200000–BJ0000]

Notice of Filing of Plats of Survey; North 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 24, 2012.

DATES: Protests of the survey must be filed before May 24, 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 Chief, Branch of Fluid Minerals, Bureau of Land Management, Montana State Office, Billings, Montana, and was necessary to determine Federal Leasable Mineral Lands. The lands we surveyed are:

Fifth Principal Meridian, North Dakota

T. 147 N., R. 97 W.

The plat, in two sheets, representing the dependent resurvey of portions of the west and north boundaries, a portion of the subdivisional lines, and the adjusted original meanders of the former left and right banks of the Little Missouri River through sections 4, 5, and 6, the subdivision of sections 5 and 6, and the survey of the meanders of the present left and right banks of the Little Missouri River through sections 4, 5, and 6, the limits of erosion in section 6, and certain division of accretion lines, Township 147 North, Range 97 West, Fifth Principal Meridian, North Dakota, was accepted March 22, 2012.

We will place a copy of the plat, in two sheets, and related field notes 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.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–9788 Filed 4–23–12; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[DN 2892]

Certain Electronic Devices Having a Retractable USB Connector; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Devices Having a Retractable USB Connector,* DN 2892; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202)

205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Anu IP LLC on April 18, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices having a retractable USB connector. The complaint names as respondents AIPTEK International, Inc. of Taiwan; Aluratek, Inc. of CA; Archos S. A. of France; Archos, Inc. of CO; Bluestar Alliance LLC of NY; Centon Electronics, Inc. of CA; Coby Electronics Corporation of NY; Corsair Memory, Inc. of CA; Emtec Electronics, Inc. of OH; General Imaging Company of CA; Huawei Technology Company, Ltd. of China; Iriver, Inc. of CA; JVC Kenwood Corporation of Japan; JVC Americas Corporation of NJ; Latte Communications, Inc. of CA; Lexar Media, Inc. of CA; Maxell Corporation of America, Inc. of NJ; Hitachi Maxell, Ltd. of Japan; Office Depot, Inc. of FL; Olympus Corporation of Japan; Olympus Corporation of the Americas of PA; Option NV of Belgium; Option, Inc. of GA; Panasonic Corporation of Japan; Panasonic Corporation North America of NJ; Patriot Memory LLC of CA; Provantage LLC of OH; RITEK Corporation of Taiwan; Advanced Media, Inc. (d/b/a RITEK U.S.A.) of CA; Sakar International, Inc. of NJ; Samsung Electronics Co., Ltd. of South Korea; Samsung Electronics America of NJ; Sanyo Electric Co, Ltd. of Japan; Sanyo North America Corporation of CA; Silicon Power Computer and Comm., Inc. of Taiwan; Silicon Power Computer and Comm. USA, Inc. of CA; Supersonic, Inc. of CA; Super Talent Technology Corporation of CA; Toshiba Corporation of Japan; Toshiba America, Inc. of NY; ViewSonic Corporation of CA; VOXX International Corporation of NY; Audiovox Accessories Corporation of IN; Yamaha Corporation of Japan; and Yamaha Corporation of America of CA.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No.2892'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 19, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9785 Filed 4–23–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–839]

Certain Consumer Electronics, Including Mobile Phones and Tablets; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 13, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Pragmatus AV, LLC of Alexandria, Virginia. A letter supplementing the complaint was filed on March 30, 2012. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of

certain consumer electronics, including mobile phones and tablets, by reason of infringement of certain claims of U.S. Patent No. 5,854,893 (''the '893 patent''); U.S. Patent No. 6,237,025 (''the '025 patent''); U.S. Patent No. 7,054,904 (''the '904 patent''); U.S. Patent No. 7,185,054 (''the '054 patent''); and U.S. Patent No. 7,206,809 (''the '809 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server 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*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 17, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain consumer electronics, including mobile phones and tablets, that infringe one or more of claims 13, 15, and 16 of the '893 patent; claims 33–37 and 43 of the '025 patent; claims 17, 19, 20, 22, and 23 of the '904 patent; claims 10, 11, 13, and 14 of the '054 patent; claims 1–12, 34, 37, 40, and 41 of the '809 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 C.F.R. § 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors, 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Pragmatus AV, LLC, 601 King Street, Suite 200, Alexandria, VA 22314.

(b) The respondents the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ASUSTeK Computer, Inc., 4F, 150, Li-Te Road, Beitou District, Taipei City, Taiwan;

ASUS Computer International, Inc., 800 Corporate Way, Fremont, CA 94539;

HTC Corporation, 23 Xinghua Road, Taoyuan, 330, Taiwan;

HTC America, Inc., 13920 SE Eastgate Way, Suite 400, Bellevue, WA 98005;

LG Electronics, Inc., LG Twin Towers, 20, Yoido-dong, Youngdungpo-gu, Seoul, 157–721, Republic of Korea;

LG Electronics U.S.A., Inc., 1000 Sylvan Ave., Englewood Cliffs, NJ 07632;

LG Electronics MobileComm U.S.A., Inc., 10101 Old Grove Road, San Diego, CA 92131;

Pantech Co., Ltd., 1–2, DMC Sangam-don Mapo-gu, Seoul, Republic of Korea;

Pantech Wireless, Inc., 5607 Glenridge Drive, Suite 500, Atlanta, GA 30342;

Research In Motion Ltd., 295 Phillip Street, Waterloo, Ontario N2L 3W8, Canada;

Research In Motion Corp., 122 W. John Carpenter Parkway, Suite 430, Irving, TX 75039;

Samsung Electronics Co., Ltd, 1320–10, Seocho 2-dong Seocho-gu, Seoul, Republic of Korea;

Samsung Electronics America, Inc., 105 Challenger Rd., Ridgefield Park, NJ 07660;

Samsung Telecommunications America, L.L.C., 1301 East Lookout Drive, Richardson, TX 75082.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: April 18, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–9767 Filed 4–23–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that on April 16, 2012 a proposed Consent Decree (''Decree'') in *United States of America and the State of Tennessee* v. *the City of Memphis* (''City''), Civil Action No. 2:10–CV–02083–SHM–dkv was lodged with the United States District Court for the Western District of Tennessee. This Decree represents a settlement of claims against the City of Memphis under

Section 301, 309, and 402 of the Clean Water Act, 33 U.S.C. 1311, 1319, and 1342; and Tenn. Code Ann. §§ 69–3–108(b)(6), 114 and 115; and Sections 101 through 138 of the Tennessee Water Quality Control Act (''TWQCA'').

Under this settlement between the United States and the State and the City, the City will be required to develop and implement a number of sewer management, operation and maintenance programs, including: A sewer overflow response plan, a fats, oils, and grease management program, a lift station and force main operations and maintenance program, and an infrastructure rehabilitation program. The City will identify priority rehabilitation projects within the first year after entry of the proposed Consent Decree. The City will assess a minimum of 10% of its system and rehabilitate approximately 6% of its system in the first year of the Consent Decree, including major interceptors at risk of failures similar to the one that occurred on the Wolf River in 2008. The Consent Decree also provides for the payment of a civil penalty of $1.29 million. The penalty will be split evenly between the United States and the State. The City will pay $645,000 to the United States. Tennessee's payment will be in the form of state projects including an effluent study at the M.C. Stiles Wastewater Treatment Plant discharge point and a sewer GPS mapping project.

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 of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States of America and State of Tennessee* v. *City of Memphis,* Civil Action No. 2:10–CV–02083–SHM–dkv, D.J. Ref. 90–5–1–1–09720.

The proposed Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271.

If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $19.50 (25 cents per page reproduction cost) for the Consent Decree alone or $81.50 for the Consent Decree and appendices payable to the U.S. Treasury or, if requesting by email or fax, forward a check in either of those amounts to the Consent Decree Library at the address given above.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–9770 Filed 4–23–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[Docket No. OTJ 101]

Solicitation of Comments on Request for United States Assumption of Concurrent Federal Criminal Jurisdiction; Los Coyotes Band of Cahuilla and Cupeno Indians

AGENCY: Office of Tribal Justice, Department of Justice.

ACTION: Notice.

SUMMARY: This notice solicits public comments on the Request for United States Assumption of Concurrent Federal Criminal Jurisdiction recently submitted to the Office of Tribal Justice, Department of Justice by the Los Coyotes Band of Cahuilla and Cupeno Indians pursuant to the provisions of 28 CFR 50.25.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before June 8, 2012. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* submit written comments via regular or express mail to Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530.
- *Fax:* submit comments to the attention of Mr. Tracy Toulou, Office of Tribal Justice, Department of Justice, (202) 514–9078 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514–8812 (not a toll-free number). To ensure proper handling of comments, please reference ''Docket No. OTJ 101'' on all electronic and written correspondence. The Department encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of the request for United States assumption of concurrent federal criminal jurisdiction submitted by the Los Coyotes Band of Cahuilla and Cupeno Indians is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT.**

Statutory Background

For more than two centuries, the Federal Government has recognized Indian tribes as domestic sovereigns that have unique government-to-government relationships with the United States. Congress has broad authority to legislate with respect to Indian tribes, however, and has exercised this authority to establish a complex jurisdictional scheme for the prosecution of crimes committed in Indian country. (The term ''Indian country'' is defined in 18 U.S.C. 1151.) Criminal jurisdiction in Indian country typically depends on several factors, including the nature of the crime; whether the alleged offender, the victim, or both are Indian; and whether a treaty, Federal statute, executive order, or judicial decision has conferred jurisdiction on a particular government.

The Tribal Law and Order Act (TLOA) was enacted on July 29, 2010, as Title II of Public Law 111–211. The purpose of the TLOA is to help the Federal Government and tribal governments better address the unique public-safety challenges that confront tribal communities. Section 221(b) of the new law, now codified at 18 U.S.C. 1162(d), permits an Indian tribe with Indian country subject to State criminal jurisdiction under Public Law 280, P.L. 83–280, 67 Stat. 588 (1953) to request that the United States accept concurrent jurisdiction to prosecute violations of the General Crimes Act and the Major Crimes Act within that tribe's Indian country.

Department of Justice Regulation Implementing 18 U.S.C. 1162(d)

On December 6, 2011, 76 FR 76037 the Department published final regulations that established the framework and procedures for a mandatory Public Law 280 tribe to request the assumption of concurrent Federal criminal jurisdiction within the Indian country of the tribe that is subject to Public Law 280. 28 CFR 50.25. Among other provisions, the regulations provide that upon receipt of a tribal request the Office of Tribal Justice shall publish a notice in the **Federal Register** seeking comments from the general public.

Request by the Los Coyotes Band of Cahuilla and Cupeno Indians

By a request dated January 8, 2012, the Los Coyotes Band of Cahuilla and Cupeno Indians located in the State of California requested the United States to assume concurrent Federal jurisdiction to prosecute violations of 18 U.S.C. 1152 (the General Crimes, or Indian Country Crimes, Act) and 18 U.S.C. 1153 (the Major Crimes Act) within the Indian country of the tribe. This would allow the United States to assume concurrent criminal jurisdiction over offenses within the Indian country of the tribe without eliminating or affecting the State's existing criminal jurisdiction.

Solicitation of Comments

This notice solicits public comments on the above request.

Dated: April 17, 2012.

Tracy Toulou,

Director, Office of Tribal Justice.

[FR Doc. 2012–9730 Filed 4–23–12; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

[Docket No. OTJ 100]

Solicitation of Comments on Request for United States Assumption of Concurrent Federal Criminal Jurisdiction; Hoopa Valley Tribe

AGENCY: Office of Tribal Justice, Department of Justice.

ACTION: Notice.

SUMMARY: This notice solicits public comments on the Request for United States Assumption of Concurrent Federal Criminal Jurisdiction recently submitted to the Office of Tribal Justice, Department of Justice by the Hoopa Valley Tribe pursuant to the provisions of 28 CFR 50.25.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before . Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* submit written comments via regular or express mail to Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530.
- *Fax:* submit comments to the attention of Mr. Tracy Toulou, Office of Tribal Justice, Department of Justice, (202) 514–9078 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514–8812 (not a toll-free number). To ensure proper handling of comments, please reference ''Docket No. OTJ 100'' on all electronic and written correspondence. The Department encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of the request for United States assumption of concurrent federal criminal jurisdiction submitted by the Hoopa Valley Tribe is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

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please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT.**

Statutory Background

For more than two centuries, the Federal Government has recognized Indian tribes as domestic sovereigns that have unique government-to-government relationships with the United States. Congress has broad authority to legislate with respect to Indian tribes, however, and has exercised this authority to establish a complex jurisdictional scheme for the prosecution of crimes committed in Indian country. (The term ''Indian country'' is defined in 18 U.S.C. 1151.) Criminal jurisdiction in Indian country typically depends on several factors, including the nature of the crime; whether the alleged offender, the victim, or both are Indian; and whether a treaty, Federal statute, executive order, or judicial decision has conferred jurisdiction on a particular government.

The Tribal Law and Order Act (TLOA) was enacted on July 29, 2010, as Title II of Public Law 111–211. The purpose of the TLOA is to help the Federal Government and tribal governments better address the unique public-safety challenges that confront tribal communities. Section 221(b) of the new law, now codified at 18 U.S.C. 1162(d), permits an Indian tribe with Indian country subject to State criminal jurisdiction under Public Law 280, P.L. 83–280, 67 Stat. 588 (1953) to request that the United States accept concurrent jurisdiction to prosecute violations of the General Crimes Act and the Major Crimes Act within that tribe's Indian country.

Department of Justice Regulation Implementing 18 U.S.C. 1162(d)

On December 6, 2011, 76 FR 76037 the Department published final regulations that established the framework and procedures for a mandatory Public Law 280 tribe to request the assumption of concurrent Federal criminal jurisdiction within the Indian country of the tribe that is subject to Public Law 280. 28 CFR 50.25. Among other provisions, the regulations provide that upon receipt of a tribal request the Office of Tribal Justice shall publish a notice in the **Federal Register** seeking comments from the general public.

Request by the Hoopa Valley Tribe

By a request dated January 17, 2012, the Hoopa Valley Tribe located in the State of California requested the United States to assume concurrent Federal jurisdiction to prosecute violations of 18 U.S.C. 1152 (the General Crimes, or Indian Country Crimes, Act) and 18 U.S.C. 1153 (the Major Crimes Act) within the Indian country of the tribe. This would allow the United States to assume concurrent criminal jurisdiction over offenses within the Indian country of the tribe without eliminating or affecting the State's existing criminal jurisdiction.

Solicitation of Comments

This notice solicits public comments on the above request.

Dated: April 17, 2012.

Tracy Toulou,

Director, Office of Tribal Justice.

[FR Doc. 2012–9731 Filed 4–23–12; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Apple, Inc., Hachette Book Group, Inc., HarperCollins Publishers L.L.C., Verlagsgruppe Georg Von Holtzbrinck Gmbh, Holtzbrinck Publishers, LLC D/B/A Macmillan, The Penguin Group, a Division of Pearson PLC, Penguin Group (USA), Inc., and Simon & Schuster, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York in *United States of America* v. *Apple, Inc. et al.,* Civil Action No. 12–CIV–2826. On April 11, 2012, the United States filed a Complaint alleging that the defendants agreed to raise the retail price of e-books, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, submitted at the same time as the Complaint, requires the settling defendants—Hachette Book Group, Inc., HarperCollins Publishers L.L.C., and Simon & Schuster, Inc.—to return pricing discretion to e-book retailers and comply with other obligations designed to end the anticompetitive effects of the conspiracy.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., DC 20530, Suite 1010 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the Southern District of New York. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John R. Read, Chief, Litigation III Section, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202–307–0468).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the Southern District of New York

United States of America, Plaintiff, v. *Apple, Inc., Hachette Book Group, Inc., Harpercollins Publishers L.L.C., Verlagsgruppe Georg Von Holtzbrinck GMBH, Holtzbrinck Publishers, LLC D/B/A Macmillan, The Penguin Group, A Division of Pearson PLC, Penguin Group (USA), Inc., and Simon & Schuster, Inc.,* Defendants.

Civil Action No. 1:12–cv–02826
Judge: Cote, Denise
Date Filed: 04/11/2012
Description: Antitrust

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Apple, Inc. (''Apple''); Hachette Book Group, Inc. (''Hachette''); HarperCollins Publishers L.L.C. (''HarperCollins''); Verlagsgruppe Georg von Holtzbrinck GmbH and Holtzbrinck Publishers, LLC d/b/a Macmillan (collectively, ''Macmillan''); The Penguin Group, a division of Pearson plc and Penguin Group (USA), Inc. (collectively, ''Penguin''); and Simon & Schuster, Inc. (''Simon & Schuster''; collectively with Hachette, HarperCollins, Macmillan, and Penguin, ''Publisher Defendants'') to obtain equitable relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. 1.

Plaintiff alleges:

I. Introduction

1. Technology has brought revolutionary change to the business of publishing and selling books, including the dramatic explosion in sales of ''e-books''—that is, books sold to consumers in electronic form and read on a variety of electronic devices, including dedicated e-readers (such as the Kindle or the Nook), multipurpose tablets, smartphones and personal

computers. Consumers reap a variety of benefits from e-books, including 24-hour access to product with near-instant delivery, easier portability and storage, and adjustable font size. E-books also are considerably cheaper to produce and distribute than physical (or ''print'') books.

2. E-book sales have been increasing rapidly ever since Amazon released its first Kindle device in November of 2007. In developing and then mass marketing its Kindle e-reader and associated e-book content, Amazon substantially increased the retail market for e-books. One of Amazon's most successful marketing strategies was to lower substantially the price of newly released and bestselling e-books to $9.99.

3. Publishers saw the rise in e-books, and particularly Amazon's price discounting, as a substantial challenge to their traditional business model. The Publisher Defendants feared that lower retail prices for e-books might lead eventually to lower wholesale prices for e-books, lower prices for print books, or other consequences the publishers hoped to avoid. Each Publisher Defendant desired higher retail e-book prices across the industry before ''$9.99'' became an entrenched consumer expectation. By the end of 2009, however, the Publisher Defendants had concluded that unilateral efforts to move Amazon away from its practice of offering low retail prices would not work, and they thereafter conspired to raise retail e-book prices and to otherwise limit competition in the sale of e-books. To effectuate their conspiracy, the Publisher Defendants teamed up with Defendant Apple, which shared the same goal of restraining retail price competition in the sale of e-books.

4. The Defendants' conspiracy to limit e-book price competition came together as the Publisher Defendants were jointly devising schemes to limit Amazon's ability to discount e-books and Defendant Apple was preparing to launch its electronic tablet, the iPad, and considering whether it should sell e-books that could be read on the new device. Apple had long believed it would be able to ''trounce Amazon by opening up [its] own ebook store,'' but the intense price competition that prevailed among e-book retailers in late 2009 had driven the retail price of popular e-books to $9.99 and had reduced retailer margins on e-books to levels that Apple found unattractive. As a result of discussions with the Publisher Defendants, Apple learned that the Publisher Defendants shared a common objective with Apple to limit e-book retail price competition, and that the Publisher Defendants also desired to have popular e-book retail prices stabilize at levels significantly higher than $9.99. Together, Apple and the Publisher Defendants reached an agreement whereby retail price competition would cease (which all the conspirators desired), retail e-book prices would increase significantly (which the Publisher Defendants desired), and Apple would be guaranteed a 30 percent ''commission'' on each e-book it sold (which Apple desired).

5. To accomplish the goal of raising e-book prices and otherwise limiting retail competition for e-books, Apple and the Publisher Defendants jointly agreed to alter the business model governing the relationship between publishers and retailers. Prior to the conspiracy, both print books and e-books were sold under the longstanding ''wholesale model.'' Under this model, publishers sold books to retailers, and retailers, as the owners of the books, had the freedom to establish retail prices. Defendants were determined to end the robust retail price competition in e-books that prevailed, to the benefit of consumers, under the wholesale model. They therefore agreed jointly to replace the wholesale model for selling e-books with an ''agency model.'' Under the agency model, publishers would take control of retail pricing by appointing retailers as ''agents'' who would have no power to alter the retail prices set by the publishers. As a result, the publishers could end price competition among retailers and raise the prices consumers pay for e-books through the adoption of identical pricing tiers. This change in business model would not have occurred without the conspiracy among the Defendants.

6. Apple facilitated the Publisher Defendants' collective effort to end retail price competition by coordinating their transition to an agency model across all retailers. Apple clearly understood that its participation in this scheme would result in higher prices to consumers. As Apple CEO Steve Jobs described his company's strategy for negotiating with the Publisher Defendants, ''We'll go to [an] agency model, where you set the price, and we get our 30%, and yes, the customer pays a little more, but that's what you want anyway.'' Apple was perfectly willing to help the Publisher Defendants obtain their objective of higher prices for consumers by ending Amazon's ''$9.99'' price program as long as Apple was guaranteed its 30 percent margin and could avoid retail price competition from Amazon.

7. The plan—what Apple proudly described as an ''aikido move''—worked. Over three days in January 2010, each Publisher Defendant entered into a functionally identical agency contract with Apple that would go into effect simultaneously in April 2010 and ''chang[e] the industry permanently.'' These ''Apple Agency Agreements'' conferred on the Publisher Defendants the power to set Apple's retail prices for e-books, while granting Apple the assurance that the Publisher Defendants would raise retail e-book prices at all other e-book outlets, too. Instead of $9.99, electronic versions of bestsellers and newly released titles would be priced according to a set of price tiers contained in each of the Apple Agency Agreements that determined de facto retail e-book prices as a function of the title's hardcover list price. All bestselling and newly released titles bearing a hardcover list price between $25.01 and $35.00, for example, would be priced at $12.99, $14.99, or $16.99, with the retail e-book price increasing in relation to the hardcover list price.

8. After executing the Apple Agency Agreements, the Publisher Defendants all then quickly acted to complete the scheme by imposing agency agreements on all their other retailers. As a direct result, those retailers lost their ability to compete on price, including their ability to sell the most popular e-books for $9.99 or for other low prices. Once in control of retail prices, the Publisher Defendants limited retail price competition among themselves. Millions of e-books that would have sold at retail for $9.99 or for other low prices instead sold for the prices indicated by the price schedules included in the Apple Agency Agreements—generally, $12.99 or $14.99. Other price and non-price competition among e-book publishers and among e-book retailers also was unlawfully eliminated to the detriment of U.S. consumers.

9. The purpose of this lawsuit is to enjoin the Publisher Defendants and Apple from further violations of the nation's antitrust laws and to restore the competition that has been lost due to the Publisher Defendants' and Apple's illegal acts.

10. Defendants' ongoing conspiracy and agreement have caused e-book consumers to pay tens of millions of dollars more for e-books than they otherwise would have paid.

11. The United States, through this suit, asks this Court to declare Defendants' conduct illegal and to enter injunctive relief to prevent further injury to consumers in the United States.

II. Defendants

12. Apple, Inc. has its principal place of business at 1 Infinite Loop, Cupertino, CA 95014. Among many other businesses, Apple, Inc. distributes e-books through its iBookstore.

13. Hachette Book Group, Inc. has its principal place of business at 237 Park Avenue, New York, NY 10017. It publishes e-books and print books through publishers such as Little, Brown, and Company and Grand Central Publishing.

14. HarperCollins Publishers L.L.C. has its principal place of business at 10 E. 53rd Street, New York, NY 10022. It publishes e-books and print books through publishers such as Harper and William Morrow.

15. Holtzbrinck Publishers, LLC d/b/a Macmillan has its principal place of business at 175 Fifth Avenue, New York, NY 10010. It publishes e-books and print books through publishers such as Farrar, Straus and Giroux and St. Martin's Press. Verlagsgruppe Georg von Holtzbrinck GmbH owns Holtzbrinck Publishers, LLC d/b/a Macmillan and has its principal place of business at Gänsheidestraße 26, Stuttgart 70184, Germany.

16. Penguin Group (USA), Inc. has its principal place of business at 375 Hudson Street, New York, NY 10014. It publishes e-books and print books through publishers such as The Viking Press and Gotham Books. Penguin Group (USA), Inc. is the United States affiliate of The Penguin Group, a division of Pearson plc, which has its principal place of business at 80 Strand, London WC2R 0RL, United Kingdom.

17. Simon & Schuster, Inc. has its principal place of business at 1230 Avenue of the Americas, New York, NY 10020. It publishes e-books and print books through publishers such as Free Press and Touchstone.

III. Jurisdiction, Venue, and Interstate Commerce

18. Plaintiff United States of America brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, to obtain equitable relief and other relief to prevent and restrain Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C 1.

19. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and 28 U.S.C. 1331, 1337(a), and 1345.

20. This Court has personal jurisdiction over each Defendant and venue is proper in the Southern District of New York under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391, because each Defendant transacts business and is found within the Southern District of New York. The U.S. component of each Publisher Defendant is headquartered in the Southern District of New York, and acts in furtherance of the conspiracy occurred in this District. Many thousands of the Publisher Defendants' e-books are and have been sold in this District, including through Defendant Apple's iBookstore.

21. Defendants are engaged in, and their activities substantially affect, interstate trade and commerce. The Publisher Defendants sell e-books throughout the United States. Their e-books represent a substantial amount of interstate commerce. In 2010, United States consumers paid more than $300 million for the Publisher Defendants' e-books, including more than $40 million for e-books licensed through Defendant Apple's iBookstore.

IV. Co-Conspirators

22. Various persons, who are known and unknown to Plaintiff, and not named as defendants in this action, including senior executives of the Publisher Defendants and Apple, have participated as co-conspirators with Defendants in the offense alleged and have performed acts and made statements in furtherance of the conspiracy.

V. The Publishing Industry and Background of the Conspiracy

A. Print Books

23. Authors submit books to publishers in manuscript form. Publishers edit manuscripts, print and bind books, provide advertising and related marketing services, decide when a book should be released for sale, and distribute books to wholesalers and retailers. Publishers also determine the cover price or ''list price'' of a book, and typically that price appears on the book's cover.

24. Retailers purchase print books directly from publishers, or through wholesale distributors, and resell them to consumers. Retailers typically purchase print books under the ''wholesale model.'' Under that model, retailers pay publishers approximately one-half of the list price of books, take ownership of the books, then resell them to consumers at prices of the retailer's choice. Publishers have sold print books to retailers through the wholesale model for over 100 years and continue to do so today.

B. E-books

25. E-books are books published in electronic formats. E-book publishers avoid some of the expenses incurred in producing and distributing print books, including most manufacturing expenses, warehousing expenses, distribution expenses, and costs of dealing with unsold stock.

26. Consumers purchase e-books through Web sites of e-book retailers or through applications loaded onto their reading devices. Such electronic distribution allows e-book retailers to avoid certain expenses they incur when they sell print books, including most warehousing expenses and distribution expenses.

27. From its very small base in 2007 at the time of Amazon's Kindle launch, the e-book market has exploded, registering triple-digit sales growth each year. E-books now constitute at least ten percent of general interest fiction and non-fiction books (commonly known as ''trade'' books [1]) sold in the United States and are widely predicted to reach at least 25 percent of U.S. trade books sales within two to three years.

D. Publisher Defendants and ''The $9.99 Problem''

28. The Publisher Defendants compete against each other for sales of trade e-books to consumers. Publishers bid against one another for print- and electronic-publishing rights to content that they expect will be most successful in the market. They also compete against each other in bringing those books to market. For example, in addition to price-setting, they create cover art and other on-book sales inducements, and also engage in advertising campaigns for some titles.

29. The Publisher Defendants are five of the six largest publishers of trade books in the United States. They publish the vast majority of their newly released titles as both print books and e-books. Publisher Defendants compete against each other in the sales of both trade print books and trade e-books.

30. When Amazon launched its Kindle device, it offered newly released and bestselling e-books to consumers for $9.99. At that time, Publisher Defendants routinely wholesaled those e-books for about that same price, which typically was less than the wholesale price of the hardcover versions of the same titles, reflecting publisher cost savings associated with the electronic format. From the time of its launch, Amazon's e-book distribution business

[1] Non-trade e-books include electronic versions of children's picture books and academic textbooks, reference materials, and other specialized texts that typically are published by separate imprints from trade books, often are sold through separate channels, and are not reasonably substitutable for trade e-books.

has been consistently profitable, even when substantially discounting some newly released and bestselling titles.

31. To compete with Amazon, other e-book retailers often matched or approached Amazon's $9.99-or-less prices for e-book versions of new releases and *New York Times* bestsellers. As a result of that competition, consumers benefited from Amazon's $9.99-or-less e-book prices even if they purchased e-books from competing e-book retailers.

32. The Publisher Defendants feared that $9.99 would become the standard price for newly released and bestselling e-books. For example, one Publisher Defendant's CEO bemoaned the ''wretched $9.99 price point'' and Penguin USA CEO David Shanks worried that e-book pricing ''can't be $9.99 for hardcovers.''

33. The Publisher Defendants believed the low prices for newly released and bestselling e-books were disrupting the industry. The Amazon-led $9.99 retail price point for the most popular e-books troubled the Publisher Defendants because, at $9.99, most of these e-book titles were priced substantially lower than hardcover versions of the same title. The Publisher Defendants were concerned these lower e-book prices would lead to the ''deflation'' of hardcover book prices, with accompanying declining revenues for publishers. The Publisher Defendants also worried that if $9.99 solidified as the consumers' expected retail price for e-books, Amazon and other retailers would demand that publishers lower their wholesale prices, further compressing publisher profit margins.

34. The Publisher Defendants also feared that the $9.99 price point would make e-books so popular that digital publishers could achieve sufficient scale to challenge the major incumbent publishers' basic business model. The Publisher Defendants were especially concerned that Amazon was well positioned to enter the digital publishing business and thereby supplant publishers as intermediaries between authors and consumers. Amazon had, in fact, taken steps to do so, contracting directly with authors to publish their works as e-books—at a higher royalty rate than the Publisher Defendants offered. Amazon's move threatened the Publisher Defendants' traditional positions as the gate-keepers of the publishing world. The Publisher Defendants also feared that other competitive advantages they held as a result of years of investments in their print book businesses would erode and, eventually, become irrelevant, as e-book sales continued to grow.

E. Publisher Defendants Recognize They Cannot Solve ''The $9.99 Problem'' Alone

35. Each Publisher Defendant knew that, acting alone, it could not compel Amazon to raise e-book prices and that it was not in its economic self-interest to attempt unilaterally to raise retail e-book prices. Each Publisher Defendant relied on Amazon to market and distribute its e-books, and each Publisher Defendant believed Amazon would leverage its position as a large retailer to preserve its ability to compete and would resist any individual publisher's attempt to raise the prices at which Amazon sold that publisher's e-books. As one Publisher Defendant executive acknowledged Amazon's bargaining strength, ''we've always known that unless other publishers follow us, there's no chance of success in getting Amazon to change its pricing practices.'' In the same email, the executive wrote, ''without a critical mass behind us Amazon won't 'negotiate,' so we need to be more confident of how our fellow publishers will react. * * *''

36. Each Publisher Defendant also recognized that it would lose sales if retail prices increased for only its e-books while the other Publisher Defendants' e-books remained competitively priced. In addition, higher prices for just one publisher's e-books would not change consumer perceptions enough to slow the erosion of consumer-perceived value of books that all the Publisher Defendants feared would result from Amazon's $9.99 pricing policy.

VI. Defendants' Unlawful Activities

37. Beginning no later than September 2008, the Publisher Defendants' senior executives engaged in a series of meetings, telephone conversations and other communications in which they jointly acknowledged to each other the threat posed by Amazon's pricing strategy and the need to work collectively to end that strategy. By the end of the summer of 2009, the Publisher Defendants had agreed to act collectively to force up Amazon's retail prices and thereafter considered and implemented various means to accomplish that goal, including moving under the guise of a joint venture. Ultimately, in late 2009, Apple and the Publisher Defendants settled on the strategy that worked—replacing the wholesale model with an agency model that gave the Publisher Defendants the power to raise retail e-book prices themselves.

38. The evidence showing conspiracy is substantial and includes:

- *Practices facilitating a horizontal conspiracy.* The Publisher Defendants regularly communicated with each other in private conversations, both in person and on the telephone, and in emails to each other to exchange sensitive information and assurances of solidarity to advance the ends of the conspiracy.
- *Direct evidence of a conspiracy.* The Publisher Defendants directly discussed, agreed to, and encouraged each other to collective action to force Amazon to raise its retail e-book prices.
- *Recognition of illicit nature of communications.* Publisher Defendants took steps to conceal their communications with one another, including instructions to ''double delete'' email and taking other measures to avoid leaving a paper trail.
- *Acts contrary to economic interests.* It would have been contrary to the economic interests of any Publisher Defendant acting alone to attempt to impose agency on all of its retailers and then raise its retail e-book prices. For example, Penguin Group CEO John Makinson reported to his parent company board of directors that ''the industry needs to develop a common strategy'' to address the threat ''from digital companies whose objective may be to disintermediate traditional publishers altogether'' because it ''will not be possible for any individual publisher to mount an effective response,'' and Penguin later admitted that it would have been economically disadvantaged if it ''was the only publisher dealing with Apple under the new business model.''
- *Motive to enter the conspiracy, including knowledge or assurances that competitors also will enter.* The Publisher Defendants were motivated by a desire to maintain both the perceived value of their books and their own position in the industry. They received assurances from both each other and Apple that they all would move together to raise retail e-book prices. Apple was motivated to ensure that it would not face competition from Amazon's low-price retail strategy.
- *Abrupt, contemporaneous shift from past behavior.* Prior to January 23, 2010, all Publisher Defendants sold their e-books under the traditional wholesale model; by January 25, 2010, all Publisher Defendants had irrevocably committed to transition all of their retailers to the agency model (and Apple had committed to sell e-books on a model inconsistent with the way it sells the vast bulk of the digital

media it offers in its iTunes store). On April 3, 2010, as soon as the Apple Agency Agreements simultaneously became effective, all Publisher Defendants immediately used their new retail pricing authority to raise the retail prices of their newly released and bestselling e-books to the common ostensible maximum prices contained in their Apple Agency Agreements.

A. The Publisher Defendants Recognize a Common Threat

39. Starting no later than September of 2008 and continuing for at least one year, the Publisher Defendants' CEOs (at times joined by one non-defendant publisher's CEO) met privately as a group approximately once per quarter. These meetings took place in private dining rooms of upscale Manhattan restaurants and were used to discuss confidential business and competitive matters, including Amazon's e-book retailing practices. No legal counsel was present at any of these meetings.

40. In September 2008, Penguin Group CEO John Makinson was joined by Macmillan CEO John Sargent and the CEOs of the other four large publishers at a dinner meeting in ''The Chef's Wine Cellar,'' a private room at Picholene. One of the CEOs reported that business matters were discussed.

41. In January 2009, the CEO of one Publisher Defendant, a United States subsidiary of a European corporation, promised his corporate superior, the CEO of the parent company, that he would raise the future of e-books and Amazon's potential role in that future at an upcoming meeting of publisher CEOs. Later that month, at a dinner meeting hosted by Penguin Group CEO John Makinson, again in ''The Chef's Wine Cellar'' at Picholene, the same group of publisher CEOs met once more.

42. On or about June 16, 2009, Mr. Makinson again met privately with other Publisher Defendant CEOs and discussed, *inter alia,* the growth of e-books and Amazon's role in that growth.

43. On or about September 10, 2009, Mr. Makinson once again met privately with other Publisher Defendant CEOs and the CEO of one non-defendant publisher in a private room of a different Manhattan restaurant, Alto. They discussed the growth of e-books and complained about Amazon's role in that growth.

44. In addition to the CEO dinner meetings, Publisher Defendants' CEOs and other executives met in-person, one-on-one to communicate about e-books multiple times over the course of 2009 and into 2010. Similar meetings took place in Europe, including meetings in the fall of 2009 between executives of Macmillan parent company Verlagsgruppe Georg von Holtzbrinck GmbH and executives of another Publisher Defendant's parent company. Macmillan CEO John Sargent joined at least one of these parent company meetings.

45. These private meetings provided the Publisher Defendants' CEOs the opportunity to discuss how they collectively could solve ''the $9.99 problem.''

B. Publisher Defendants Conspire To Raise Retail E-Book Prices Under the Guise of Joint Venture Discussions

46. While each Publisher Defendant recognized that it could not solve ''the $9.99 problem'' by itself, collectively the Publisher Defendants accounted for nearly half of Amazon's e-book revenues, and by refusing to compete with one another for Amazon's business, the Publisher Defendants could force Amazon to accept the Publisher Defendants' new contract terms and to change its pricing practices.

47. The Publisher Defendants thus conspired to act collectively, initially in the guise of joint ventures. These ostensible joint ventures were not meant to enhance competition by bringing to market products or services that the publishers could not offer unilaterally, but rather were designed as anticompetitive measures to raise prices.

48. All five Publisher Defendants agreed in 2009 at the latest to act collectively to raise retail prices for the most popular e-books above $9.99. One CEO of a Publisher Defendant's parent company explained to his corporate superior in a July 29, 2009 email message that ''[i]n the USA and the UK, but also in Spain and France to a lesser degree, the 'top publishers' are in discussions to create an alternative platform to Amazon for e-books. The goal is less to compete with Amazon as to force it to accept a price level higher than 9.99 . * * * I am in NY this week to promote these ideas and the movement is positive with [the other four Publisher Defendants].'' (Translated from French).

49. Less than a week later, in an August 4, 2009 strategy memo for the board of directors of Penguin's ultimate parent company, Penguin Group CEO John Makinson conveyed the same message:

> Competition for the attention of readers will be most intense from digital companies whose objective may be to disintermediate traditional publishers altogether. This is not a new threat but we do appear to be on a collision course with Amazon, and possibly Google as well. It will not be possible for any individual publisher to mount an effective response, because of both the resources necessary and the risk of retribution, so the industry needs to develop a common strategy. This is the context for the development of the Project Z initiatives [joint ventures] in London and New York.

C. Defendants Agree To Increase and Stabilize Retail E-Book Prices by Collectively Adopting an Agency Model

50. To raise e-book prices, the Publisher Defendants also began to consider in late 2009 selling e-books under an ''agency model'' that would take away Amazon's ability to set low retail prices. As one CEO of a Publisher Defendant's parent company explained in a December 6, 2009 email message, ''[o]ur goal is to force Amazon to return to acceptable sales prices through the establishment of agency contracts in the USA * * *. To succeed our colleagues must know that we entered the fray and follow us.'' (Translated from French).

51. Apple's entry into the e-book business provided a perfect opportunity for collective action to implement the agency model and use it to raise retail e-book prices. Apple was in the process of developing a strategy to sell e-books on its new iPad device. Apple initially contemplated selling e-books through the existing wholesale model, which was similar to the manner in which Apple sold the vast majority of the digital media it offered in its iTunes store. On February 19, 2009, Apple Vice President of Internet Services Eddy Cue explained to Apple CEO Steve Jobs in an email, ''[a]t this point, it would be very easy for us to compete and I think trounce Amazon by opening up our own ebook store.'' In addition to considering competitive entry at that time, though, Apple also contemplated illegally dividing the digital content world with Amazon, allowing each to ''own the category'' of its choice—audio/video to Apple and e-books to Amazon.

52. Apple soon concluded, though, that competition from other retailers—especially Amazon—would prevent Apple from earning its desired 30 percent margins on e-book sales. Ultimately, Apple, together with the Publisher Defendants, set in motion a plan that would compel all non-Apple e-book retailers also to sign onto agency or else, as Apple's CEO put it, the Publisher Defendants all would say, ''we're not going to give you the books.''

53. The executive in charge of Apple's inchoate e-books business, Eddy Cue, telephoned each Publisher Defendant and Random House on or around December 8, 2009 to schedule exploratory meetings in New York City on December 15 and December 16.

Hachette and HarperCollins took the lead in working with Apple to capitalize on this golden opportunity for the Publisher Defendants to achieve their goal of raising and stabilizing retail e-book prices above $9.99 by collectively imposing the agency model on the industry.

54. It appears that Hachette and HarperCollins communicated with each other about moving to an agency model during the brief window between Mr. Cue's first telephone calls to the Publisher Defendants and his visit to meet with their CEOs. On the morning of December 10, 2009, a HarperCollins executive added to his calendar an appointment to call a Hachette executive at 10:50 a.m. At 11:01 a.m., the Hachette executive returned the phone call, and the two spoke for six minutes. Then, less than a week later in New York, both Hachette and HarperCollins executives told Mr. Cue in their initial meetings with him that they wanted to sell e-books under an agency model, a dramatic departure from the way books had been sold for over a century.

55. The other Publisher Defendants also made clear to Apple that they ''certainly'' did not want to continue ''the existing way that they were doing business,'' *i.e.,* with Amazon promoting their most popular e-books for $9.99 under a wholesale model.

56. Apple saw a way to turn the agency scheme into a highly profitable model for itself. Apple determined to give the Publisher Defendants what they wanted while shielding itself from retail price competition and realizing margins far in excess of what e-book retailers then averaged on each newly released or bestselling e-book sold. Apple realized that, as a result of the scheme, ''the customer'' would ''pay[] a little more.''

57. On December 16, 2009, the day after both companies' initial meetings with Apple, Penguin Group CEO John Makinson had a breakfast meeting at a London hotel with the CEO of another Publisher Defendant's parent company. Consistent with the Publisher Defendants' other efforts to conceal their activities, Mr. Makinson's breakfast companion wrote to his U.S. subordinate that he would recount portions of his discussion with Mr. Makinson only by telephone.

58. By the time Apple arrived for a second round of meetings during the week of December 21, 2009, the agency model had become the focus of its discussions with all of the Publisher Defendants. In these discussions, Apple proposed that the Publisher Defendants require *all* retailers of their e-books to accept the agency model. Apple thereby sought to ensure that it would not have to compete on retail prices. The proposal appealed to the Publisher Defendants because wresting pricing control from Amazon and other e-book retailers would advance their collusive plan to raise retail e-book prices.

59. The Publisher Defendants acknowledged to Apple their common objective to end Amazon's $9.99 pricing. As Mr. Cue reported in an email message to Apple's CEO Steve Jobs, the three publishers with whom he had met saw the ''plus'' of Apple's position as ''solv[ing the] Amazon problem.'' The ''negative'' was that Apple's proposed retail prices—topping out at $12.99 for newly released and bestselling e-books—were a ''little less than [the publishers] would like.'' Likewise, Mr. Jobs later informed an executive of one of the Publisher Defendant's corporate parents that ''[a]ll major publishers'' had told Apple that ''Amazon's $9.99 price for new releases is eroding the value perception of their products in customer's minds, and they do not want this practice to continue for new releases.''

60. As perhaps the only company that could facilitate their goal of raising retail e-book prices across the industry, Apple knew that it had significant leverage in negotiations with Publisher Defendants. Apple exercised this leverage to demand a thirty percent commission—a margin significantly above the prevailing competitive margins for e-book retailers. The Publisher Defendants worried that the combination of paying Apple a higher commission than they would have liked and pricing their e-books lower than they wanted might be too much to bear in exchange for Apple's facilitation of their agreement to raise retail e-book prices. Ultimately, though, they convinced Apple to allow them to raise prices high enough to make the deal palatable to them.

61. As it negotiated with the Publisher Defendants in December 2009 and January 2010, Apple kept each Publisher Defendant informed of the status of its negotiations with the other Publisher Defendants. Apple also assured the Publisher Defendants that its proposals were the same to each and that no deal Apple agreed to with one publisher would be materially different from any deal it agreed to with another publisher. Apple thus knowingly served as a critical conspiracy participant by allowing the Publisher Defendants to signal to one another both (a) which agency terms would comprise an acceptable means of achieving their ultimate goal of raising and stabilizing retail e-book prices, and (b) that they could lock themselves into this particular means of collectively achieving that goal by all signing their Apple Agency Agreement.

62. Apple's Mr. Cue emailed each Publisher Defendant between January 4, 2010, and January 6, 2010 an outline of what he tabbed ''the best approach for e-books.'' He reassured Penguin USA CEO David Shanks and other Publisher Defendant CEOs that Apple adopted the approach ''[a]fter talking to all the other publishers.'' Mr. Cue sent substantively identical email messages and proposals to each Publisher Defendant.

63. The outlined proposal that Apple circulated after consulting with each Publisher Defendant contained several key features. First, as Hachette and HarperCollins had initially suggested to Apple, the publisher would be the principal and Apple would be the agent for e-book sales. Consumer pricing authority would be transferred from retailers to publishers. Second, Apple's proposal mandated that every other retailer of each publisher's e-books—Apple's direct competitors—be forced to accept the agency model as well. As Mr. Cue wrote, ''all resellers of new titles need to be in agency model.'' Third, Apple would receive a 30 percent commission for each e-book sale. And fourth, each Publisher Defendant would have identical pricing tiers for e-books sold through Apple's iBookstore.

64. On January 11, 2010, Apple emailed its proposed e-book distribution agreement to all the Publisher Defendants. As with the outlined proposals Apple sent earlier in January, the proposed e-book distribution agreements were substantially the same. Also on January 11, 2010, Apple separately emailed to Penguin and two other Publisher Defendants charts showing how the Publisher Defendant's bestselling e-books would be priced at $12.99—the ostensibly maximum price under Apple's then-current price tier proposal—in the iBookstore.

65. The proposed e-book distribution agreement mainly incorporated the principles Apple set out in its email messages of January 4 through January 6, with two notable changes. First, Apple demanded that the Publisher Defendants provide Apple their complete e-book catalogs and that they not delay the electronic release of any title behind its print release. Second, and more important, Apple replaced the express requirement that each publisher adopt the agency model with each of its retailers with an unusual most favored nation (''MFN'') pricing provision. That provision was not structured like a standard MFN in favor of a retailer, ensuring Apple that it would receive the

best available wholesale price. Nor did the MFN ensure Apple that the Publisher Defendants would not set a higher retail price on the iBookstore than they set on other Web sites where they controlled retail prices. Instead, the MFN here required each publisher to guarantee that it would lower the retail price of each e-book in Apple's iBookstore to match the lowest price offered by any other retailer, even if the Publisher Defendant did not control that other retailer's ultimate consumer price. That is, instead of an MFN designed to protect Apple's ability to compete, this MFN was designed to protect Apple from having to compete on price at all, while still maintaining Apple's 30 percent margin.

66. The purpose of these provisions was to work in concert to enforce the Defendants' agreement to raise and stabilize retail e-book prices. Apple and the Publisher Defendants recognized that coupling Apple's right to all of their e-books with its right to demand that those e-books not be priced higher on the iBookstore than on any other Web site effectively required that each Publisher Defendant take away retail pricing control from all other e-book retailers, including stripping them of any ability to discount or otherwise price promote e-books out of the retailer's own margins. Otherwise, the retail price MFN would cause Apple's iBookstore prices to drop to match the best available retail price of each e-book, and the Publisher Defendants would receive only 70 percent of those reduced retail prices. Price competition by other retailers, if allowed to continue, thus likely would reduce e-book revenues to levels the Publisher Defendants could not control or predict.

67. In negotiating the retail price MFN with Apple, ''some of [the Publisher Defendants]'' asserted that Apple did not need the provision ''because they would be moving to an agency model with [the other e-book retailers,]'' regardless. Ultimately, though, all Defendants agreed to include the MFN commitment mechanism.

68. On January 16, 2010, Apple, via Mr. Cue, offered revised terms to the Publisher Defendants that again were identical in substance. Apple modified its earlier proposal in two significant ways. First, in response to publisher requests, it added new maximum pricing tiers that increased permissible e-book prices to $16.99 or $19.99, depending on the book's hardcover list price. Second, Apple's new proposal mitigated these price increases somewhat by adding special pricing tiers for e-book versions of books on the New York Times fiction and non-fiction bestseller lists. For e-book versions of bestsellers bearing list prices of $30 or less, Publisher Defendants could set a price up to $12.99; for bestsellers bearing list prices between $30 and $35, the e-book price cap would be $14.99. In conjunction with the revised proposal, Mr. Cue set up meetings for the next week to finalize agreements with the Publisher Defendants.

69. Each Publisher Defendant required assurances that it would not be the only publisher to sign an agreement with Apple that would compel it either to take pricing authority from Amazon or to pull its e-books from Amazon. The Publisher Defendants continued to fear that Amazon would act to protect its ability to price e-books at $9.99 or less if any one of them acted alone. Individual Publisher Defendants also feared punishment in the marketplace if only its e-books suddenly became more expensive at retail while other publishers continued to allow retailers to compete on price. As Mr. Cue noted, ''all of them were very concerned about being the only ones to sign a deal with us.'' Penguin explicitly communicated to Apple that it would sign an e-book distribution agreement with Apple only if at least three of the other ''major[]'' publishers did as well. Apple supplied the needed assurances.

70. While the Publisher Defendants were discussing e-book distribution terms with Apple during the week of January 18, 2010, Amazon met in New York City with a number of prominent authors and agents to unveil a new program under which copyright holders could take their e-books directly to Amazon—cutting out the publisher—and Amazon would pay royalties of up to 70 percent, far in excess of what publishers offered. This announcement further highlighted the direct competitive threat Amazon posed to the Publisher Defendants' business model. The Publisher Defendants reacted immediately. For example, Penguin USA CEO David Shanks reported being ''really angry'' after ''hav[ing] read [Amazon's] announcement.'' After thinking about it for a day, Mr. Shanks concluded, ''[o]n Apple I am now more convinced that we need a viable alternative to Amazon or this nonsense will continue and get much worse.'' Another decisionmaker stated he was ''p****d'' at Amazon for starting to compete directly against the publishers and expressed his desire ''to screw Amazon.''

71. To persuade one of the Publisher Defendants to stay with the others and sign an agreement, Apple CEO Steve Jobs wrote to an executive of the Publisher Defendant's corporate parent that the publisher had only two choices apart from signing the Apple Agency Agreement: (i) Accept the status quo (''Keep going with Amazon at $9.99''); or (ii) continue with a losing policy of delaying the release of electronic versions of new titles (''Hold back your books from Amazon''). According to Jobs, the Apple deal offered the Publisher Defendants a superior alternative path to the higher retail e-book prices they sought: ''Throw in with Apple and see if we can all make a go of this to create a real mainstream e-books market at $12.99 and $14.99.''

72. In addition to passing information through Apple and during their private dinners and other in-person meetings, the Publisher Defendants frequently communicated by telephone to exchange assurances of common action in attempting to raise the retail price of e-books. These telephone communications increased significantly during the two-month period in which the Publisher Defendants considered and entered the Apple Agency Agreements. During December 2009 and January 2010, the Publisher Defendants' U.S. CEOs placed at least 56 phone calls to one another. Each CEO, including Penguin's Shanks and Macmillan's Sargent, placed at least seven such phone calls.

73. The timing, frequency, duration, and content of the Publisher Defendant CEOs' phone calls demonstrate that the Publisher Defendants used them to seek and exchange assurances of common strategies and business plans regarding the Apple Agency Agreements. For example, in addition to the telephone calls already described in this complaint:

- Near the time Apple first presented the agency model, one Publisher Defendant's CEO used a telephone call—ostensibly made to discuss a marketing joint venture—to tell Penguin USA CEO David Shanks that ''everyone is in the same place with Apple.''
- After receiving Apple's January 16, 2010 revised proposal, executives of several Publisher Defendants responded to the revised proposal and meetings by, again, seeking and exchanging confidential information. For example, on Sunday, January 17, one Publisher Defendant's CEO used his mobile phone to call another Publisher Defendant's CEO and talk for approximately ten minutes. And on the morning of January 19, Penguin USA CEO David Shanks had an extended telephone conversation with the CEO of another Publisher Defendant.
- On January 21, 2010, the CEO of one Publisher Defendant's parent company instructed his U.S.

subordinate via email to find out Apple's progress in agency negotiations with other publishers. Four minutes after that email was sent, the U.S. executive called another Publisher Defendant's CEO, and the two spoke for over eleven minutes.

• On January 22, 2010, at 9:30 a.m., Apple's Cue met with one Publisher Defendant's CEO to make what Cue hoped would be a ''final go/no-go decision'' about whether the Publisher Defendant would sign an agreement with Apple. Less than an hour later, the Publisher Defendant's CEO made phone calls, two minutes apart, to two other Publisher Defendants' CEOs, including Macmillan's Sargent. The CEO who placed the calls admitted under oath to placing them specifically to learn if the other two Publisher Defendants would sign with Apple prior to Apple's iPad launch.

• On the evening of Saturday, January 23, 2010, Apple's Cue emailed his boss, Steve Jobs, and noted that Penguin USA CEO David Shanks ''want[ed] an assurance that he is 1 of 4 before signing.'' The following Monday morning, at 9:46 a.m., Mr. Shanks called another Publisher Defendant's CEO and the two talked for approximately four minutes. Both Penguin and the other Publisher Defendant signed their Apple Agency Agreements later that day.

74. On January 24, 2010, Hachette signed an e-book distribution agreement with Apple. Over the next two days, Simon & Schuster, Macmillan, Penguin, and HarperCollins all followed suit and signed e-book distribution agreements with Apple. Within these three days, the Publisher Defendants agreed with Apple to abandon the longstanding wholesale model for selling e-books. The Apple Agency Agreements took effect simultaneously on April 3, 2010 with the release of Apple's new iPad.

75. The final version of the pricing tiers in the Apple Agency Agreements contained the $12.99 and $14.99 price points for bestsellers, discussed earlier, and also established prices for all other newly released titles based on the hardcover list price of the same title. Although couched as maximum retail prices, the price tiers in fact established the retail e-book prices to be charged by Publisher Defendants.

76. By entering the Apple Agency Agreements, each Publisher Defendant effectively agreed to require all of their e-book retailers to accept the agency model. Both Apple and the Publisher Defendants understood the Agreements would compel the Publisher Defendants to take pricing authority from all non-Apple e-book retailers. A February 10, 2010 presentation by one Publisher Defendant applauded this result (emphasis in original): ''The Apple agency model deal means that we will have to shift to an agency model with Amazon which [will] strengthen our control over pricing.''

77. Apple understood that the final Apple Agency Agreements ensured that the Publisher Defendants would raise their retail e-book prices to the ostensible limits set by the Apple price tiers not only in Apple's forthcoming iBookstore, but on Amazon.com and all other consumer sites as well. When asked by a *Wall Street Journal* reporter at the January 27, 2010 iPad unveiling event, ''Why should she buy a book for * * * $14.99 from your device when she could buy one for $9.99 from Amazon on the Kindle or from Barnes & Noble on the Nook?'' Apple CEO Steve Jobs responded, ''that won't be the case * * *. the prices will be the same.''

78. Apple understood that the retail price MFN was the key commitment mechanism to keep the Publisher Defendants advancing their conspiracy in lockstep. Regarding the effect of the MFN, Apple executive Pete Alcorn remarked in the context of the European roll-out of the agency model in the spring of 2010:

> I told [Apple executive Keith Moerer] that I think he and Eddy [Cue] made it at least halfway to changing the industry permanently, and we should keep the pads on and keep fighting for it. I might regret that later, but right now I feel like it's a giant win to keep pushing the MFN and forcing people off the [A]mazon model and onto ours. If anything, the place to give is the pricing—long run, the mfn is more important. The interesting insight in the meeting was Eddy's explanation that it doesn't have to be that broad—any decent MFN forces the model.

79. Within the four months following the signing of the Apple Agency Agreements, and over Amazon's objections, each Publisher Defendant had transformed its business relationship with all of the major e-book retailers from a wholesale model to an agency model and imposed flat prohibitions against e-book discounting or other price competition on all non-Apple e-book retailers.

80. For example, after it signed its Apple Agency Agreement, Macmillan presented Amazon a choice: adopt the agency model or lose the ability to sell e-book versions of new hardcover titles for the first seven months of their release. Amazon rejected Macmillan's ultimatum and sought to preserve its ability to sell e-book versions of newly released hardcover titles for $9.99. To resist Macmillan's efforts to force it to accept either the agency model or delayed electronic availability, Amazon effectively stopped selling Macmillan's print books and e-books.

81. When Amazon stopped selling Macmillan titles, other Publisher Defendants did not view the situation as an opportunity to gain market share from a weakened competitor. Instead, they rallied to support Macmillan. For example, the CEO of one Publisher Defendant's parent company instructed the Publisher Defendant's CEO that ''[Macmillan CEO] John Sargent needs our help!'' The parent company CEO explained, ''M[acm]illan have been brave, but they are small. We need to move the lines. And I am thrilled to know how A[mazon] will react against 3 or 4 of the big guys.''

82. The CEO of one Publisher Defendant's parent company assured Macmillan CEO John Sargent of his company's support in a January 31, 2010 email: ''I can ensure you that you are not going to find your company alone in the battle.'' The same parent company CEO also assured the head of Macmillan's corporate parent in a February 1 email that ''others will enter the battle field!'' Overall, Macmillan received ''hugely supportive'' correspondence from the publishing industry during Macmillan's effort to force Amazon to accept the agency model.

83. As its battle with Amazon continued, Macmillan knew that, because the other Publisher Defendants, via the Apple Agency Agreements, had locked themselves into forcing agency on Amazon to advance their conspiratorial goals, Amazon soon would face similar edicts from a united front of Publisher Defendants. And Amazon could not delist the books of all five Publisher Defendants because they together accounted for nearly half of Amazon's e-book business. Macmillan CEO John Sargent explained the company's reasoning: ''we believed whatever was happening, whatever Amazon was doing here, they were going to face—they're going to have more of the same in the future one way or another.'' Another Publisher Defendant similarly recognized that Macmillan was not acting unilaterally but rather was ''leading the charge on moving Amazon to the agency model.''

84. Amazon quickly came to fully appreciate that not just Macmillan but all five Publisher Defendants had irrevocably committed themselves to the agency model across all retailers, including taking control of retail pricing and thereby stripping away any opportunity for e-book retailers to compete on price. Just two days after it stopped selling Macmillan titles, Amazon capitulated and publicly

announced that it had no choice but to accept the agency model, and it soon resumed selling Macmillan's e-book and print book titles.

D. Defendants Further the Conspiracy by Pressuring Another Publisher To Adopt the Agency Model

85. When a company takes a pro-competitive action by introducing a new product, lowering its prices, or even adopting a new business model that helps it sell more product at better prices, it typically does not want its competitors to copy its action, but prefers to maintain a first-mover or competitive advantage. In contrast, when companies jointly take collusive action, such as instituting a coordinated price increase, they typically want the rest of their competitors to join them in that action. Because collusive actions are not pro-competitive or consumer friendly, any competitor that does not go along with the conspirators can take more consumer friendly actions and see its market share rise at the expense of the conspirators. Here, the Defendants acted consistently with a collusive arrangement, and inconsistently with a pro-competitive arrangement, as they sought to pressure another publisher (whose market share was growing at the Publisher Defendants' expense after the Apple Agency Contracts became effective) to join them.

86. Penguin appears to have taken the lead in these efforts. Its U.S. CEO, David Shanks, twice directly told the executives of the holdout major publisher about his displeasure with their decision to continue selling e-books on the wholesale model. Mr. Shanks tried to justify the actions of the conspiracy as an effort to save brick-and-mortar bookstores and criticized the other publisher for ''not helping'' the group. The executives of the other publisher responded to Mr. Shanks's complaints by explaining their objections to the agency model.

87. Mr. Shanks also encouraged a large print book and e-book retailer to punish the other publisher for not joining Defendants' conspiracy. In March 2010, Mr. Shanks sent an email message to an executive of the retailer complaining that the publisher ''has chosen to stay on their current model and will allow retailers to sell at whatever price they wish.'' Mr. Shanks argued that ''[s]ince Penguin is looking out for [your] welfare at what appears to be great costs to us, I would hope that [you] would be equally brutal to Publishers who have thrown in with your competition with obvious disdain for your welfare * * *. I hope you make [the publisher] hurt like Amazon is doing to [the Publisher Defendants].''

88. When the third-party retailer continued to promote the non-defendant publisher's books, Mr. Shanks applied more pressure. In a June 22, 2010 email to the retailer's CEO, Mr. Shanks claimed to be ''baffled'' as to why the retailer would promote that publisher's books instead of just those published by ''people who stood up for you.''

89. Throughout the summer of 2010, Apple also cajoled the holdout publisher to adopt agency terms in line with those of the Publisher Defendants, including on a phone call between Apple CEO Steve Jobs and the holdout publisher's CEO. Apple flatly refused to sell the holdout publisher's e-books unless and until it agreed to an agency relationship substantially similar to the arrangement between Apple and the Publisher Defendants defined by the Apple Agency Agreements.

E. Conspiracy Succeeds at Raising and Stabilizing Consumer E-book Prices

90. The ostensible maximum prices included in the Apple Agency Agreements' price schedule represent, in practice, actual e-book prices. Indeed, at the time the Publisher Defendants snatched retail pricing authority away from Amazon and other e-book retailers, not one of them had built an internal retail pricing apparatus sufficient to do anything other than set retail prices at the Apple Agency Agreements' ostensible caps. Once their agency agreements took effect, the Publisher Defendants raised e-book prices at all retail outlets to the maximum price level within each tier. Even today, two years after the Publisher Defendants began setting e-book retail prices according to the Apple price tiers, they still set the retail prices for the electronic versions of all or nearly all of their bestselling hardcover titles at the ostensible maximum price allowed by those price tiers.

91. The Publisher Defendants' collective adoption of the Apple Agency Agreements allowed them (facilitated by Apple) to raise, fix, and stabilize retail e-book prices in three steps: (a) They took away retail pricing authority from retailers; (b) they then set retail e-book prices according to the Apple price tiers; and (c) they then exported the agency model and higher retail prices to the rest of the industry, in part to comply with the retail price MFN included in each Apple Agency Agreement.

92. Defendants' conspiracy and agreement to raise and stabilize retail e-book prices by collectively adopting the agency model and Apple price tiers led to an increase in the retail prices of newly released and bestselling e-books. Prior to the Defendants' conspiracy, consumers benefited from price competition that led to $9.99 prices for newly released and bestselling e-books. Almost immediately after Apple launched its iBookstore in April 2010 and the Publisher Defendants imposed agency model pricing on all retailers, the Publisher Defendants' e-book prices for most newly released and bestselling e-books rose to either $12.99 or $14.99.

93. Defendants' conspiracy and agreement to raise and stabilize retail e-book prices by collectively adopting the agency model and Apple price tiers for their newly released and bestselling e-books also led to an increase in average retail prices of the balance of Publisher Defendants' e-book catalogs, their so-called ''backlists.'' Now that the Publisher Defendants control the retail prices of e-books—but Amazon maintains control of its print book retail prices—Publisher Defendants' e-book prices sometimes are higher than Amazon's prices for print versions of the same titles.

VII. Violation Alleged

94. Beginning no later than 2009, and continuing to date, Defendants and their co-conspirators have engaged in a conspiracy and agreement in unreasonable restraint of interstate trade and commerce, constituting a violation of Section 1 of the Sherman Act, 15 U.S.C. 1. This offense is likely to continue and recur unless the relief requested is granted.

95. The conspiracy and agreement consists of an understanding and concert of action among Defendants and their co-conspirators to raise, fix, and stabilize retail e-book prices, to end price competition among e-book retailers, and to limit retail price competition among the Publisher Defendants, ultimately effectuated by collectively adopting and adhering to functionally identical methods of selling e-books and price schedules.

96. For the purpose of forming and effectuating this agreement and conspiracy, some or all Defendants did the following things, among others:

a. Shared their business information, plans, and strategies in order to formulate ways to raise retail e-book prices;

b. Assured each other of support in attempting to raise retail e-book prices;

c. Employed ostensible joint venture meetings to disguise their attempts to raise retail e-book prices;

d. Fixed the method of and formulas for setting retail e-book prices;

e. Fixed tiers for retail e-book prices;

f. Eliminated the ability of e-book retailers to fund retail e-book price decreases out of their own margins; and

g. Raised the retail prices of their newly released and bestselling e-books to the agreed prices—the ostensible price caps—contained in the pricing schedule of their Apple Agency Agreements.

97. Defendants' conspiracy and agreement, in which the Publisher Defendants and Apple agreed to raise, fix, and stabilize retail e-book prices, to end price competition among e-book retailers, and to limit retail price competition among the Publisher Defendants by fixing retail e-book prices, constitutes a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

98. Moreover, Defendants' conspiracy and agreement has resulted in obvious and demonstrable anticompetitive effects on consumers in the trade e-books market by depriving consumers of the benefits of competition among e-book retailers as to both retail prices and retail innovations (such as e-book clubs and subscription plans), such that it constitutes an unreasonable restraint on trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

99. Where, as here, defendants have engaged in a *per se* violation of Section 1 of the Sherman Act, no allegations with respect to the relevant product market, geographic market, or market power are required. To the extent such allegations may otherwise be necessary, the relevant product market for the purposes of this action is trade e-books. The anticompetitive acts at issue in this case directly affect the sale of trade e-books to consumers. No reasonable substitute exists for e-books. There are no technological alternatives to e-books, thousands of which can be stored on a single small device. E-books can be stored and read on electronic devices, while print books cannot. E-books can be located, purchased, and downloaded anywhere a customer has an internet connection, while print books cannot. Industry firms also view e-books as a separate market segment from print books, and the Publisher Defendants were able to impose and sustain a significant retail price increase for their trade e-books.

100. The relevant geographic market is the United States. The rights to license e-books are granted on territorial bases, with the United States typically forming its own territory. E-book retailers typically present a unique storefront to U.S. consumers, often with e-books bearing different retail prices than the same titles would command on the same retailer's foreign Web sites.

101. The Publisher Defendants possess market power in the market for trade e-books. The Publisher Defendants successfully imposed and sustained a significant retail price increase for their trade e-books. Collectively, they create and distribute a wide variety of popular e-books, regularly comprising over half of the *New York Times* fiction and non-fiction bestseller lists. Collectively, they provide a critical input to any firm selling trade e-books to consumers. Any retailer selling trade e-books to consumers would not be able to forgo profitably the sale of the Publisher Defendants' e-books.

102. Defendants' agreement and conspiracy has had and will continue to have anticompetitive effects, including:

a. Increasing the retail prices of trade e-books;

b. Eliminating competition on price among e-book retailers;

c. Restraining competition on retail price among the Publisher Defendants;

d. Restraining competition among the Publisher Defendants for favorable relationships with e-book retailers;

e. Constraining innovation among e-book retailers;

f. Entrenching incumbent publishers' favorable position in the sale and distribution of print books by slowing the migration from print books to e-books;

g. Making more likely express or tacit collusion among publishers; and

h. Reducing competitive pressure on print book prices.

103. Defendants' agreement and conspiracy is not reasonably necessary to accomplish any procompetitive objective, or, alternatively, its scope is broader than necessary to accomplish any such objective.

VIII. Request For Relief

104. To remedy these illegal acts, the United States requests that the Court:

a. Adjudge and decree that Defendants entered into an unlawful contract, combination, or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

b. Enjoin the Defendants, their officers, agents, servants, employees and attorneys and their successors and all other persons acting or claiming to act in active concert or participation with one or more of them, from continuing, maintaining, or renewing in any manner, directly or indirectly, the conduct alleged herein or from engaging in any other conduct, combination, conspiracy, agreement, understanding, plan, program, or other arrangement having the same effect as the alleged violation or that otherwise violates Section 1 of the Sherman Act, 15 U.S.C. 1, through fixing the method and manner in which they sell e-books, or otherwise agreeing to set the price or release date for e-books, or collective negotiation of e-book agreements, or otherwise collectively restraining retail price competition for e-books;

c. Prohibit the collusive setting of price tiers that can de facto fix prices;

d. Declare null and void the Apple Agency Agreements and any agreement between a Publisher Defendant and an e-book retailer that restricts, limits, or impedes the e-book retailer's ability to set, alter, or reduce the retail price of any e-book or to offer price or other promotions to encourage consumers to purchase any e-book, or contains a retail price MFN;

e. Reform the agreements between Apple and Publisher Defendants to strike the retail price MFN clauses as void and unenforceable; and

f. Award to Plaintiff its costs of this action and such other and further relief as may be appropriate and as the Court may deem just and proper.

Dated: April 11, 2012

For Plaintiff
United States of America:

__/s/Sharis A. Pozen_____
Sharis A. Pozen,
Acting Assistant Attorney General for Antitrust.

__/s/Joseph F. Wayland_____
Joseph F. Wayland,
Deputy Assistant Attorney General.

__/s/Gene Kimmelman_____
Gene Kimmelman,
Chief Counsel for Competition Policy and Intergovernmental Relations.

__/s/Patricia A. Brink_____
Patricia A. Brink,
Director of Civil Enforcement.

Mark W. Ryan,
Director of Litigation, mark.w.ryan@usdoj.gov.

__/s/John R. Read_____
John R. Read,
Chief.

David C. Kully,
Assistant Chief, Litigation III Section, david.kully@usdoj.gov.

__/s/Daniel McCuaig_____
Daniel McCuaig,
Nathan P. Sutton,
Mary Beth Mcgee,
Owen M. Kendler,
William H. Jones II,
Stephen T. Fairchild,
Attorneys for the United States, Litigation III Section, 450 Fifth Street NW., Suite 4000, Washington, DC 20530. Telephone: (202) 307–0520, Facsimile: (202) 514–7308.
daniel.mccuaig@usdoj.gov.
nathan.sutton@usdoj.gov.
mary.beth.mcgee@usdoj.gov.
owen.kendler@usdoj.gov.
bill.jones2@usdoj.gov.
stephen.fairchild@usdoj.gov.

United States District Court for the Southern District of New York

United States of America, Plaintiff, v. *Apple, Inc., Hachette Book Group, Inc., Harpercollins Publishers L.L.C., Verlagsgruppe Georg Von Holtzbrinck GMBH, Holtzbrinck Publishers, LLC, d/b/a Macmillan, The Penguin Group, A Division of Pearson PLC, Penguin Group (USA), Inc., and Simon & Schuster, Inc.,* Defendants.

Civil Action No. 1:12-cv-02826
Judge: Cote, Denise
Date Filed: 04/11/2012
Description: Antitrust

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), Plaintiff United States of America (''United States'') files this Competitive Impact Statement relating to the proposed Final Judgment against Defendants Hachette Book Group, Inc. (''Hachette''), HarperCollins Publishers L.L.C. (''HarperCollins''), and Simon & Schuster, Inc. (''Simon & Schuster''; collectively with Hachette and HarperCollins, ''Settling Defendants''), submitted on April 11, 2012, for entry in this antitrust proceeding.

I. Nature and Purpose of the Proceeding

On April 11, 2012, the United States filed a civil antitrust Complaint alleging that Apple, Inc. (''Apple'') and five of the six largest publishers in the United States (''Publisher Defendants'') restrained competition in the sale of electronic books (''e-books''), in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

Shortly after filing the Complaint, the United States filed a proposed Final Judgment with respect to Settling Defendants. The proposed Final Judgment is described in more detail in Section III below. The United States and Settling Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action as to Settling Defendants, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.[2]

The Complaint alleges that Publisher Defendants, concerned by Amazon.com, Inc. (''Amazon'')'s pricing of newly released and bestselling e-books at $9.99 or less, agreed among themselves and with Apple to raise the retail prices of e-books by taking control of e-book pricing from retailers. The effect of Defendants' agreement has been to increase the price consumers pay for e-books, end price competition among e-book retailers, constrain innovation among e-book retailers, and entrench incumbent publishers' favorable position in the sale and distribution of print books by slowing the migration from print books to e-books. The Complaint seeks injunctive relief to enjoin continuance and prevent recurrence of the violation.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. The E-Books Market

Technological advances have enabled the production, storage, distribution, and consumption of books in electronic format, lowering significantly the marginal costs to publishers of offering books for sale. E-books can be read on a variety of electronic devices, including dedicated devices (''e-readers'') such as Amazon's Kindle or Barnes & Noble, Inc.'s Nook, tablet computers such as Apple's iPad, desktop or laptop computers, and smartphones. E-book sales are growing, and e-books are increasingly popular with American consumers. E-books conservatively now constitute ten percent of general interest fiction and non-fiction books (commonly known as ''trade'' books) sold in the United States and are widely predicted to reach at least 25 percent of U.S. trade books sales within two to three years.

Until Defendants' agreement took effect, publishers sold e-books under a wholesale model that had prevailed for decades in the sale of print books. Under this wholesale model, publishers typically sold copies of each title to retailers for a discount (usually around 50%) off the price printed on the physical edition of the book (the ''list price''). Retailers, as owners of the books, were then free to determine the prices at which the books would be sold to consumers. Thus, while publishers might recommend prices, retailers could and frequently did compete for sales at prices significantly below list prices, to the benefit of consumers.

In 2007, Amazon became the first company to offer a significant selection of e-books to consumers when it launched its Kindle e-reader device. From the time of its Kindle launch, Amazon offered a portion of its e-books catalogue, primarily its newly released and *New York Times*-bestselling e-books, to consumers for $9.99. To compete with Amazon, other e-book retailers often matched or at least approached Amazon's $9.99-or-less prices for e-book versions of many new releases and *New York Times* bestsellers. As a result of that competition, consumers benefited from Amazon's $9.99-or-less e-book prices even when they purchased e-books from competing e-book retailers.

B. Illegal Agreement To Raise E-Book Prices

Publisher Defendants, however, feared that the Amazon-led $9.99 price for e-books would significantly threaten their long-term profits. Publisher Defendants feared $9.99 e-book prices would lead to the erosion over time of hardcover book prices and an accompanying decline in revenue. They also worried that if $9.99 solidified as consumers' expected retail price for e-books, Amazon and other retailers would demand that publishers lower their wholesale prices, again compressing their profit margins. Publisher Defendants also feared that the $9.99 price would drive e-book popularity to such a degree that digital publishers could achieve sufficient scale to challenge the Publisher Defendants' basic business model.

In private meetings among their executives, Publisher Defendants complained about the ''$9.99 problem'' and the threat they perceived it posed to the publishing industry.[3] Through these communications, each Publisher Defendant gained assurance that its competitors shared concern about Amazon's $9.99 e-book pricing policy.

At the same time, each Publisher Defendant feared that if it attempted unilaterally to impose measures that would force Amazon to raise retail e-book prices, Amazon would resist. And each Publisher Defendant recognized that, even if it succeeded in raising retail prices for its e-books, if its competitor publishers' e-books remained at the lower, competitive level, it would lose sales to other Publisher Defendants. Accordingly, Publisher Defendants agreed to act collectively to raise retail e-book prices.

To effectuate their agreement, Publisher Defendants considered a

[2] The case against the remaining Defendants will continue. Those Defendants are Apple, Verlagsgruppe Georg von Holtzbrinck GmbH and Holtzbrinck Publishers, LLC d/b/a Macmillan (collectively, ''Macmillan''), and The Penguin Group, a division of Pearson plc and Penguin Group (USA), Inc. (collectively, ''Penguin'').

[3] Prior to the formation of and throughout Publisher Defendants' agreement, their CEOs and other high-level executives frequently communicated with each other in both formal and informal settings. From these communications emerged a pattern of Publisher Defendants improperly exchanging confidential, competitively sensitive information.

number of coordinated methods to force Amazon to raise e-book retail prices. For example, they explored creating purported joint ventures, with exclusive access to certain e-book titles. These joint ventures were intended not to compete with Amazon, but to convince it to raise its price above $9.99. Publisher Defendants intended these strategies to cause Amazon to capitulate on its $9.99 pricing practice. None of these strategies, though, ultimately proved successful in raising retail e-book prices.

It was Apple's entry into the e-book business, however, that provided a perfect opportunity collectively to raise e-book prices. In December 2009, Apple approached each Publisher Defendant with news that it intended to sell e-books through its new iBookstore in conjunction with its forthcoming iPad device. Publisher Defendants and Apple soon recognized that they could work together to counter the Amazon-led $9.99 price.

In its initial discussions with Publisher Defendants, Apple assumed that it would enter as an e-book retailer under the wholesale model. At the suggestion of two Publisher Defendants, however, Apple began to consider selling e-books under the ''agency model,'' whereby the publishers would set the prices of e-books sold and Apple would take a 30% commission as the selling agent. In January 2010, Apple sent to each Publisher Defendant substantively identical term sheets that would form the basis of the nearly identical agency agreements that each Publisher Defendant would sign with Apple (''Apple Agency Agreements''). Apple informed the publishers that it had devised these term sheets after ''talking to all the publishers.''

The volume of Publisher Defendants' communications among themselves intensified during the ensuing negotiation of the Apple Agency Agreements. Through frequent in-person meetings, phone calls, and electronic communications, Publisher Defendants, facilitated by Apple, assured each other of their mutual intent to reach agreement with Apple. After each round of negotiations with Apple over the terms of their agency agreements, Publisher Defendants' CEOs immediately contacted each other to discuss strategy and verify where each stood with Apple. They also used Apple to verify their position vis-à-vis other Publisher Defendants. Penguin, for example, sought Apple's assurance that it was ''1 of 4 before signing''—an assurance that Apple provided. Two days later, Penguin and two other Publisher Defendants signed Apple Agency Agreements.

To the extent Publisher Defendants expressed doubts during the negotiations about whether to sign the Apple Agency Agreements, Apple persuaded the Publisher Defendants to stay with the others and sign up. For example, Apple CEO Steve Jobs wrote to an executive of one Publisher Defendant's corporate parent that the publisher had only two choices apart from signing the Apple Agency Agreement: (i) Accept the status quo (''Keep going with Amazon at $9.99''); or (ii) continue with the losing windowing policy (''Hold back your books from Amazon''). According to Jobs, the Apple deal offered the Publisher Defendants a superior alternative path to the higher retail e-book prices they sought: ''Throw in with Apple and see if we can all make a go of this to create a real mainstream e-books market at $12.99 and $14.99.''

The Apple Agency Agreements contained two primary features that assured Publisher Defendants of their ability to wrest pricing control from retailers and raise e-book retail prices above $9.99. First, Apple insisted on including a Most Favored Nation clause (''MFN'' or ''Price MFN'') that required each publisher to guarantee that no other retailer could set prices lower than what the Publisher Defendant set for Apple, even if the Publisher Defendant did not control that other retailer's ultimate consumer price. The effect of this MFN was twofold: it not only protected Apple from having to compete on retail price, but also dictated that to protect themselves from the MFN's provisions, Publisher Defendants needed to remove from all other e-book retailers the ability to control retail price, including the ability to fund discounts or promotions out of the retailer's own margins.[4] Thus, the agreement eliminated retail price competition across all retailers selling Publisher Defendants' e-books.

Second, the Apple Agency Agreements contained pricing tiers (ostensibly setting maximum prices) for e-books—virtually identical across the Publisher Defendants' agreements—based on the list price of each e-book's hardcover edition. Defendants understood that by using the price tiers, they were actually fixing the de facto prices for e-books. In fact, once the Apple Agency Agreements took effect, Publisher Defendants almost uniformly set e-book prices to maximum price levels allowed by each tier. Apple and Publisher Defendants were well aware that the impact of their agreement was to force other retailers off the wholesale model, eliminate retail price competition for e-books, allow publishers to raise e-book prices, and permanently to change the terms and pricing on which the e-book industry operated.

The negotiations between Apple and Publisher Defendants culminated in all five Publisher Defendants signing the Apple Agency Agreements within a three-day span, with the last Publisher Defendant signing on January 26, 2010. The next day, Apple announced the iPad at a launch event. At that event, then-Apple CEO Steve Jobs, responding to a reporter's question about why customers should pay $14.99 for an iPad e-book when they could purchase that e-book for $9.99 from Amazon or Barnes & Noble, replied that ''that won't be the case. * * * The prices will be the same.'' Jobs later confirmed his understanding that the Apple Agency Agreements fulfilled the publishers' desire to increase prices for consumers. He explained that, under the agreements, Apple would ''go to [an] agency model, where [publishers] set the price, and we get our 30%, and yes, the customer pays a little more, but that's what [publishers] want anyway.''

Starting the day after the iPad launch, Publisher Defendants, beginning with Macmillan, quickly acted to complete their scheme by imposing agency agreements on all of their other retailers. Initially, Amazon attempted to resist Macmillan's efforts to force it to accept either the agency model or windowing of its e-books by refusing to sell Macmillan's titles. Other Publisher Defendants, continuing their practice of communicating with each other, offered Macmillan's CEO messages of encouragement and assurances of solidarity. For example, one Settling Defendant's CEO emailed Macmillan's CEO to tell him, ''I can ensure you that you are not going to find your company alone in the battle.'' Quickly, Amazon came to realize that all Publisher Defendants had committed themselves to take away any e-book retailer's ability to compete on price. Just two days after it stopped selling Macmillan titles, Amazon capitulated and publicly announced that it had no choice but to accept the agency model.

After Amazon acquiesced to the agency model, all of Publisher Defendants' major retailers quickly transitioned to the agency model for e-

[4] Otherwise, the retail price MFN would cause Apple's iBookstore prices to drop to match the best available retail price of each e-book, reducing the revenues to each Publisher Defendant and, indeed, defeating the very purpose of agreeing to the agency model: raising retail prices across all e-book retailers.

book sales. Retail price competition on e-books had been eliminated and the retail price of e-books had increased.

C. Effects of the Illegal Agreement

As a result of Defendants' illegal agreement, consumers have paid higher prices for e-books than they would have paid in a market free of collusion. For example, the average price for Publisher Defendants' e-books increased by over ten percent between the summer of 2009 and the summer of 2010. On many adult trade e-books, consumers have witnessed an increase in retail prices between 30 and 50 percent. In some cases, the agency model dictates that the price of an e-book is higher than its corresponding trade paperback edition, despite the significant savings in printing and distributing costs offered by e-books.

Beyond this monetary harm to consumers, Defendants' agreement has prevented e-book retailers from experimenting with innovative pricing strategies that could efficiently respond to consumer demand. Because retailer discounting is prohibited by the agency agreements, retailers have been prevented from introducing innovative sales models or promotions with respect to Publisher Defendants' e-books, such as offering e-books under an ''all-you-can-read'' subscription model where consumers would pay a flat monthly fee.

III. Explanation of the Proposed Final Judgment

The relief contained in the proposed Final Judgment is intended to provide prompt, certain and effective remedies that will begin to restore competition to the marketplace. The requirements and prohibitions will eliminate the Settling Defendants' illegal conduct, prevent recurrence of the same or similar conduct, and establish robust antitrust compliance programs.

A. Required Conduct (Section IV)[5]

1. Sections IV.A and IV.B

To begin to restore competition to the e-books marketplace, the proposed Final Judgment requires the Settling Defendants to terminate immediately the Apple Agency Agreements that they used to collusively raise and stabilize e-book prices across the industry. Section IV.A of the proposed Final Judgment orders the Settling Defendants to terminate those contracts within seven days after this Court's entry of the proposed Final Judgment. This requirement will permit the contractual relationships between Apple and the Settling Defendants to be reset subject to competitive constraints.

The Apple Agency Agreements included MFN clauses that ensured Publisher Defendants would take away retail pricing control from all other e-book retailers. Accordingly, Section IV.B requires the termination of those contracts between a Settling Defendant and an e-book retailer that contain either (a) a restriction on an e-book retailer's ability to set the retail price of any e-book, or (b) a Price MFN. Under the proposed Final Judgment, termination will occur as soon as each contract permits, starting 30 days after the Court enters the proposed Final Judgment.[6] All of Settling Defendants' contracts with major e-book retailers contain one of these provisions and would be terminated. Section IV.B also allows any retailer with such a contract the option to terminate its contract with the Settling Defendant on just 30 days notice. These provisions will ensure that most of Settling Defendants' contracts that restrict the retailer from competing on price will be terminated within a short period.

E-book retailers, including Apple, will be able to negotiate new contracts with any Settling Defendant. But, as set forth in provisions described below, the proposed Final Judgment will ensure that the new contracts will not be set under the collusive conditions that produced the Apple Agency Agreements. Sections V.A–B of the proposed Final Judgment prohibit Settling Defendants, for at least two years, from including prohibitions on retailer discounting in new agreements with retailers. Additionally, a retailer can stagger the termination dates of its contracts to ensure that it is negotiating with only one Settling Defendant at a time to avoid joint conduct that could lead to a return to the collusively established previous outcome.

2. Section IV.C

As part of their conspiracy to raise and stabilize e-book prices, the Publisher Defendants discussed forming joint ventures, the purpose of which was, as Publisher Defendants' executives described it, ''less to compete with Amazon as to force it to accept a price level higher than 9.99,'' and to ''defend against further price erosion.'' To reduce the risk that future joint ventures involving Settling Defendants could eliminate competition among them, Section IV.C of the proposed Final Judgment requires a Settling Defendant to notify the Department of Justice before forming or modifying a joint venture between it and another publisher related to e-books. That provision sets forth a procedure for the Department of Justice to evaluate the potential anticompetitive effects of joint activity among Publisher Defendants at a sufficiently early stage to prevent harm to competition.

3. Section IV.D

To ensure Settling Defendants' compliance with the proposed Final Judgment, Section IV.D requires Settling Defendants to provide to the United States each e-book agreement entered into with any e-book retailer on or after January 1, 2012, and to continue to provide those agreements to the United States on a quarterly basis.

B. Prohibited Conduct (Section V)

1. Sections V.A, V.B, and V.C

Sections V.A and V.B ensure that e-book retailers can compete on the price of e-books sold to consumers. Specifically, the proposed Final Judgment prohibits Settling Defendants from enforcing existing agreements with or entering new agreements containing two components of the Apple Agency Agreements that served as linchpins to their conspiracy—the ban on retailer discounting (eliminating all price competition among retailers) and the retail price-matching MFNs that ensured agency terms were exported to all e-book retailers.

Sections V.A and V.B of the proposed Final Judgment prohibit Settling Defendants, for two years after the filing of the Complaint, from entering new agreements with e-book retailers that restrict the retailers' discretion over e-book pricing, including offering discounts, promotions, or other price reductions. These provisions do not dictate a particular business model, such as agency or wholesale, but prohibit Settling Defendants from forbidding a retailer from competing on price and using some of its commission to offer consumers a better value, either through a promotion or a discount. Under Section V.A, a Settling Defendant also must grant each e-book retailer with which it currently has an agreement the freedom to offer discounts or other e-book promotions for two years. With these provisions, most retailers will soon be able to discount e-books in order to compete for market share.

[5] Sections I–III of the proposed Final Judgment contain a statement acknowledging the Court's jurisdiction, definitions, and a statement of the scope of the proposed Final Judgment's applicability.

[6] The proposed Final Judgment defines a ''Price MFN'' to include most favored nation clauses related to retail prices, wholesale prices, or commissions.

These measures prohibit Settling Defendants, for a two-year period, from completely removing e-book retailers' discretion over retail prices. In light of current industry dynamics, including rapid innovation, a two-year period, in which Settling Defendants must provide pricing discretion to retailers, is sufficient to allow competition to return to the market.

Section V.C prohibits Settling Defendants, for five years, from entering into an agreement with an e-book retailer that contains a Price MFN. Defendants knew that the inclusion of the Price MFN in the Apple Agency Agreements would lead to the adoption of the agency model by all of Publisher Defendants' e-book retailers. The proposed Final Judgment therefore broadly defines banned ''Price MFNs'' to include not only MFNs requiring publishers to match retail e-book prices across e-book retailers (the MFNs in the Apple Agency Agreements), but also MFNs requiring publishers to match the wholesale prices at which e-books are sold to e-book retailers, and MFNs requiring publishers to match the revenue share or commission given to other e-book retailers. Prohibiting these particular Price MFNs serves an important function to prevent Settling Defendants from using MFNs to achieve substantially the same result they effected here through their collusive agreements.

2. Section V.D

Section V.D prohibits Settling Defendants from retaliating against an e-book retailer based on the retailer's e-book prices. Specifically, this Section prohibits a Settling Defendant from punishing an e-book retailer because the Settling Defendant disapproves of the retailer discounting or promoting e-books. This Section also prohibits a Settling Defendant from urging any other e-book publisher or e-book retailer to retaliate against an e-book retailer, as Penguin did. However, Section V.D expressly recognizes that, after the expiration of the two-year period described in Sections V.A and V.B, the anti-retaliation provision does not prohibit Settling Defendants from unilaterally entering into and enforcing agency agreements with e-book retailers that restrict a retailer's ability to set or reduce e-book prices or offer promotions.

3. Sections V.E and V.F

Section V.E of the proposed Final Judgment broadly prohibits Settling Defendants from agreeing with each other or another e-book publisher to raise or set e-book retail prices or coordinate terms relating to the licensing, distribution, or sale of e-books. This Section bans the kind of agreements among Publisher Defendants that led to the anticompetitive increase in e-book prices.

Section V.F likewise prohibits Settling Defendants from directly or indirectly conveying confidential or competitively sensitive information to any other e-book publisher. Such information includes, but is not limited to, business plans and strategies, pricing strategies for books, terms in retailer agreements, or terms in author agreements. Banning such communications is critical here, where communications among publishing competitors were condoned by and carried out as common practice at the highest levels of the companies and led directly to the collusive agreement alleged in the Complaint. Because these communications occurred among some of the parent companies of the Publishing Defendants, Section V.F also applies to those parent company officers who directly control Settling Defendants' business decisions. Settling Defendants are not prohibited from informing the buying public of the list prices of their books or engaging in ongoing legitimate distribution relationships with other publishers.

C. Permitted Conduct (Section VI)

Section VI.A of the proposed Final Judgment expressly permits Settling Defendants to compensate e-book retailers for services that they provide to publishers or consumers and help promote or sell more books. Section VI.A, for example, allows Settling Defendants to support brick-and-mortar retailers by directly paying for promotion or marketing efforts in those retailers' stores.

Section VI.B permits a Settling Defendant to negotiate a commitment from an e-book retailer that a retailer's aggregate expenditure on discounts and promotions of the Settling Defendant's e-books will not exceed the retailer's aggregate commission under an agency agreement in which the publisher sets the e-book price and the retailer is compensated through a commission. In particular, Section VI.B grants Settling Defendants the right to enter one-year agency agreements that also prevent e-book retailers from cumulatively selling that Settling Defendant's e-books at a loss over the period of the contract. An e-book retailer that enters an agency agreement with a Settling Defendant under Section VI.B would be permitted to discount that Settling Defendant's individual e-book titles by varying amounts (for example, some could be ''buy one get one free,'' some could be half off, and others could have no discount), as long as the total dollar amount spent on discounts or other promotions did not exceed in the aggregate the retailer's full commission from the Settling Defendant over a one-year period. This provision, which works with Sections V.A and V.B (which enhance retailers' ability to set e-book prices), allows a Settling Defendant to prevent a retailer selling its entire catalogue at a sustained loss. Absent the collusion here, the antitrust laws would normally permit a publisher unilaterally to negotiate for such protections.

D. Antitrust Compliance (Section VII)

As outlined in Section VII, as part of the compliance program, each Settling Defendant must designate an Antitrust Compliance Officer. The Antitrust Compliance Officer must distribute a copy of the proposed Final Judgment to the Settling Defendant's officers, directors, and employees (and their successors) who engage in the licensing, distribution, or sale of e-books. The proposed Final Judgment further requires the Antitrust Compliance Officer to ensure that each such person receives training related to the proposed Final Judgment and the antitrust laws; to ensure certification by each such person of compliance with the terms of the proposed Final Judgment; to conduct an annual antitrust compliance audit; to be available to receive information concerning violations of the proposed Final Judgment and to take appropriate action to remedy any violations of the proposed Final Judgment; and to maintain a log of communications between officers and directors of Settling Defendants, involved in the development of strategies related to e-books, and any person associated with another Publisher Defendant, where that communication relates to the selling of books in any format in the United States.

Appointment of an Antitrust Compliance Officer is necessary in this case given the extensive communication among competitors' CEOs that facilitated Defendants' agreement, among other things. The United States has required the submission of Settling Defendants' e-book agreements to facilitate the monitoring of the e-book industry and to ensure compliance with the proposed Final Judgment.

To facilitate monitoring compliance with the proposed Final Judgment, Settling Defendants must make available, upon written request, records and documents in their possession,

custody, or control relating to any matters contained in the proposed Final Judgment. Settling Defendants must also make available their personnel for interviews regarding such matters. In addition, Settling Defendants must, upon written request, prepare written reports relating to any of the matters contained in the proposed Final Judgment.

IV. Alternatives to the Proposed Final Judgment

At several points during its investigation, the United States received from some Publisher Defendants proposals or suggestions that would have provided less relief than is contained in the proposed Final Judgment. These proposals and suggestions were rejected.

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Settling Defendants. The United States believes that the relief contained in the proposed Final Judgment will more quickly restore retail price competition to consumers.

V. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Publisher Defendants or Apple.

VI. Procedures Available for Modification of the Proposed Final Judgment

The United States and Settling Defendants have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later.

All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 5th Street NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court is directed to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B); *see generally United States* v. *KeySpan Corp.,* 763 F. Supp. 2d 633, 637–38 (S.D.N.Y. 2011) (WHP) (discussing Tunney Act standards); *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing standards for public interest determination). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to ''broad discretion to settle with the Defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995).

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, the court's function is ''not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will best serve society, but only to ensure that the resulting settlement is within the *reaches* of the public interest.'' *KeySpan,* 763 F. Supp. 2d at 637 (quoting *United States* v. *Alex Brown & Sons, Inc.,* 963 F. Supp. 235, 238 (S.D.N.Y. 1997)) (internal quotations omitted). In making this determination, ''[t]he [c]ourt is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decision such that its conclusions regarding the proposed settlement are reasonable.'' *Id.* at 637–38 (quoting *United States* v. *Abitibi–Consolidated Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008).[7] The government's predictions about the efficacy of its remedies are entitled to deference.[8]

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short

[7] *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981) (''The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''').

[8] *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *KeySpan,* 763 F. Supp. 2d at 638 (''A court must limit its review to the issues in the complaint * * *.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[9]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 11, 2012

Respectfully submitted,
For Plaintiff
The United States of America
__/s/Daniel McCuaig_____
Daniel McCuaig,
Nathan P. Sutton,
Mary Beth McGee,
Owen M. Kendler,
William H. Jones,
Stephen T. Fairchild,

Attorneys for the United States, United States Department of Justice Antitrust Division Litigation III, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530.

United States District Court for the Southern District of New York

United States of America, Plaintiff, v. *Apple, Inc., Hachette Book Group, Inc., Harpercollins Publishers L.L.C., Verlagsgruppe Georg Von Holtzbrinck GMBH, Holtzbrinck Publishers, LLC* d/b/a *Macmillan, The Penguin Group, A Division of Pearson PLC, Penguin Group (USA), Inc.,* and *Simon & Schuster, Inc.,* Defendants.

Civil Action No. 1:12–cv–02826
Judge: Cote, Denise
Date Filed: 04/11/2012
Description: Antitrust.

[Proposed] Final Judgment as to Defendants

Hachette, Harpercollins, and Simon & Schuster

Whereas, Plaintiff, the United States of America filed its Complaint on April 11, 2012, alleging that Defendants conspired to raise retail prices of E-books in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. 1, and Plaintiff and Settling Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And whereas, this Final Judgment does not constitute any admission by Settling Defendants that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaint are true;

And whereas, Settling Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, Plaintiff requires Settling Defendants to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Settling Defendants have represented to the United States that the actions and conduct restrictions can and will be undertaken and that they will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of Settling Defendants, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over the Settling Defendants. The Complaint states a claim upon which relief may be granted against Settling Defendants under Section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. ''Agency Agreement'' means an agreement between an E-book Publisher and an E-book Retailer under which the E-book Publisher Sells E-books to consumers through the E-book Retailer, which under the agreement acts as an agent of the E-book Publisher and is paid a commission in connection with the Sale of one or more of the E-book Publisher's E-books.

B. ''Apple'' means Apple, Inc., a California corporation with its principal place of business in Cupertino, California, its successors and assigns, and its parents, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Department of Justice'' means the Antitrust Division of the United States Department of Justice.

D. ''E-book'' means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying E-books. For purposes of this Final Judgment, the term E-book does not include (1) an audio book, even if delivered and stored digitally; (2) a standalone specialized software application or ''app'' sold through an ''app store'' rather than through an e-book store (*e.g.,* through Apple's ''App Store'' rather than through its ''iBookstore'' or ''iTunes'') and not designed to be executed or read by or

[9] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone'').

through a dedicated E-book reading device; or (3) a media file containing an electronically formatted book for which most of the value to consumers is derived from audio or video content contained in the file that is not included in the print version of the book.

E. ''E-book Publisher'' means any Person that, by virtue of a contract or other relationship with an E-book's author or other rights holder, owns or controls the necessary copyright or other authority (or asserts such ownership or control) over any E-book sufficient to distribute the E-book within the United States to E-book Retailers and to permit such E-book Retailers to Sell the E-book to consumers in the United States. Publisher Defendants are E-book Publishers. For purposes of this Final Judgment, E-book Retailers are not E-book Publishers.

F. ''E-book Retailer'' means any Person that lawfully Sells (or seeks to lawfully Sell) E-books to consumers in the United States, or through which a Publisher Defendant, under an Agency Agreement, Sells E-books to consumers. For purposes of this Final Judgment, Publisher Defendants and all other Persons whose primary business is book publishing are not E-book Retailers.

G. ''Hachette'' means Hachette Book Group, Inc., a Delaware corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, and partnerships, and their directors, officers, managers, agents, and employees.

H. ''HarperCollins'' means HarperCollins Publishers L.L.C., a Delaware limited liability company with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, and partnerships, and their directors, officers, managers, agents, and employees.

I. ''Including'' means including, but not limited to.

J. ''Macmillan'' means (1) Holtzbrinck Publishers, LLC d/b/a Macmillan, a New York limited liability company with its principal place of business in New York, New York; and (2) Verlagsgruppe Georg von Holtzbrinck GmbH, a German corporation with its principal place of business in Stuttgart, Germany, their successors and assigns, and their parents, subsidiaries, divisions, groups, affiliates, and partnerships, and their directors, officers, managers, agents, and employees.

K. ''Penguin'' means (1) Penguin Group (USA), Inc., a Delaware corporation with its principal place of business in New York, New York, and (2) The Penguin Group, a division of U.K. corporation Pearson PLC with its principal place of business in London, England, their successors and assigns, and their parents, subsidiaries, divisions, groups, affiliates, and partnerships, and their directors, officers, managers, agents, and employees.

L. ''Person'' means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

M. ''Price MFN'' means a term in an agreement between an E-book Publisher and an E-book Retailer under which

1. The Retail Price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher Sells one or more E-books to consumers depends in any way on the Retail Price, or discounts from the Retail Price, at which any other E-book Retailer or the E-book Publisher, under an Agency Agreement, through any other E-book Retailer Sells the same E-book(s) to consumers.

2. The Wholesale Price at which the E-book Publisher Sells one or more E-books to that E-book Retailer for Sale to consumers depends in any way on the Wholesale Price at which the E-book Publisher Sells the same E-book(s) to any other E-book Retailer for Sale to consumers; or

3. The revenue share or commission that E-book Retailer receives from the E-book Publisher in connection with the Sale of one or more E-books to consumers depends in any way on the revenue share or commission that (a) any other E-book Retailer receives from the E-book Publisher in connection with the Sale of the same E-book(s) to consumers, or (b) that E-book Retailer receives from any other E-book Publisher in connection with the Sale of one or more of the other E-book Publisher's E-books.

For purposes of this Final Judgment, it will not constitute a Price MFN under subsection 3 of this definition if a Settling Defendant agrees, at the request of an E-book Retailer, to meet more favorable pricing, discounts, or allowances offered to the E-book Retailer by another E-book Publisher for the period during which the other E-book Publisher provides that additional compensation, so long as that agreement is not or does not result from a pre-existing agreement that requires the Settling Defendant to meet all requests by the E-book Retailer for more favorable pricing within the terms of the agreement.

N. ''Publisher Defendants'' means Hachette, HarperCollins, Macmillan, Penguin, and Simon & Schuster. Where this Final Judgment imposes an obligation on Publisher Defendants to engage in or refrain from engaging in certain conduct, that obligation shall apply to each Publisher Defendant individually and to any joint venture or other business arrangement established by any two or more Publisher Defendants.

O. ''Purchase'' means a consumer's acquisition of one or more E-books as a result of a Sale.

P. ''Retail Price'' means the price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher Sells an E-book to a consumer.

Q. ''Sale'' means delivery of access to a consumer to read one or more E-books (purchased alone, or in combination with other goods or services) in exchange for payment; ''Sell'' or ''Sold'' means to make or to have made a Sale of an E-book to a consumer.

R. ''Settling Defendants'' means Hachette, HarperCollins, and Simon & Schuster. Where the Final Judgment imposes an obligation on Settling Defendants to engage in or refrain from engaging in certain conduct, that obligation shall apply to each Settling Defendant individually and to any joint venture other business arrangement established by a Settling Defendant and one or more Publisher Defendants.

S. ''Simon & Schuster'' means Simon & Schuster, Inc., a New York corporation with its principal place of business in New York, New York, its successors and assigns, and its subsidiaries, divisions, groups, and partnerships, and their directors, officers, managers, agents, and employees.

T. ''Wholesale Price'' means (1) the net amount, after any discounts or other adjustments (not including promotional allowances subject to Section 2(d) of the Robinson-Patman Act, 15 U.S.C. 13(d)), that an E-book Retailer pays to an E-book Publisher for an E-book that the E-book Retailer Sells to consumers; or (2) the Retail Price at which an E-book Publisher, under an Agency Agreement, Sells an E-book to consumers through an E-book Retailer minus the commission or other payment that E-book Publisher pays to the E-book Retailer in connection with or that is reasonably allocated to that Sale.

III. Applicability

This Final Judgment applies to Settling Defendants and all other Persons in active concert or participation with any of them who receive actual notice of this Final

Judgment by personal service or otherwise.

IV. Required Conduct

A. Within seven days after entry of this Final Judgment, each Settling Defendant shall terminate any agreement with Apple relating to the Sale of E-books that was executed prior to the filing of the Complaint.

B. For each agreement between a Settling Defendant and an E-book Retailer other than Apple that (1) restricts, limits, or impedes the E-book Retailer's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; or (2) contains a Price MFN, the Settling Defendant shall notify the E-book Retailer, within ten days of the filing of the Complaint, that the E-book Retailer may terminate the agreement with thirty-days notice and shall, thirty days after the E-book Retailer provides such notice, release the E-book Retailer from the agreement. For each such agreement that the E-book Retailer has not terminated within thirty days after entry of this Final Judgment, each Settling Defendant shall, as soon as permitted under the agreement, take each step required under the agreement to cause the agreement to be terminated and not renewed or extended.

C. Settling Defendants shall notify the Department of Justice in writing at least sixty days in advance of the formation or material modification of any joint venture or other business arrangement relating to the Sale, development, or promotion of E-books in the United States in which a Settling Defendant and at least one other E-book Publisher (including another Publisher Defendant) are participants or partial or complete owners. Such notice shall describe the joint venture or other business arrangement, identify all E-book Publishers that are parties to it, and attach the most recent version or draft of the agreement, contract, or other document(s) formalizing the joint venture or other business arrangement. Within thirty days after a Settling Defendant provides notification of the joint venture or business arrangement, the Department of Justice may make a written request for additional information. If the Department of Justice makes such a request, the Settling Defendant shall not proceed with the planned formation or material modification of the joint venture or business arrangement until thirty days after substantially complying with such additional request(s) for information. The failure of the Department of Justice to request additional information or to bring an action under the antitrust laws to challenge the formation or material modification of the joint venture shall neither give rise to any inference of lawfulness nor limit in any way the right of the United States to investigate the formation, material modification, or any other aspects or activities of the joint venture or business arrangement and to bring actions to prevent or restrain violations of the antitrust laws.

The notification requirements of this Section IV.C shall not apply to ordinary course business arrangements between a Publisher Defendant and another E-book Publisher (not a Publisher Defendant) that do not relate to the Sale of E-books to consumers, or to business arrangements the primary or predominant purpose or focus of which involves: (i) E-book Publishers co-publishing one or more specifically identified E-book titles or a particular author's E-books; (ii) a Settling Defendant licensing to or from another E-book Publisher the publishing rights to one or more specifically identified E-book titles or a particular author's E-books; (iii) a Settling Defendant providing technology services to or receiving technology services from another E-book Publisher (not a Publisher Defendant) or licensing rights in technology to or from another E-book Publisher; or (iv) a Settling Defendant distributing E-books published by another E-book Publisher (not a Publisher Defendant).

D. Each Settling Defendant shall furnish to the Department of Justice (1) within seven days after entry of this Final Judgment, one complete copy of each agreement, executed, renewed, or extended on or after January 1, 2012, between the Settling Defendant and any E-book Retailer relating to the Sale of E-books, and, (2) thereafter, on a quarterly basis, each such agreement executed, renewed, or extended since the Settling Defendant's previous submission of agreements to the Department of Justice.

V. Prohibited Conduct

A. For two years, Settling Defendants shall not restrict, limit, or impede an E-book Retailer's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books, such two-year period to run separately for each E-book Retailer, at the option of the Settling Defendant, from either:

1. The termination of an agreement between the Settling Defendant and the E-book Retailer that restricts, limits, or impedes the E-book Retailer's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; or

2. The date on which the Settling Defendant notifies the E-book Retailer in writing that the Settling Defendant will not enforce any term(s) in its agreement with the E-book Retailer that restrict, limit, or impede the E-book Retailer from setting, altering, or reducing the Retail Price of one or more E-books, or from offering price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books.

Each Settling Defendant shall notify the Department of Justice of the option it selects for each E-book Retailer within seven days of making its selection.

B. For two years after the filing of the Complaint, Settling Defendants shall not enter into any agreement with any E-book Retailer that restricts, limits, or impedes the E-book Retailer from setting, altering, or reducing the Retail Price of one or more E-books, or from offering price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books.

C. Settling Defendants shall not enter into any agreement with an E-book Retailer relating to the Sale of E-books that contains a Price MFN.

D. Settling Defendants shall not retaliate against, or urge any other E-book Publisher or E-book Retailer to retaliate against, an E-book Retailer for engaging in any activity that the Settling Defendants are prohibited by Sections V.A, V.B, and VI.B.2 of this Final Judgment from restricting, limiting, or impeding in any agreement with an E-book Retailer. After the expiration of prohibitions in Sections V.A and V.B of this Final Judgment, this Section V.D shall not prohibit any Settling Defendant from unilaterally entering into or enforcing any agreement with an E-book Retailer that restricts, limits, or impedes the E-book Retailer from setting, altering, or reducing the Retail Price of any of the Settling Defendant's E-books or from offering price discounts or any other form of promotions to encourage consumers to Purchase any of the Settling Defendant's E-books.

E. Settling Defendants shall not enter into or enforce any agreement, arrangement, understanding, plan, program, combination, or conspiracy with any E-book Publisher (including another Publisher Defendant) to raise, stabilize, fix, set, or coordinate the Retail Price or Wholesale Price of any E-book or fix, set, or coordinate any term

or condition relating to the Sale of E-books.

This Section V.E shall not prohibit a Settling Defendant from entering into and enforcing agreements relating to the distribution of another E-book Publisher's E-books (not including the E-books of another Publisher Defendant) or to the co-publication with another E-book Publisher of specifically identified E-book titles or a particular author's E-books, or from participating in output-enhancing industry standard-setting activities relating to E-book security or technology.

F. A Settling Defendant (including each officer of each parent of the Settling Defendant who exercises direct control over the Settling Defendant's business decisions or strategies) shall not convey or otherwise communicate, directly or indirectly (including by communicating indirectly through an E-book Retailer with the intent that the E-book Retailer convey information from the communication to another E-book Publisher or knowledge that it is likely to do so), to any other E-book Publisher (including to an officer of a parent of a Publisher Defendant) any competitively sensitive information, including:

1. Its business plans or strategies;

2. Its past, present, or future wholesale or retail prices or pricing strategies for books sold in any format (*e.g.,* print books, E-books, or audio books);

3. Any terms in its agreement(s) with any retailer of books Sold in any format; or

4. Any terms in its agreement(s) with any author.

This Section V.F shall not prohibit a Settling Defendant from communicating (a) in a manner and through media consistent with common and reasonable industry practice, the cover prices or wholesale or retail prices of books sold in any format to potential purchasers of those books; or (b) information the Settling Defendant needs to communicate in connection with (i) its enforcement or assignment of its intellectual property or contract rights, (ii) a contemplated merger, acquisition, or purchase or sale of assets, (iii) its distribution of another E-book Publisher's E-books, or (iv) a business arrangement under which E-book Publishers agree to co-publish, or an E-book Publisher agrees to license to another E-book Publisher the publishing rights to, one or more specifically identified E-book titles or a particular author's E-books.

VI. Permitted Conduct

A. Nothing in this Final Judgment shall prohibit a Settling Defendant unilaterally from compensating a retailer, including an E-book Retailer, for valuable marketing or other promotional services rendered.

B. Notwithstanding Sections V.A and V.B of this Final Judgment, a Settling Defendant may enter into Agency Agreements with E-book Retailers under which the aggregate dollar value of the price discounts or any other form of promotions to encourage consumers to Purchase one or more of the Settling Defendant's E-books (as opposed to advertising or promotions engaged in by the E-book Retailer not specifically tied or directed to the Settling Defendant's E-books) is restricted; *provided that* (1) such agreed restriction shall not interfere with the E-book Retailer's ability to reduce the final price paid by consumers to purchase the Settling Defendant's E-books by an aggregate amount equal to the total commissions the Settling Defendant pays to the E-book Retailer, over a period of at least one year, in connection with the Sale of the Settling Defendant's E-books to consumers; (2) the Settling Defendant shall not restrict, limit, or impede the E-book Retailer's use of the agreed funds to offer price discounts or any other form of promotions to encourage consumers to Purchase one or more E-books; and (3) the method of accounting for the E-book Retailer's promotional activity does not restrict, limit, or impede the E-book Retailer from engaging in any form of retail activity or promotion.

VII. Antitrust Compliance

Within thirty days after entry of this Final Judgment, each Settling Defendant shall designate its general counsel or chief legal officer, or an employee reporting directly to its general counsel or chief legal officer, as Antitrust Compliance Officer with responsibility for ensuring the Settling Defendant's compliance with this Final Judgment. The Antitrust Compliance Officer shall be responsible for the following:

A. Furnishing a copy of this Final Judgment, within thirty days of its entry, to each of the Settling Defendant's officers and directors, and to each of the Settling Defendant's employees engaged, in whole or in part, in the distribution or Sale of E-books;

B. Furnishing a copy of this Final Judgment in a timely manner to each officer, director, or employee who succeeds to any position identified in Section VII.A of this Final Judgment;

C. Ensuring that each person identified in Sections VII.A and VII.B of this Final Judgment receives at least four hours of training annually on the meaning and requirements of this Final Judgment and the antitrust laws, such training to be delivered by an attorney with relevant experience in the field of antitrust law;

D. Obtaining, within sixty days after entry of this Final Judgment and on each anniversary of the entry of this Final Judgment, from each person identified in Sections VII.A and VII.B of this Final Judgment, and thereafter maintaining, a certification that each such person (a) has read, understands, and agrees to abide by the terms of this Final Judgment; and (b) is not aware of any violation of this Final Judgment or the antitrust laws or has reported any potential violation to the Antitrust Compliance Officer;

E. Conducting an annual antitrust compliance audit covering each person identified in Sections VII.A and VII.B of this Final Judgment, and maintaining all records pertaining to such audits;

F. Communicating annually to the Settling Defendant's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws;

G. Taking appropriate action, within three business days of discovering or receiving credible information concerning an actual or potential violation of this Final Judgment, to terminate or modify the Settling Defendant's conduct to assure compliance with this Final Judgment; and, within seven days of taking such corrective actions, providing to the Department of Justice a description of the actual or potential violation of this Final Judgment and the corrective actions taken;

H. Furnishing to the Department of Justice on a quarterly basis electronic copies of any non-privileged communications with any Person containing allegations of Settling Defendants' noncompliance with any provisions of this Final Judgment;

I. Maintaining, and furnishing to the Department of Justice on a quarterly basis, a log of all oral and written communications, excluding privileged or public communications, between or among (1) any of the Settling Defendant's officers, directors, or employees involved in the development of the Settling Defendant's plans or strategies relating to E-books, and (2) any person employed by or associated with another Publisher Defendant, relating, in whole or in part, to the distribution or sale in the United States of books sold in any format, including an identification (by name, employer, and job title) of the author and recipients of and all participants in the

communication, the date, time, and duration of the communication, the medium of the communication, and a description of the subject matter of the communication (for a collection of communications solely concerning a single business arrangement that is specifically exempted from the reporting requirements of Section IV.C of this Final Judgment, the Settling Defendant may provide a summary of the communications rather than logging each communication individually); and

J. Providing to the Department of Justice annually, on or before the anniversary of the entry of this Final Judgment, a written statement as to the fact and manner of the Settling Defendant's compliance with Sections IV, V, and VII of this Final Judgment.

VIII. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department of Justice, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Settling Defendants, be permitted:

1. Access during the Settling Defendants' office hours to inspect and copy, or at the option of the United States, to require Settling Defendants to provide to the United States hard copy or electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Settling Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, the Settling Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Settling Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Settling Defendants shall submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested. Written reports authorized under this paragraph may, in the sole discretion of the United States, require Settling Defendants to conduct, at their cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a Settling Defendant to the United States, the Settling Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Settling Defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give the Settling Defendant ten calendar days notice prior to divulging such material in any civil or administrative proceeding.

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. No Limitation on Government Rights

Nothing in this Final Judgment shall limit the right of the United States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any past, present, or future conduct, policy, or practice of the Settling Defendants.

XI. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire five years from the date of its entry.

XII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

[FR Doc. 2012–9831 Filed 4–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1589]

Draft Standards and Best Practices for Interaction Between Medical Examiner/Coroner and Organ and Tissue Procurement Organizations

AGENCY: National Institute of Justice, DOJ.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Scientific Working Group for Medicolegal Death Investigation will make available to the general public a document entitled, ''Organ and Tissue Procurement Committee Standards and Best Practices for Interaction Between Medical Examiner/Coroner Offices and Organ Tissue Procurement Organizations''. The opportunity to provide comments on this document is open to coroner/medical examiner office representatives, law enforcement agencies, organizations, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft document under consideration are directed to the following Web site: *http://www.swgmdi.org.*

DATES: Comments must be received on or before May 12, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Kashtan, by telephone at 202–353–1856 [**Note:** this is not a toll-free telephone number], or by email at *Patricia.Kashtan@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2012–9842 Filed 4–23–12; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science And Engineering; 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: Advisory Committee for Computer and Information Science and Engineering (1115).

Date and Time: May 10, 2012 12 p.m.–5:30 p.m., May 11, 2012 8 a.m.–2 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington VA.

Type of Meeting: Open.

Contact Person: Carmen Whitson, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director for CISE on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: The agenda will comprise of a CISE overview including the status of the current budget priorities, the AC working groups will be reporting out. There will also be preparations for the upcoming COV meetings.

Dated: April 18, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–9751 Filed 4–23–12; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act; Audit Committee Meeting of the Board of Directors

TIME AND DATE: 2 p.m., Monday, April 30, 2012.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call To Order

II. Mid Year Review Discussion

III. Executive Session with Internal Audit Director

IV. Executive Session with Officers: Pending Litigation

V. Internal Audit Report with Management's Response

VI. Amendment to the FY 2012 Internal Audit Plan

VII. FY'13 Risk Assessment & DRAFT Internal Audit Plan

VIII. Internal Audit Performance Scorecard

IX. Internal Audit Status Reports

X. External Audit Updates

XI. National Foreclosure Mitigation Counseling (NFMC)/Emergency Homeowners Loan Program (EHLP) Update

XII. CFO Update

XIII. OHTS Watch List

XIV. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2012–9955 Filed 4–20–12; 4:15 pm]

BILLING CODE 7570–02–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting Notice; Finance, Budget & Program; Committee Meeting of the Board of Directors

TIME AND DATE: 2 p.m., Wednesday, May 2, 2012.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call to Order

II. Executive Session

III. Financial Report

IV. Grant Approvals

V. Lease Update

VI. FY '12 Milestone Report/Dashboard

VII. NFMC & EHLP

VIII. Program Updates

IX. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2012–9961 Filed 4–20–12; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. EA–12–050, EA–12–051; ASLBP No. 12–918–01–EA–BD01]

Fukushima-Related Orders Modifying Licenses; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over this proceeding, which involves the following consolidated cases:

All Operating Boiling Water Reactor Licensees With Mark I and Mark II Containments: Order Modifying Licenses With Regard to Reliable Hardened Containment Vents (Effective Immediately) Docket No. Ea–12–050

All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status: Order Modifying Licenses With Regard To Reliable Spent Fuel Pool Instrumentation (Effective Immediately) Docket No. Ea–12–051

This proceeding concerns requests for hearing submitted by Pilgrim Watch (April 2, 2012) and requests for hearing submitted by co-petitioner Beyond Nuclear (April 3, 2012) challenging: (1) an immediately effective order issued to all operating boiling water reactor licensees with Mark I and Mark II Containments directing that they modify their licenses with regard to reliable hardened containment vents, published in the **Federal Register** on March 19, 2012 (77 FR 16,098); and (2) an immediately effective order issued to all power reactor licensees and holders of construction permits in active or deferred status directing that they modify their licenses with regard to reliable spent fuel pool instrumentation, published in the **Federal Register** on March 19, 2012 (77 FR 16,082).

The Board is comprised of the following administrative judges:

Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

E. Roy Hawkens, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in

accordance with the NRC E-filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 18th day of April 2012.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2012–9801 Filed 4–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–280, 50–281, 72–55, 72–1030; NRC–2012–0085]

Virginia Electric and Power Company; Surry Power Station Units 1 and 2; Independent Spent Fuel Storage Installation; Exemption

1.0 Background

Virginia Electric and Power Company (Dominion or licensee) is the holder of Facility Operating License Nos. DRP–32 and DRP–37, which authorize operation of the Surry Power Station Units 1 and 2 in Surry County, Virginia, pursuant to Title 10 of the Code of Federal Regulations (10 CFR), part 50. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

Pursuant to 10 CFR part 72, Subpart K, a general license is issued for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. Dominion is authorized to operate a nuclear power reactor under 10 CFR part 50, and holds a 10 CFR part 72 general license for storage of spent fuel at the Surry Power Station ISFSI. Under the terms of its general license, Dominion loaded spent fuel using the Transnuclear, Inc, (TN) NUHOMS® HD Storage System (HD–32PTH) dry cask storage system (Certificate of Compliance (CoC) No. 1030, Amendment No. 0) at the Surry Power Station ISFSI.

2.0 Request/Action

The TN NUHOMS® HD dry cask storage system is designed for zone loading based on decay heat. CoC No. 1030 specifies requirements, conditions, and operating limits of the dry shielded canisters (DSCs) in Appendix A of the Technical Specifications (TS). The TS restrict the decay heat in lower Zone 1a locations to ≤1.05 kW and the upper Zone 1b locations to ≤0.8 kW. The licensee inadvertently reversed the upper and lower zones while preparing the dry shielded canister (DSC) loading maps. This resulted in five fuel assemblies being loaded into four DSCs with decay heat greater than the limits specified in the CoC. The four DSCs are designated with serial numbers DOM–32PTH–001–C, –002–C, –003–C, and –009–C.

In a letter dated July 21, 2011, as supplemented September 28, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML11208B629 and ML11286A115, respectively), Dominion requested a one-time exemption from the following requirements to allow storage of the four DSCs, with serial numbers DOM–32PTH–001–C, –002–C, –003–C, and –009–C, in their current, as-loaded, condition at the Surry Power Station ISFSI:

- 10 CFR 72.212(b)(3), which states the general licensee must ''[e]nsure that each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214.''
- The portion of 10 CFR 72.212(b)(11), which states that ''[t]he licensee shall comply with the terms, conditions, and specifications of the CoC * * *''

3.0 Discussion

Pursuant to 10 CFR 72.7, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Authorized by Law

This exemption would allow the licensee to continue to store four DSCs (loaded with spent nuclear fuel assemblies having decay heat exceeding the limits required by CoC No. 1030, Amendment No. 0, at the time of loading) in their as-loaded configuration at the Surry Power Station ISFSI. The provisions in 10 CFR part 72 from which Dominion is requesting an exemption, require the licensee to comply with the terms, conditions, and specifications of the CoC for the approved cask model that it uses.

The Commission issued 10 CFR 72.7 under the authority granted to it under Section 133 of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10153. Section 72.7 allows the NRC to grant exemptions from the requirements of 10 CFR part 72. Granting the licensee's proposed exemption provides adequate protection to public health and safety, and the environment. As explained below, the proposed exemption will not endanger life or property, or the common defense and security, and is otherwise in the public interest. Therefore, the exemption is authorized by law.

Will Not Endanger Life or Property or the Common Defense and Security

The provisions in 10 CFR 72.212(a) specifically state that the general licensee is limited to spent fuel that the general licensee is authorized to possess at the site under the specific license for the site. Sections 72.212(b)(3) and 72.212(b)(11) require the general licensee to store spent fuel in cask models approved under the provisions of 10 CFR part 72 (which are listed in 10 CFR 72.214) and require general licensees to comply with the terms and conditions of the CoC for the approved cask model that is used. The requested exemption would allow the licensee to continue to store four DSCs (loaded with spent nuclear fuel assemblies having decay heat exceeding the limits required by CoC No. 1030, Amendment No. 0 at the time of loading) in their as-loaded configuration at the Surry Power Station ISFSI.

Currently, the five affected fuel assemblies have been in storage for a minimum of 2.5 years and have decayed to meet the required decay heat limits of the CoC. The licensee submitted TN Calculation No. 10494–174, which performed a bounding thermal analysis using ANSYS finite element software to evaluate the misloading events. The ANSYS analysis consists of a half-symmetric, three-dimensional model of a 32PTH DSC with a number of conservative assumptions. First, the modeled fuel assembly loading pattern is based on the configuration that resulted in the maximum fuel cladding temperature presented in the UFSAR analysis dated October 2, 2009, with the exception that the two fuel assemblies in Zone 1b were set to 860 W. The licensee states this configuration bounds the design zone limits as listed in TS, Section 2.1, which are based on each Zone 1b fuel assemblies being 800 W. It also bounds the as-loaded configurations, where one or both fuel assemblies in Zone 1b exceeded a decay heat of 800 W, up to a value of 806 W. The remaining DSC fuel assembly decay heats were within the design basis. Therefore, since the as-loaded configuration had a total DSC decay heat of 33.31 kW, the licensee states the model conservatively assumes a total

DSC decay heat of 34.92 kW. Secondly, the licensee applies a storage condition ambient temperature of 115 °F, which is above the maximum normal storage ambient temperature of 100 °F. The NRC staff finds the assumed 115 °F boundary condition provides a reasonably conservative ambient temperature choice, considering that summer temperatures often are greater than 90 °F and can reach 100 °F (per weather almanac, *www.NOAA.gov*). The NRC staff further finds that applying a higher ambient temperature boundary condition also mitigates the thermal effects of other ambient weather conditions, such as wind direction relative to the DSC's inlet and outlet openings.

Using the conservative assumptions stated above, the TN Calculation No. 10494–174 analysis presented by the licensee indicates a maximum cladding temperature of 689 °F for the as-loaded DSC with the reversed heat load zoning for storage conditions. This is 5 °F higher than the previously calculated cladding temperature found in Table 4–2 of the UFSAR. The temperatures of other DSC components increased by less than 5 °F. The temperature increases due to the misloaded fuel assemblies are essentially unchanged for transfer conditions. By applying an additional 5 °F to the previously calculated temperature for transfer conditions listed in Table 4–1 of the UFSAR, the licensee estimates that the maximum fuel cladding temperature for the as-loaded DSC with the reversed heat load zoning for transfer conditions to be 724 °F. As a result, the licensee concluded that the maximum cladding temperatures for both normal storage and transfer conditions were below the 752 °F maximum allowable cladding temperature limit noted in the UFSAR analysis. The NRC staff has reviewed the analysis presented by Dominion and finds the thermal effect of the misloaded fuel assemblies to be minimal, and that the thermal margins were sufficient to mitigate the effects of the misloaded fuel assemblies so as to provide adequate heat removal capabilities when the DSC fuel assembly arrangement was not within the design basis. This thermal evaluation provides reasonable assurance that the TN NUHOMS® HD Storage System (HD–32PTH) loaded with fuel assemblies exceeding the decay heat limits allowed by the CoC will allow for continued safe storage of the spent fuel.

The licensee also discusses structural and pressure considerations due to the increased decay heat of the Zone 1b fuel assemblies. The licensee concludes that the increased decay heat did not have an effect on the structural evaluation since the DSC fuel compartment and basket rails are at temperatures below those considered in the design basis analysis. The submitted analysis finds that the 5 °F higher temperature, due to the larger as-loaded decay heat, would result in a DSC pressure increase of 0.1 psig. The resulting 6 psig and 6.5 psig DSC pressures for the normal storage and transfer conditions were less than the 15 psig design basis pressure. The NRC staff has reviewed the analysis submitted in the exemption request and finds that there were no structural implications on the cask system resulting from the misloaded fuel assemblies.

The licensee verified the design basis shielding analysis remained bounding for the as-loaded DSCs. The licensee concluded the design basis shielding analysis assumes a DSC loading of 32 assemblies all having source terms applicable to assemblies generating 1.5 kW of decay heat and therefore bounds the as-loaded DSCs. The NRC staff has reviewed the design basis shielding analysis and concludes that the design remains bounding for the as-loaded DSCs and the radiation protection system of the NUHOMS® HD–32PTH dry cask storage system remains in compliance with 10 CFR part 72.

The NRC staff has reviewed Dominion's exemption request and finds that the five fuel assemblies loaded into four DSCs with decay heat greater than specified in the CoC do not affect the heat removal capabilities, the structural integrity, or the radiation protection system of the cask systems. Therefore, the NRC staff concludes that the exemption to allow the licensee to store the four DSCs in their as-loaded configuration does not pose an increased risk to public health and safety or the common defense or security.

Otherwise in the Public Interest

The information Dominion submitted with its exemption request and the TN analysis documented in TN Calculation No. 10494–174 demonstrate that the as-loaded DSCs are not compromised due to the misloaded fuel assemblies. Dominion has also considered an alternative action to correct the condition by reloading the affected DSCs to be in compliance with CoC No. 1030. This would involve retrieving each of the DSCs from their Horizontal Storage Modules (HSM), unloading the spent fuel assemblies from the DSC, performing inspections of various DSC components, reloading the spent fuel assemblies into the used DSC or a new DSC (if there was damage noted on the used DSC) in accordance with CoC No. 1030, performing the DSC closing procedures, and transferring the DSC back to the ISFSI for re-insertion into the HSM.

The licensee estimates this alternative action of loading and unloading operations would increase personnel exposures by 250 mRem per affected DSC. In addition, the licensee also states the alternative to the proposed action would generate radioactive contaminated material and waste during loading and unloading operations and disposal of the used DSCs (if the DSCs were damaged during the unloading process). The licensee estimates the alternative to the proposed action would cost an estimated $300,000 for unloading and reloading operations of each affected DSC and also necessitate additional fuel handling operations. If the DSC was damaged during unloading, the licensee estimates an additional $1,000,000 for purchase of a new DSC and $200,000 for disposal of the used DSC.

The exemption, by allowing the four affected DSCs to remain in their as-loaded condition, is consistent with NRC's mission to protect public health and safety. Approving the DSCs to remain in their as-loaded condition results in less of an opportunity for a release of radioactive material than the alternative to the proposed action. Therefore, the exemption is in the public interest.

Environmental Consideration

The NRC staff also considered in the review of this exemption request whether there would be any significant environmental impacts associated with the exemption. For this proposed action, the NRC staff performed an environmental assessment pursuant to 10 CFR 51.30. The proposed action is the approval of a request for a one-time exemption from the requirements of 10 CFR 72.212(b)(3) and the portion of 72.212(b)(11), which requires compliance with the terms, conditions, and specifications of a CoC, but only to the extent necessary to allow Dominion to store the four DSCs in the current as-loaded configuration at the Surry Power Station ISFSI.

The NRC staff performed an environmental assessment and determined that the proposed action will not significantly impact the quality of the human environment. The NRC staff concludes that there are no changes being made in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure as a result of

the proposed action. In addition the proposed action only affects the requirements associated with the fuel assemblies already loaded into the casks and does not affect non-radiological plant effluents, or any other aspects of the environment. The Environmental Assessment and the Finding of No Significant Impact are documented in the **Federal Register** (77 FR 20440, dated April 4, 2012).

4.0 Conclusion

Based on the foregoing considerations, the NRC has determined pursuant to 10 CFR 72.7, that the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC grants Dominion a one-time exemption from the requirements in 10 CFR 72.212(b)(3) and from the portion of 10 CFR 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC for the TN NUHOMS® HD dry cask storage system with DSCs serial numbers DOM–32PTH–001–C, –002–C, –003–C, and –009–C, at the Surry Power Station ISFSI.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated: Dated at Rockville, Maryland, this 12th day of April 2012.

Doug Weaver,

Deputy Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–9802 Filed 4–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338, 50–339, 72–56, and 72–1030; NRC–2012–0084]

Virginia Electric and Power Company, North Anna Power Station Units 1 and 2, Independent Spent Fuel Storage Installation; Exemption

1.0 Background

Virginia Electric and Power Company (Dominion, the licensee) is the holder of Facility Operating License Nos. NPF–4 and NPF–7, which authorize operation of the North Anna Power Station Units 1 and 2 in Louisa County, Virginia, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), part 50. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

Pursuant to 10 CFR part 72, Subpart K, a general license is issued for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. Dominion is authorized to operate a nuclear power reactor under 10 CFR part 50, and holds a 10 CFR part 72 general license for storage of spent fuel at the North Anna Power Station ISFSI. Under the terms of its general license, Dominion loaded spent fuel using the Transnuclear, Inc., (TN) NUHOMS® HD Storage System (HD–32PTH) dry cask storage system (Certificate of Compliance (CoC) No. 1030, Amendment No. 0) at the North Anna Power Station ISFSI.

2.0 Request/Action

The TN NUHOMS® HD dry cask storage system is designed for zone loading based on decay heat. CoC 1030 specifies requirements, conditions, and operating limits of the dry shielded canisters (DSCs) in Appendix A of the Technical Specifications (TS). The TS restrict the decay heat in lower Zone 1a locations to <1.05 kW and the upper Zone 1b locations to ≤0.8 kW. The licensee inadvertently reversed the upper and lower zones while preparing the DSC loading maps. This resulted in twelve fuel assemblies being loaded into seven DSCs with decay heat greater than the limits specified in the CoC. The seven DSCs are designated with serial numbers DOM–32PTH–004–C, –005–C, –007–C, –010–C, –013–C, –019–C and GBC–32PTH–011–C.

In a letter dated July 21, 2011, as supplemented September 28, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML11208C453 and ML11286A143, respectively), Dominion requested a one-time exemption from the following requirements to allow storage of the seven DSCs, with serial numbers DOM–32PTH–004–C, –005–C, –007–C, –010–C, –013–C, –019–C and GBC–32PTH–011–C, in their current, as-loaded, condition at the North Anna Power Station ISFSI:

- 10 CFR 72.212(b)(3), which states the general licensee must ''[e]nsure that each cask used by the general licensee conforms to the terms, conditions, and specifications of a CoC or an amended CoC listed in § 72.214.''
- The portion of 10 CFR 72.212(b)(11), which states that ''[t]he licensee shall comply with the terms, conditions, and specifications of the CoC * * *''

3.0 Discussion

Pursuant to 10 CFR 72.7, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Authorized by Law

This exemption would allow the licensee to continue to store seven DSCs (loaded with spent nuclear fuel assemblies having decay heat exceeding the limits required by CoC No. 1030, Amendment No. 0, at the time of loading) in their as-loaded configuration at the North Anna Power Station ISFSI. The provisions in 10 CFR Part 72 from which Dominion is requesting an exemption, require the licensee to comply with the terms, conditions, and specifications of the CoC for the approved cask model that it uses.

The Commission issued 10 CFR 72.7 under the authority granted to it under Section 133 of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10153. Section 72.7 allows the NRC to grant exemptions from the requirements of 10 CFR part 72. Granting the licensee's proposed exemption provides adequate protection to public health and safety, and the environment. As explained below, the proposed exemption will not endanger life or property, or the common defense and security, and is otherwise in the public interest. Therefore, the exemption is authorized by law.

Will Not Endanger Life or Property or the Common Defense and Security

The provisions in 10 CFR 72.212(a) specifically state that the general licensee is limited to spent fuel that the general licensee is authorized to possess at the site under the specific license for the site. Sections 72.212(b)(3) and 72.212(b)(11) require the general licensee to store spent fuel in cask models approved under the provisions of 10 CFR part 72 (which are listed in 10 CFR 72.214) and require general licensees to comply with the terms and conditions of the CoC for the approved cask model that is used. The requested exemption would allow the licensee to continue to store seven DSCs (loaded with spent nuclear fuel assemblies having decay heat exceeding the limits required by CoC No. 1030, Amendment No. 0 at the time of loading) in their as-loaded configuration at the North Anna Power Station ISFSI.

Currently, the twelve affected fuel assemblies have been in storage for a minimum of 1.3 years and have decayed to meet the required decay heat limits of the CoC. The licensee submitted TN Calculation No. 10494–174, which performed a bounding thermal analysis using ANSYS finite element software to evaluate the misloading events. The ANSYS analysis consists of a half-symmetric, three-dimensional model of a 32PTH DSC with a number of conservative assumptions. First, the modeled fuel assembly loading pattern is based on the configuration that resulted in the maximum fuel cladding temperature presented in the UFSAR analysis dated October 2, 2009, with the exception that the two fuel assemblies in Zone 1b were set to 860 W. The licensee states this configuration bounds the design zone limits as listed in TS, Section 2.1, which are based on each Zone 1b fuel assemblies being 800 W. It also bounds the as-loaded configurations, where one or both fuel assemblies in Zone 1b exceeded a decay heat of 800 W, up to a value of 859 W. The remaining DSC fuel assembly decay heats were within the design basis. Therefore, since the as-loaded configuration had a total DSC decay heat of 31.167 kW, the licensee states the model conservatively assumes a total DSC decay heat of 34.92 kW. Secondly, the licensee applies a storage condition ambient temperature of 115 °F, which is above the maximum normal storage ambient temperature of 100 °F. The NRC staff finds the assumed 115 °F boundary condition provides a reasonably conservative ambient temperature choice, considering that summer temperatures often are greater than 90 °F and can reach 100 °F (per weather almanac, *www.NOAA.gov*). The NRC staff further finds that applying a higher ambient temperature boundary condition also mitigates the thermal effects of other ambient weather conditions, such as wind direction relative to the DSC's inlet and outlet openings.

Using the conservative assumptions stated above, the TN Calculation No. 10494–174 analysis presented by the licensee indicates a maximum cladding temperature of 689 °F for the as loaded DSC with the reversed heat load zoning for storage conditions. This is 5 °F higher than the previously calculated cladding temperature found in Table 4–2 of the UFSAR. The temperatures of other DSC components increased by less than 5 °F. The temperature increases due to the misloaded fuel assemblies are essentially unchanged for transfer conditions. By applying an additional 5 °F to the previously calculated temperature for transfer conditions listed in Table 4–1 of the UFSAR, the licensee estimates that the maximum fuel cladding temperature for the as-loaded DSC with the reversed heat load zoning for transfer conditions to be 724 °F. As a result, the licensee concluded that the maximum cladding temperatures for both normal storage and transfer conditions were below the 752 °F maximum allowable cladding temperature limit noted in the UFSAR analysis. The NRC staff has reviewed the analysis presented by Dominion and finds the thermal effect of the misloaded fuel assemblies to be minimal, and that the thermal margins were sufficient to mitigate the effects of the misloaded fuel assemblies so as to provide adequate heat removal capabilities when the DSC fuel assembly arrangement was not within the design basis. This thermal evaluation provides reasonable assurance that the TN NUHOMS® HD Storage System (HD–32PTH) loaded with fuel assemblies exceeding the decay heat limits allowed by the CoC will allow for continued safe storage of the spent fuel.

The licensee also discusses structural and pressure considerations due to the increased decay heat of the Zone 1b fuel assemblies. The licensee concludes that the increased decay heat did not have an effect on the structural evaluation since the DSC fuel compartment and basket rails are at temperatures below those considered in the design basis analysis. The submitted analysis finds that the 5 °F higher temperature, due to the larger as-loaded decay heat, would result in a DSC pressure increase of 0.1 psig. The resulting 6 psig and 6.5 psig DSC pressures for the normal storage and transfer conditions were less than the 15 psig design basis pressure. The NRC staff has reviewed the analysis submitted in the exemption request and finds that there were no structural implications on the cask system resulting from the misloaded fuel assemblies.

The licensee verified the design basis shielding analysis remained bounding for the as-loaded DSCs. The licensee concluded the design basis shielding analysis assumes a DSC loading of 32 assemblies all having source terms applicable to assemblies generating 1.5 kW of decay heat and, therefore, bounds the as-loaded DSCs. The NRC staff has reviewed the design basis shielding analysis and concludes that the design remains bounding for the as-loaded DSCs and the radiation protection system of the NUHOMS® HD–32PTH dry cask storage system remains in compliance with 10 CFR part 72.

The NRC staff has reviewed Dominion's exemption request and finds that the twelve fuel assemblies loaded into seven DSCs with decay heat greater than specified in the CoC do not affect the heat removal capabilities, the structural integrity, or the radiation protection system of the cask systems. Therefore, the NRC staff concludes that the exemption to allow the licensee to store the seven DSCs in their as-loaded configuration does not pose an increased risk to public health and safety or the common defense or security.

Otherwise in the Public Interest

The information Dominion submitted with its exemption request and the TN analysis documented in TN Calculation No. 10494–174 demonstrate that the as-loaded DSCs are not compromised due to the misloaded fuel assemblies. Dominion has also considered alternative action to correct the condition by reloading the affected DSCs to be in compliance with CoC No. 1030. This would involve retrieving each of the DSCs from their Horizontal Storage Modules (HSM), unloading the spent fuel assemblies from the DSC, performing inspections of various DSC components, reloading the spent fuel assemblies into the used DSC or a new DSC (if there was damage noted on the used DSC) in accordance with CoC No. 1030, performing the DSC closing procedures, and transferring the DSC back to the ISFSI for re-insertion into the HSM.

The licensee estimates this alternative action of loading and unloading operations would increase personnel exposures by 250 mRem per affected DSC. In addition, the licensee also states the alternative to the proposed action would generate radioactive contaminated material and waste during loading and unloading operations and disposal of the used DSCs (if the DSCs were damaged during the unloading process). The licensee estimates the alternative to the proposed action would cost an estimated $300,000 for unloading and reloading operations of each affected DSC and also necessitate additional fuel handling operations. If the DSC was damaged during unloading, the licensee estimates an additional $1,000,000 for purchase of a new DSC and $200,000 for disposal of the used DSC.

The exemption, by allowing the seven affected DSCs to remain in their as-loaded condition, is consistent with NRC's mission to protect public health and safety. Approving the DSCs to remain in their as-loaded condition results in less of an opportunity for a

release of radioactive material than the alternative to the proposed action. Therefore, the exemption is in the public interest.

Environmental Consideration

The NRC staff also considered in the review of this exemption request whether there would be any significant environmental impacts associated with the exemption. For this proposed action, the NRC staff performed an environmental assessment pursuant to 10 CFR 51.30. The proposed action is the approval of a request for a one-time exemption from the requirements of 10 CFR 72.212(b)(3) and the portion of 72.212(b)(11), which requires compliance with the terms, conditions, and specifications of a CoC, but only to the extent necessary to allow Dominion to store the seven DSCs in the current as-loaded configuration at the North Anna Power Station ISFSI.

The NRC staff determined that the proposed action will not significantly impact the quality of the human environment. The NRC staff concludes that there are no changes being made in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure as a result of the proposed action. In addition the proposed action only affects the requirements associated with the fuel assemblies already loaded into the casks and does not affect non-radiological plant effluents, or any other aspects of the environment. The Environmental Assessment and the Finding of No Significant Impact are documented in the **Federal Register** (77 FR 20438, dated April 4, 2012).

4.0 Conclusion

Based on the foregoing considerations, the NRC has determined, pursuant to 10 CFR 72.7, that the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC grants Dominion a one-time exemption from the requirements in 10 CFR 72.212(b)(3) and from the portion of 10 CFR 72.212(b)(11) that states the licensee shall comply with the terms, conditions, and specifications of the CoC for TN NUHOMS® HD dry cask storage system with DSCs serial numbers DOM–32PTH–004–C, -005–C,t -007–C, -010–C, -013–C, -019–C and GBC–32PTH–011–C at the North Anna Power Station ISFSI.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of April 2012.

For the Nuclear Regulatory Commission.

Douglas Weaver,

Deputy Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–9803 Filed 4–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meeting Noice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of April 23, 30, May 7, 14, 21, 28, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 23, 2012

Tuesday, April 24, 2012

9 a.m. Briefing on Part 35 Medical Events Definitions—Permanent Implant Brachytherapy (Public Meeting) (Contact: Michael Fuller, 301–415–0520).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of April 30, 2012—Tentative

Monday, April 30, 2012

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting) (Contact: Kristin Davis, 301–492–2208).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of May 7, 2012—Tentative

Friday, May 11, 2012

9 a.m. Briefing on Potential Medical Isotope Production Licensing Actions (Public Meeting) (Contact: Jessie Quichocho, 301–415–0209).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of May 14, 2012—Tentative

There are no meetings scheduled for the week of May 14, 2012.

Week of May 21, 2012—Tentative

There are no meetings scheduled for the week of May 21, 2012.

Week of May 28, 2012—Tentative

Friday, June 1, 2012

9 a.m. Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting) (Contact: Rani Franovich, 301–415–1868).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: April 19, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–9970 Filed 4–20–12; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30036; 812–13767]

Beverly Hills Bancorp Inc.; Notice of Application

April 18, 2012.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (''Act'') for an exemption from all provisions of the Act, except sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder, modified as discussed in the application.

Summary of Application: The requested order would exempt the applicant, Beverly Hills Bancorp Inc. (''BHBC''), from certain provisions of the Act until the earlier of one year from the date of the requested order or such time as BHBC would no longer be required to register as an investment company under the Act.

Filing Dates: The application was filed on April 22, 2010, and amended on October 18, 2010, and November 2, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving 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 14, 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. Applicant, Post Office Box 8280, Calabasas, CA 91372.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868, or May Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations:

1. BHBC was a bank holding company that conducted its banking and lending operations through its wholly-owned subsidiary First Bank of Beverly Hills, a California banking corporation (the ''Bank''). From its incorporation in 1996 until April 24, 2009, the Bank was the source of substantially all of BHBC's revenues and income. The Bank sustained substantial losses in its real estate loan and mortgage-backed securities portfolios, and as of December 31, 2008, it no longer met applicable regulatory capital requirements. As a result, on February 13, 2009, the Federal Deposit Insurance Corporation (''FDIC'') and the California Department of Financial Institutions (the ''CDFI'') issued an order requiring the Bank to increase its regulatory capital within 60 days. Because the Bank was unable to increase its regulatory capital within the specified time period, on April 24, 2009, the CDFI closed the Bank and the FDIC was appointed as the Bank's receiver.

2. BHBC has one class of common stock outstanding, which it voluntarily delisted from the NASDAQ Global Select Market on February 12, 2009. On February 19, 2009, BHBC deregistered its common stock under Section 12(g) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and on March 13, 2009, its reporting obligations under Section 15(d) of the Exchange Act were suspended. As such, BHBC is no longer subject to the reporting requirements of the Exchange Act and its common stock is traded on the pink sheets. As of September 30, 2011, BHBC had 78 holders of record.

3. BHBC has options outstanding under two equity incentive plans, the Amended and Restated 1999 Equity Participation Plan of Wilshire Financial Services Group Inc. (the ''1999 Plan'') and the 2002 Equity Participation Plan (the ''2002 Plan,'' and together with the 1999 Plan, the ''Plans''). All outstanding awards under the Plans were granted prior to the FDIC's appointment as receiver for the Bank. As of September 30, 2011, there were options outstanding under the 1999 Plan to purchase 32,667 shares of BHBC common stock, all of which were held by one director of BHBC.[1] As of September 30, 2011, the only options outstanding under the 2002 Plan were options to purchase 137,333 shares of BHBC common stock held by four individuals, each of whom is a director and/or officer of BHBC. BHBC will not issue any additional awards under the 2002 Plan. In addition, BHBC's four directors have stock appreciation rights (SARs) with respect to 120,000 shares of common stock.

4. As of September 30, 2011, on a consolidated basis, for financial reporting purposes BHBC has assets of $11.9 million, liabilities of $38.4 million, and a stockholders' equity of negative $26.5 million. On a non-consolidated basis, BHBC's assets total approximately $10.3 million, and since the receivership of the Bank, these assets have consisted almost exclusively of checking accounts at commercial banks and shares of the Vanguard Short-Term Investment Grade Fund (Admiral Shares) (the ''Vanguard Fund''), which BHBC has since liquidated and invested the proceeds in Permitted Securities (as defined below).

5. BHBC has several direct or indirect wholly owned subsidiaries, none of which has any ongoing business or operations. As of September 30, 2011, the following assets were held by BHBC subsidiaries: (i) Wilshire Acquisitions Corporation (''Wilshire Asquisitions'') has assets with a book value of $151,732 consisting of accrued interest and prepaid expenses related to a subsidiary trust, (ii) WFC Inc. has assets with a book value of $377,250 consisting of approximately 19 small consumer and residential mortgage loans, cash, and prepaid expenses, and (iii) BH Commercial Capital I, Inc. has assets with a book value of $1,084,799 consisting of two secured commercial real estate loans (collectively, the ''Subsidiary Assets''). In addition, BHBC also either directly or indirectly owns the common securities of three subsidiary trusts that were formed in connection with offerings of trust preferred securities in which the trust subsidiaries issued their common securities to BHBC or Wilshire Acquisitions and their preferred securities to third party investors. The subsidiary trusts then loaned all the proceeds of the sale of trust preferred securities to BHBC or Wilshire Acquisitions in exchange for junior subordinated debentures (the ''Subordinated Debentures''). The subsidiary trusts have no assets other than the Subordinated Debentures.

6. BHBC's liabilities consist principally of $25.8 million of the Subordinated Debentures issued to its two direct trust subsidiaries and $10.3 million of Subordinated Debentures issued to its indirect trust subsidiary. In the aggregate, interest in an approximate amount of $900,000 accrues on a yearly basis pursuant to these three series of Subordinated Debentures. BHBC states that there is no public market for the Subordinated Debentures or the trust preferred securities. Under the terms of the Subordinated Debentures, BHBC may defer interest payments for up to 20 consecutive quarters.[2] On January 29, 2009, BHBC elected to exercise this right and no payments are due under the Subordinated Debentures until 2014.

7. BHBC states that it and its current and former directors and officers are subject to actual and potential

[1] The 1999 Plan expired on September 30, 2009.

[2] During the period when interest payments are being deferred, interest continues to accrue, compounding quarterly, at an annual rate equal to the interest in effect for such period and must be paid at the end of the deferral period.

contingent liabilities of uncertain amounts related to claims associated with its former operations, as well as regulatory and stockholder claims in connection with the failure of the Bank. When the Bank was closed and put into receivership with the FDIC, the FDIC became successor to all of the Bank's claims, including claims against BHBC and the current or former officers and directors of BHBC and the Bank, for failure to maintain the net worth of the Bank, gross negligence and breach of fiduciary duty. BHBC states that in addition to any claims made directly against it, BHBC is subject to indemnification and expense obligations in connection with various actions brought against its current and former directors, officers, employees or agents.

8. Since the Bank was placed into receivership, BHBC has had no active business or operations. Within several months of the receivership, BHBC terminated all employees, and since that time has paid two consultants on an hourly basis primarily for administrative and accounting services. BHBC does not maintain an office and is managed by its four member board of directors, which has considered various alternatives, including liquidation and acquisition of an operating business, while preserving its assets. BHBC states that because of its financial condition and contingent liabilities, pursuing these courses of action has not been feasible.

Applicant's Legal Analysis

1. Section 3(a)(1)(A) of the Act defines an investment company as any issuer who ''is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities.'' Section 3(a)(1)(C) of the Act further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash).

2. Section 6(c) of the Act provides that the Commission may exempt any person from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, shall apply to the company and other persons dealing with the company, as if such company were a registered investment company.

3. BHBC acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, BHBC requests an order of the Commission pursuant to sections 6(c) and 6(e) of the Act exempting it from all provisions of the Act, subject to certain exceptions described below. BHBC requests an exemption until the earlier of one year from the date of the requested order or such time as it would no longer be required to register as an investment company under the Act. During the term of the proposed exemption, BHBC states that it will comply with sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder, subject to certain modifications described in the application.

4. BHBC requests exemptive relief to the extent necessary to permit it to hold certain types of instruments that may be considered ''securities'', as defined in section 2(a)(36) under the Act, such as short-term U.S. government securities, certificates of deposit and deposit accounts with banks that are insured by the FDIC, commercial paper rated A–1/P–1, shares of registered money market funds, and any instruments that are eligible for investment by money market funds consistent with rule 2a–7 under the Act (collectively, ''Permitted Securities'') without being required to register as an investment company under the Act. BHBC requests this relief in order to permit it to preserve the value of its assets for the benefit of its security holders, and submits that this relief is necessary and appropriate for the public interest.

5. In determining whether to grant relief for a company in an extended transition period, the following factors are considered: (a) Whether the failure of the company to become primarily engaged in a non-investment business or excepted business or to liquidate within one year was due to factors beyond its control; (b) whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and (c) whether the company invested in securities solely to preserve the value of its assets. BHBC believes that it meets these criteria.

6. BHBC believes its failure to become primarily engaged in a non-investment business or to liquidate within a year following the receivership of the Bank is due to factors beyond its control. The board of directors of BHBC has regularly considered the feasibility of liquidating or engaging in an operating non-investment business and concluded that it is not feasible to commence or acquire a non-investment business or liquidate as a result of BHBC's negative net worth and the uncertainties associated with potential litigation and regulatory claims. BHBC states that the contingent liabilities make it impossible to liquidate BHBC and distribute its assets to creditors and make it imprudent to utilize any substantial part of its assets in an operating business. BHBC states that these circumstances are unlikely to change over the requested one-year period in light of the nature of the actual and contingent liabilities. BHBC states that it has invested its liquid assets solely to preserve the value of its assets and has invested only in bank checking accounts and Permitted Securities after liquidating the Vanguard Fund. BHBC does not believe its current ownership of certain loans acquired prior to its receivership is inconsistent with its purpose of preserving the value of its assets for the benefit of its security holders. BHBC thus believes that the public interest will be best served by permitting it to hold its liquid assets in Permitted Securities while its liabilities are resolved.

Applicant's Conditions

Applicant agrees that the requested order will be subject to the following conditions:

1. BHBC will not purchase or otherwise acquire any securities other than Permitted Securities, except that BHBC may acquire equity securities of an issuer that is not an ''investment company'' as defined in section 3(a) of the Act or is relying on an exclusion from the definition of ''investment company'' under section 3(c) of the Act other than section 3(c)(1) or 3(c)(7), in connection with the acquisition of an operating business as evidenced by a resolution approved by BHBC's board of directors. BHBC may continue to hold the Subsidiary Assets.

2. BHBC will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding, or trading in securities.

3. BHBC will not make any primary or secondary public offerings of its securities, and it will notify its stockholders that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that BHBC and other persons, in their transactions and relations with BHBC, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if BHBC were a registered investment

company, except as permitted by the order requested hereby.

4. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of BHBC may engage in a transaction that otherwise would be prohibited by these sections with BHBC:

(a) If such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to BHBC, and (ii) the participation of BHBC in the proposed transaction will not be on a basis less advantageous to BHBC than that of other participants; and

(b) In connection with each such transaction, BHBC shall inform the bankruptcy court of: (i) The identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9772 Filed 4–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 26, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, April 26, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings; and

An opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: April 19, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–9933 Filed 4–20–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66825; File No. SR–ICC–2012–01]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule To Provide That One Hundred Percent (100%) of the Initial Margin Requirement for Client-Related Positions Cleared in a Clearing Participant's Customer Account Origin May Be Satisfied by a Clearing Participant Utilizing US Treasuries

April 18, 2012.

I. Introduction

On February 17, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICC–2012–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on March 7, 2012.[2] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

This rule change will allow clearing participants to satisfy the initial margin-related liquidity requirements for client-related positions cleared in a clearing participant's customer account origin by posting US Treasuries.

The proposed rule changes provide that one hundred percent (100%) of the initial margin requirement for client-related positions cleared in a clearing participant's customer account origin may be satisfied by the clearing participant utilizing US Treasuries.[3]

The ICC rules currently provide that for all accounts at least forty-five percent (45%) of initial margin must be posted in US dollar cash. The next twenty percent (20%) must be posted in US dollar cash or US Treasuries. The remaining thirty-five percent (35%) must be posted in US dollar cash or US Treasuries or G7 cash.

The proposed rules provide that at least sixty-five percent (65%) of the initial margin requirement for client-related positions cleared in a clearing participant's customer account origin must be posted in US dollar denominated assets (US dollar cash and/or US Treasuries) and the remaining thirty-five percent (35%) must be posted in US dollar cash, US Treasuries, or G7 cash. The proposed changes will apply only to the initial margin liquidity requirements associated with the initial margin requirement for client-related positions cleared in a clearing participant's customer account origin. The proposed changes will not apply to the ICC liquidity requirements for house initial margin and the guaranty fund.

The proposed rule changes are intended to facilitate client-related clearing. Customers of ICC's clearing participants have indicated that the current US dollar cash liquidity requirement is too restrictive and serves as a barrier to clearing. The proposed rule changes are consistent with the recently promulgated CFTC regulation 39.11(e)(1) that provides that the CFTC's ''cash'' liquidity requirement includes US Treasury obligations. ICC routinely monitors its potential liquidity needs and reevaluates its liquidity requirements to ensure that it has sufficient intraday liquidity to manage cash payments in the event of a member default.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–66500 (March 1, 2012), 77 FR 13678 (March 7, 2012).

[3] ICC applies haircuts to US Treasuries to mitigate liquidity risk. The haircuts as of April 1, 2012 are: 1.25% for US Treasuries maturing in less than one year, 2.5% for US Treasuries maturing in one to five years, 5.0% for US Treasuries maturing in five to ten years, and 10.0% for US Treasuries maturing in more than ten years (available at: *https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Collateral_Management.pdf).*

[4] Currently at least 45% of house initial margin and the guaranty fund requirements must be posted in US dollar cash and the ICC contribution to the guaranty fund is in US dollar cash. Additionally, ICC requires all members to meet and maintain their minimum guaranty fund requirement deposit of $20 million in US dollar cash regardless of the amount of each member's total guaranty fund requirement. In addition, in the event of immediate liquidity needs in the event of a member's default, ICC may borrow (through IntercontinentalExchange, Inc.) up to an aggregate principal amount of $100 million against IntercontinentalExchange, Inc.'s senior unsecured revolving credit facility.

III. Discussion

Section 19(b)(2)(B) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.

The proposed rule change is intended to facilitate client-related clearing. Because the proposed rule change will expand the use of US Treasuries for the initial margin requirement for client-related positions cleared in a clearing participant's customer account origin, it will help remove certain barriers to client-related clearing, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions, and therefore is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [7] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–ICC–2012–01) be, and hereby is, approved.[9]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9769 Filed 4–23–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2)(B).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66827; File No. SR–ISE–2012–26]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security

April 18, 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 9, 2012, International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade option contracts overlying 10 shares of a security (''Mini Options''). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to ISE Rule 502, the Exchange currently lists and trades standardized options contracts on a number of equities and Exchange-Traded Fund Shares (''ETFs''), each with a unit of trading of 100 shares. The purpose of this proposed rule change is to expand investors' choices by listing and trading option contracts on a select number of high-priced and actively traded securities, each with a unit of trading ten times lower than those of the regular sized option contracts, or 10 shares. Specifically, the Exchange proposes to adopt Supplementary Material .12(a) to ISE Rule 504, which states that after an option class on a stock or Exchange-Traded Fund Share with a 100 share deliverable has been approved for listing and trading on the Exchange, series of option contracts with a 10 share deliverable on that stock or Exchange-Traded Fund Share may be listed for all expirations opened for trading on the Exchange. The Exchange further proposes that Mini Options may only be listed on stocks and Exchange-Traded Fund Shares that meet the following criteria, at the time of listing: (a) The industry average daily options volume over the previous three calendar months is at least 10,000 contracts, and (b) the price of the underlying security is at least $150.

The Exchange notes that as a result of the proposed listing criteria, only a handful of securities, ones that have significant options liquidity, will be eligible to have Mini Options listed on them. Specifically, pursuant to the listing criteria established by the Exchange for Mini Options, the following securities currently qualify to have Mini Options listed: Apple, Inc., (AAPL), SPDR Gold Trust (GLD), Google, Inc. (GOOG), Amazon, Inc. (AMZN), International Business Machines (IBM), and Priceline.com, Inc. (PCLN). The Exchange believes that Mini Options will appeal to retail investors who may not currently be able to participate in the trading of options on such high priced securities.

Except for the difference in the deliverable of shares, the proposed Mini Options would have the same terms and contract characteristics as regular sized equity and ETF options, including exercise style. All existing Exchange rules applicable to options on equities and ETFs would apply to Mini Options, except with respect to position and exercise limits and hedge exemptions to those position limits, which would be tailored for the smaller size. Pursuant to proposed amendments to Rule 412, position limits applicable to the regular sized option contract will also apply to the Mini Options on the same underlying security, with 10 Mini Option contracts counting as one regular

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

sized contract. Positions in both the regular sized option contract and Mini Options on the same security will be combined for purposes of calculating positions. Further, hedge exemptions will apply pursuant to ISE Rule 413(a), which the Exchange proposes to revise to provide that 10 (as opposed to 100) shares of the underlying security in the appropriate hedge for Mini Options and to make clear that the hedge exemptions apply to the position limits set forth in Rule 412(a) and any Supplementary Material thereto, as well as the position limits set forth in Rule 412(d).[3]

The Exchange believes that the proposal to list Mini Options will not lead to investor confusion. There are two important distinctions between Mini Options and regular options that are designed to ease the likelihood of any investor confusion. First, the premium multiplier for the proposed Mini Options will be 10, rather than 100, to reflect the smaller unit of trading. To reflect this change, the Exchange proposes to add Rule 709(c) which notes that bids and offers for an option contract overlying 10 shares will be expressed in terms of dollars per 1/10th part of the total value of the contract. Thus, an offer of ''.50'' shall represent an offer of $5.00 on an option contract having a unit of trading consisting of 10 shares. Second, the Exchange intends to designate Mini Options with different trading symbols than that designated for the regular sized contract. For example, while the trading symbol for regular option contracts for Apple, Inc. is AAPL, the Exchange proposes to adopt 7AAPL as the trading symbol for Mini Options on that same security.

The Exchange proposes to add Supplementary Material .12(b) to reflect that strike prices for Mini Options shall be set at the same level as for regular options. For example, a call series strike price to deliver 10 shares of stock at $125 per share has a total deliverable value of $1250, and the strike price will be set at 125. Further, pursuant to proposed new Supplementary Material .12(c) to Rule 504, the Exchange proposes to not permit the listing of additional series of Mini Options if the underlying is trading at $90 or less to limit the number of strikes once the underlying is no longer a high priced security. The Exchange proposes a $90.01 minimum for continued qualification so that additional series of Mini Options that correspond to standard strikes may be added even though the underlying has fallen slightly below the initial qualification standard. In addition, the underlying security must be trading above $90 for five consecutive days before the listing of Mini Option contracts in a new expiration month. This restriction will allow the Exchange to list strikes in Mini Options without disruption when a new expiration month is added even if the underlying has had a minor decline in price.

The same trading rules applicable to existing equity and ETF options will apply to Mini Options. The Exchange notes that by listing the same strike price for Mini Options as for regular options, the Exchange seeks to keep intact the long-standing relationship between the underlying security and an option strike price thus allowing investors to intuitively grasp the option's value, *i.e.,* option is in the money, at the money or out of the money. The Exchange believes that by not changing anything but the multiplier and the option symbol, as discussed above, retail investors will be able to grasp the distinction between regular size option contracts and Mini Options. The Exchange notes that The Options Clearing Corporation (''OCC'') Symbology is structured for contracts that have a deliverable of other than 100 shares to be designated with a numeric added to the standard trading symbol. Further, the Exchange believes that the contract characteristics of Mini Options are consistent with the terms of the Options Disclosure Document.

With regard to the impact of this proposal on system capacity, ISE has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of Mini Options. The Exchange has further discussed the proposed listing and trading of Mini Options with the OCC, which has represented that it is able to accommodate the proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities and Exchange Act of 1934 (''Exchange Act''),[4] in general, and with Section 6(b)(5) of the Exchange Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that investors would benefit from the introduction and availability of Mini Options by making options on high priced securities more readily available and as an investing tool at more affordable prices, particularly for average retail investors, who otherwise may not be able to participate in trading options on high priced securities. As noted above, the proposed rule change intends to adopt a different trading symbol to distinguish Mini Options from regular option contracts and therefore, ease any investor confusion as to the product they are trading. Moreover, the proposed rule change is designed to protect investors and the public interest by providing investors with an enhanced tool to reduce risk in high priced securities. In particular, Mini Options will provide retail customers who invest in high priced issues in lots of less than 100 shares with a means of protecting their investments that is currently only available to those who have positions of 100 shares or more. Further, the proposed rule change is limited to those securities that meet the Exchange's proposed listing criteria to ensure that only those securities that have significant options liquidity and therefore, customer demand, are selected to have Mini Options listed on them.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal**

[3] ISE Rule 414, Exercise Limits, refers to exercise limits that correspond to aggregate long positions as described in ISE Rule 412. The position limit established in a given option under ISE Rule 412 is also the exercise limit for such option. Thus, although the proposed rule change would not amend the text of ISE Rule 414 itself, the proposed amendment to ISE Rule 412 would have a corresponding effect to the exercise limits established in ISE Rule 414.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on the following:

1. NYSE Arca, Inc. recently proposed to allow the listing and trading of a ''mini'' option product.[6] The Exchange's proposal would allow the listing and trading of Mini Options contracts with contract specifications that differ from the similar product proposed by NYSE Arca. Due to the differences in contract specifications, these two similar products, even if on the same underlying security, would not necessarily be fungible. The Commission requests comment on whether the listing and trading of two distinct and non-fungible ''mini'' options products, particularly if on the same underlying security, would create investor confusion or raise any other issues or concerns for market participants.

2. As discussed above, the Exchange's proposal would provide for contract specifications for Mini Options that include: (i) The strike prices would be set at the same level for Mini Options as for corresponding standard contracts; (ii) the premium multiplier would be 10 for Mini Options (rather than 100 as for the standard contract) and the premium would be expressed in terms of dollars per 1/10th part of the total value of the contract; and (iii) the Exchange would designate Mini Options with different trading symbols than the standard contract. The Commission requests comment regarding the Exchange's proposed contract methodology.[7]

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2012–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–26 and should be submitted on or before May 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9771 Filed 4–23–12; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Securities Exchange Act Release No. 66725 (April 3, 2012), 77 FR 21120 (April 9, 2012) (SR–NYSEArca–2012–26).

[7] For a description of the proposed contract methodology for the mini option product proposed by NYSE Arca, *see id.*

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66830; File No. SR–NASDAQ–2012–002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, To Adopt an Alternative to the $4 Per Share Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either $2 Closing Price Per Share or $3 Closing Price Per Share, if Certain Other Listing Requirements are Met

April 18, 2012.

I. Introduction

On January 3, 2012, The NASDAQ Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to adopt an alternative to the $4 minimum bid price initial listing requirement for the Nasdaq Capital Market of either $2 or $3, if certain other listing requirements are met. The proposed rule change was published for comment in the **Federal Register** on January 20, 2012.[3] The Commission received one comment on the proposal.[4] On March 1, 2012, the Commission extended to April 19, 2012 the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[5] Nasdaq filed Amendment No. 1 to the proposed rule change on April 16, 2012.[6] The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66159 (January 13, 2012), 77 FR 3021 (January 20, 2012) (''Notice'').

[4] *See* letter from David A. Donohoe, Jr., Donohoe Advisory Associates LLC, to Elizabeth M. Murphy, Secretary, Commission, dated February 10, 2012 (''Donohoe Letter'').

[5] *See* Securities Exchange Act Release No. 66499 (March 1, 2012), 77 FR 13680 (March 7, 2012).

[6] In Amendment No. 1, Nasdaq modified the proposal by, among other things: (1) Changing the alternative minimum price requirement from a bid price to a closing price that must be maintained for at least five consecutive business days; (2) stating that in the event a security listed under the alternative standard reaches a $4 closing price, in determining whether the security qualifies for listing under the existing Nasdaq Capital Market listing requirement Nasdaq would review the security to ensure that it meets both the quantitative and qualitative listing standards and would require that the security maintain the closing price for five

Continued

publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Amended Proposal

Currently, issuers seeking to list their securities on the Nasdaq Capital Market must meet, among other things, the initial listing standards of the Nasdaq Capital Market. The initial listing standards include quantitative and qualitative requirements. To qualify for listing on the Nasdaq Capital Market, an issuer's security must, among other things, have a minimum bid price of at least $4 per share.[7]

Nasdaq proposes to add an alternative to the $4 minimum bid price per share requirement. Under the proposed alternative, a security would qualify for listing on the Nasdaq Capital Market if, for at least five consecutive business days prior to approval, the security has a minimum closing price of at least $3 per share, if the issuer meets the Equity or Net Income standards,[8] or at least $2 per share, if the issuer meets the Market Value of Listed Securities standard.[9]

Further, for issuers to qualify their securities under this alternative price requirement, the issuer must demonstrate that it has net tangible assets in excess of $2 million if the issuer has been in continuous operation for at least three years. If the issuer has been in continuous operation for less than three years, then the issuer must demonstrate net tangible assets in excess of $5 million. The issuer could also be listed under the alternative, lower $2 or $3 price requirement if the issuer has average revenue of at least $6 million for the last three years.[10]

Nasdaq is proposing to add new interpretative material in connection with this alternative price requirement. Proposed IM–5505 states that an issuer that qualifies its securities for initial listing under the alternative price requirement could become a ''penny stock'' if the issuer fails the net tangible assets and revenue tests after listing and does not satisfy any of the other exclusions from being a penny stock contained in Rule 3a51–1 under the Act.[11] Nasdaq would monitor issuers whose securities are listed under the alternative price requirement, and publish on its Web site on a daily basis a list of those companies that no longer satisfy the net tangible assets or revenue tests, nor any other exclusions from being a penny stock under Rule 3a51–1. Moreover, the proposed IM–5505, as amended, would provide that if an issuer initially lists its securities under the proposed alternative price requirement and the securities subsequently achieve a $4 closing price over at least five consecutive business days[12] and satisfy all other initial listing criteria, the securities would no longer be considered as having listed under the alternative price requirement, and would no longer be monitored for compliance with that requirement.[13] In Amendment No. 1, Nasdaq amended the proposal to state that the $4 closing price would be the Nasdaq Official Closing Price,[14] or if such price is not available, the consolidated closing price distributed under the applicable National Market System Plan. In Amendment No. 1, Nasdaq also stated that it would notify a company that initially lists its securities under the alternative standard of its subsequent qualification for listing under the $4 price requirement of Rule 5505(a)(1)(A).

Nasdaq's stated purpose for its proposal is to compete with NYSE Amex for initial listings of companies with securities priced between $2 and $4.[15] Currently, NYSE Amex is able to list companies priced between $2 and $4 without their securities being considered ''penny stocks,'' because NYSE Amex benefits from the ''grandfather'' exclusion set forth in Rule 3a51–1(a)(1) under the Act,[16] which does not apply to Nasdaq.[17] As

consecutive business days unless Nasdaq extends this five-day period to a longer period based on the facts and circumstances (Nasdaq would notify the issuer of any such qualification); (3) specifying that in determining whether a $4 closing price has been maintained for at least five consecutive business days in order to qualify for listing under the existing Nasdaq Capital Market listing requirement Nasdaq would use the Nasdaq Official Closing Price, if available, or the consolidated closing price; and (4) specifying that Nasdaq will update on a daily basis the list that it has proposed to publish on its Web site of securities that subsequently become penny stocks.

[7] *See* Nasdaq Rule 5505(a)(1). The term ''bid price'' refers to the closing bid price. *See* Nasdaq Rule 5005(a)(3).

[8] *See* Nasdaq Rule 5505(b)(1) and Nasdaq Rule 5505(b)(3). Under the Equity Standard, an issuer would need to meet, among other things: (A) stockholders' equity of at least $5 million; (B) market value of publicly held shares of at least $15 million; and (C) two year operating history. Under the Net Income Standard, an issuer would have to meet, among other things: (A) Net income from continuing operations of $750,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years; (B) stockholders' equity of at least $4 million; and (C) market value of publicly held shares of at least $5 million.

[9] *See* Nasdaq Rule 5505(b)(2). Under the Market Value of Listed Securities Standard, an issuer would need to meet, among other things: (A) Market value of listed securities of at least $50 million (current publicly traded issuers must meet this requirement and the price requirement for 90 consecutive trading days prior to applying for listing if qualifying to list only under the market value of listed securities standard); (B) stockholders' equity of at least $4 million; and (C) market value of publicly held shares of at least $15 million. Nasdaq proposes to revise Nasdaq Rule 5505(b)(2) in order to make it consistent with the proposal. In particular, Nasdaq Rule 5505(b)(2)(A) would be revised to delete the specific reference to $4 bid price requirement, since an issuer seeking to initially list its securities under the Market Value of Listed Securities Standard using the proposed alternative price requirement would have to maintain a closing price of at least $2 per share for 90 consecutive trading days. *See* email from Arnold Golub, Vice President, Office of the General Counsel, Nasdaq, to Sharon Lawson, Senior Special Counsel, Division of Trading and Markets, Commission, on April 18, 2012.

[10] Nasdaq would define net tangible assets or average revenues based on the issuer's most recently filed audited financial statements that satisfy the requirements of the Commission or Other Regulatory Authority, so long as such financial statements are dated less than 15 months prior to the date of listing. Nasdaq Rule 5005(a)(31) defines ''Other Regulatory Authority'' as ''(i) in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act; or (ii) in the case of an insurance company that is subject to an exemption issued by the Commission that permits the listing of the security, notwithstanding its failure to be registered pursuant to section 12(b), the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary state.''

[11] *See* 17 CFR 240.3a51–1.

[12] *See* Amendment No. 1, note 6, *supra.* As provided in proposed Amendment No. 1 to IM–5505, Nasdaq may extend this five-day period based on any fact or circumstance, including the margin of compliance, the trading volume, the Market Maker montage, the trend of the security's price, or information or concerns raised by other regulators concerning the trading of the security.

[13] In Amendment No. 1 Nasdaq also clarified that, for purposes of satisfying the Market Value of Listed Securities Standard to be no longer treated as listed under the alternative standard, a company would be required to maintain for 90 consecutive trading days the market value of their listed securities at $50 million and a $4 bid price, although this 90-day period may overlap with the five-consecutive-business-day period during which the company must maintain a $4 closing price. The company would, of course, also have to meet the other remaining quantitative and qualitative listing standards to no longer be considered listed under the alternative standard and therefore no longer subject to the penny stock rules. *See* Nasdaq Rule 5505(b)(2)(A).

[14] *See* Nasdaq Rule 4754(b)(4) and Amendment No. 1, *supra* note 6. In Amendment No. 1, Nasdaq stated that the Nasdaq Official Closing Price is set by the Nasdaq Closing Cross process, using an algorithm to find a price to match all eligible buy and sell orders at the close. Nasdaq stated that a closing cross occurs for every security listed on Nasdaq. If no trades occur as a result of the closing cross, then the Nasdaq Official Closing Price is the last matched trade that occurred that day on Nasdaq.

[15] *See* Notice, *supra* at Note 3.

[16] 17 CFR 240.3a51–1(a)(1).

[17] *See* Notice, *supra* at Note 3; NYSE Amex Company Guide Section 102(b). Nasdaq filed a petition seeking an exemption from Rule 3a51–1(a)(2)(i)(C) to allow Nasdaq to adopt initial listing standards identical to NYSE Amex's or, in the alternative, elimination of the grandfather provision. *See* Notice, *supra* at Note 3; *see also* Request for Rulemaking to Allow the Nasdaq

a result, in order to compete with NYSE Amex for listing securities priced between $2 and $4, and avoid their being considered ''penny stocks,'' Nasdaq's proposed Rule 5505(a)(1)(B) incorporates the net tangible assets and average revenue tests contained in the alternative penny stock exclusion set forth in Rule 3a51–1(g) under the Act [18] so that Nasdaq can initially list companies priced between $2 and $4 on the Nasdaq Capital Market that are not considered ''penny stocks.'' [19] As noted above, however, ongoing monitoring of listed companies relying on this alternative penny stock exclusion is required in order to assure they continue to meet the net tangible assets and average revenue tests set forth in that exclusion.

III. Comment Summary

The Commission received one comment letter on the proposal, in which the commenter recommended that the Commission initiate a process to amend Rule 3a51–1 under the Act [20] and then approve Nasdaq's proposal.[21] The commenter noted that NYSE Amex's initial listing price requirements—$3 per share under three of NYSE Amex's listing standards and $2 per share under a fourth listing standard—are lower than Nasdaq's current $4 per share initial listing price requirement.[22] The commenter stated his belief that this disparity is the main reason securities of companies trading between $2 and $4 per share list on NYSE Amex instead of the Nasdaq Capital Market.[23] The commenter also expressed his belief that the Commission should ''level the playing field'' between NYSE Amex and Nasdaq.[24] The commenter urged the Commission to focus on what changes to the penny stock rules must be made in order to eliminate the purported regulatory inequality between the two exchanges and carry out its mandate to ensure fair competition among the exchanges.[25]

Further, the commenter stated that the list of issuers published on Nasdaq's Web site would be ''unwieldy and certain to be less than fully transparent.'' [26] The commenter suggested that this aspect of Nasdaq's proposal would ''allow the NYSE Amex to maintain a competitive advantage over Nasdaq'' because issuers listing on Nasdaq would risk being deemed a ''penny stock'' in the future whereas issuers listing on NYSE Amex incur no such risk.[27] Again, the commenter suggested that the solution to this purported regulatory inequality is to amend the penny stock rules.[28]

IV. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[29] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[30] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The development and enforcement of meaningful listing standards for an exchange is of substantial importance to financial markets and the investing public. Among other things, listing standards provide the means for an exchange to screen issuers that seek to become listed and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest likely to generate depth and liquidity sufficient to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market, assuring compliance with its listing standards and detecting and deterring manipulative trading activity.

Rule 3a51–1 under the Act [31] defines ''penny stock'' as any equity security that does not satisfy one of the exceptions enumerated in subparagraphs (a) through (g) under the Rule. If a security is a penny stock, Rules 15g-1 through 15g-9 under the Act [32] impose certain additional disclosure and other requirements on brokers and dealers when effecting transactions in such securities. Currently, Nasdaq-listed securities are not considered penny stocks because they comply with the requirements in Rule 3a51–1(a)(2) under the Act,[33] which excepts from the definition of penny stock securities registered on a national securities exchanges that have initial listing standards that meet certain requirements, including a $4 bid price at the time of listing. Nasdaq listing standards currently include all the requirements to qualify for the penny stock exception under Rule 3a51–1(a)(2) so that today, once a security is initially listed on Nasdaq, the security will not be considered a penny stock for so long as it is listed on Nasdaq.

As noted above, the penny stock rules also exclude from the definition of penny stock, under a ''grandfather'' provision, securities registered on a national securities exchange that has been continually registered as such since April 20, 1992, and has maintained quantitative listing standards that are substantially similar to or stricter than those listing standards that were in place on the exchange on January 8, 2004.[34] NYSE Amex meets this standard, but Nasdaq, which was more recently registered as a national securities exchange, does not. Accordingly, NYSE Amex's initial listing price requirements of either $2 or $3 are grandfathered under this provision. Nasdaq has proposed its alternative price listing requirement in order to compete with NYSE Amex for listings of securities priced between $2 and $4.

The Commission has carefully considered Nasdaq's proposal under the Exchange Act requirements. Under Nasdaq's proposed alternative price standard, companies that maintain a $2 or $3 closing price for at least five consecutive business days would qualify for listing if, among other things, they meet the net tangible assets or average revenue tests of the alternative penny stock exclusion set forth in Rule

Capital Market to Adopt Initial Listing Price Requirements Identical to NYSE Amex, File No. 4–604 (May 25, 2010).

[18] 17 CFR 240.3a51–1(g).

[19] *See* Notice, *supra* at Note 3.

[20] 17 CFR 240.3a51–1(g).

[21] *See* Donohoe Letter.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f(b)(5).

[31] 17 CFR 240.3a51–1.

[32] 17 CFR 240.15g–1 *et seq.*

[33] 17 CFR 240.3a51–1(a)(2).

[34] *See* 17 CFR 240.3a51–1(a)(1).

3a51–1(g).[35] This presents novel issues since it is the first time that an exchange-listed security could become subject to the penny stock rules following initial listing if it no longer meets the net tangible assets or average revenue tests of the alternative exclusion, and does not qualify for another exclusion under the penny stock rules.[36] Further, unlike securities listed under Nasdaq's existing standards, which have a blanket exclusion from the penny stock rules, broker-dealers that effect recommended transactions in securities that originally qualified for listing under Nasdaq's alternative price standard would, among other things, under Rule 3a51–1(g), need to review current financial statements of the issuer to verify that it meets the applicable net tangible assets or average revenue test, have a reasonable basis for believing they remain accurate, and preserve copies of those financial statements as part of its records.

To facilitate compliance by broker-dealers, Nasdaq has committed to monitor the companies listed under the alternative price standard and to publish on its Web site, and update daily, a list of any such company that no longer meets the net tangible assets or average revenue tests of the penny stock exclusion, and which does not satisfy any other penny stock exclusion. Nasdaq also specifically reminds broker-dealers of their obligations under the penny stock rules. The Commission believes that, although the listing of securities that do not have a blanket exclusion from the penny stock rules and require ongoing monitoring may increase compliance burdens on broker-dealers, the additional steps proposed by Nasdaq to facilitate compliance should reduce those burdens and that, on balance, Nasdaq's proposal is consistent with the requirement of Section 6(b)(5) of the Act that the rules of an exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

Further, to address concerns about the potential manipulation of lower priced stocks to meet the initial listing requirements, Nasdaq has amended its proposal to require a company to maintain a $2 or $3 closing price for five consecutive business days prior to approval for listing, rather than on a single day, as proposed.[37] The Commission believes that requiring the minimum $2 or $3 closing price to be maintained for a longer period should reduce the risk that some might attempt to manipulate or otherwise artificially inflate the closing price in order to allow a security to qualify for listing. In addition, Nasdaq has noted that it would exercise its discretionary authority to deny initial listing if there were particular concerns about an issuer, such as its ability to maintain compliance with continued listing standards or if there were other public interest concerns. The Commission believes these additional measures, in conjunction with Nasdaq's surveillance procedures and pre-listing qualification review, should help reduce the potential for price manipulation to meet the new initial listing standards, and in this respect are designed to prevent fraudulent and manipulative acts and practices consistent with Section 6(b)(5) of the Act.

Additionally, under Nasdaq's proposal, if securities listed under the alternative price listing standard subsequently achieve a $4 closing price over at least five consecutive business days, and the issuer and the securities satisfy all other relevant initial listing criteria, then such securities would no longer be considered as having listed under the alternative price requirement. As with the initial $2 and $3 closing price requirements, the Commission has considered whether this provision could provide an incentive for market participants to manipulate the price of the security in order to achieve the $4 closing price and no longer be considered as having listed under the alternative price requirement. The Commission notes that Nasdaq has taken several steps to address these concerns. First, Nasdaq has represented that it would conduct a robust, wholesale review of the issuer's compliance with all applicable initial listing criteria, including qualitative and quantitative standards, at the time the $4 closing price is achieved, and would have a reasonable basis to believe that that price was legitimately, and not manipulatively, achieved. Secondly, Nasdaq has further represented that it is developing enhanced surveillance procedures to monitor securities listed under the alternative price requirement as they approach $4 to identify anomalous trading that would be indicative of potential price manipulation. Finally, the amended proposal requires the $4 closing price to be met over at least a five consecutive business day period in order to reduce the potential for price manipulation. The Commission believes that these measures should help reduce the potential for price manipulation to achieve the $4 closing price, and in this respect are designed to prevent fraudulent and manipulative acts and practices consistent with Section 6(b)(5) of the Act.[38]

In sum, the Commission believes that the Nasdaq proposal, as amended, reasonably addresses the concerns discussed above. We also note that Nasdaq's proposal is more rigorous than existing NYSE Amex listing standards in that it additionally requires the net tangible assets or average revenue test set forth in Rule 3a51–1(g) to be met. For the reasons set forth above, the Commission finds that the proposed rule change is consistent withthe Act, including the provisions of Section 6(b)(5) thereunder.

V. Solicitation of Comments of Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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–NASDAQ–2012–002 on the subject line.

[35] *See* 17 CFR 240.3a51–1(g). As set forth in note 9, *supra,* a company seeking to qualify under only the Market Value of Listed Securities Standard would, among other things, also be required to maintain for 90 consecutive trading days the market value of their listed securities at $50 million and the $2 price requirement prior to applying to list under the alternative standard.

[36] The Commission has previously noted the potential for abuse with respect to penny stocks. *See, e.g.,* Securities Exchange Act Release No. 49037 (January 16, 2004), 69 FR 2531 (January 8, 2004) (''Our original penny stock rules reflected Congress' view that many of the abuses occurring in the penny stock market were caused by the lack of publicly available information about the market in general and about the price and trading volume of particular penny stocks'').

[37] The Commission notes that Nasdaq's current rules only require a company to achieve a $4 bid price on a single day to qualify for initial listing, except for reverse merger companies, which have to maintain a closing price of $4 per share or higher for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days. *See* Nasdaq Rule 5110(c)(1)(B) and (c)(2)(B).

[38] We note that the commenter recommended that the Commission instead amend the penny stock rules to level the playing field between Nasdaq and NYSE Amex, and eliminate what he views as regulatory inequality between the two exchanges. The Commission, however, notes that the proposal before the Commission must be considered on its merits in accordance with the substantive and procedural requirements of Section 19(b) under the Act. 15 U.S.C. 78s(b).

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–NASDAQ–2012–002. 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 Nasdaq. 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–NASDAQ–2012–002 and should be submitted on or before May 15, 2012.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

Amendment No. 1 revises the proposal to, among other things, change the minimum bid price requirement to a closing price, require that a security must have a $4 closing price for at least five consecutive business days, rather than one day as originally proposed, before it will be reevaluated under both the qualitative and quantitative initial listing standards, and require daily publication of the list of securities that become subject to the penny stock rules. The Commission believes that the changes in Amendment No. 1 strengthen the proposal and, as discussed above, address concerns about the potential for manipulation. Accordingly, the Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[39] for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–NASDAQ–2012–002), as modified by Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9795 Filed 4–23–12; 8:45 am]

BILLING CODE 8011–01–P

[39] 15 U.S.C. 78s(b)(2).

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13050 and #13051]

Kentucky Disaster Number KY–00045

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–4057–DR), dated 03/16/2012.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 02/29/2012 through 03/03/2012.

DATES: *Effective Date:* 04/12/2012.

Physical Loan Application Deadline Date: 05/15/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 12/17/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of KENTUCKY, dated 03/16/2012, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Adair, Bath.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–9757 Filed 4–23–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Announcement of National Small Business Week Video Contest Under the America Competes Reauthorization Act of 2011

AGENCY: Small Business Administration (SBA).

ACTION: Notice.

SUMMARY: In celebration of National Small Business Week 2012, the U.S. Small Business Administration (SBA) announces a video contest (the ''Contest'') for small businesses to show how they have been assisted by an SBA program or service. This **Federal Register** notice is required under the Section 105 of the America COMPETES Reauthorization Act of 2011.

DATES: The submission period for entries begins 12 p.m. EDT, April 16, 2012, and ends 5 p.m. EDT, May 11, 2012. Winners will be announced during National Small Business Week 2012, unless the term of the Contest is extended by SBA.

FOR FURTHER INFORMATION CONTACT: Stephen Morris, Office of Communications & Public Liaison, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416; Telephone (202) 205–7422; *stephen.morris@sba.gov.*

SUPPLEMENTARY INFORMATION:

Competition Details

1. *Subject of the Competition:* In celebration of National Small Business Week 2012, the U.S. Small Business Administration is looking for creative videos from small businesses that show how they have been assisted by an SBA program or service, including, but not limited to, counseling, training, guaranteed loans, government contracts, and disaster recovery. The video contest will provide recognition to small businesses across the country that are utilizing SBA's programs and services to create jobs, serve as pillars in their communities, and to create the next big products that will help keep America competitive.

2. *Prize:* Winning videos will be shown during a Google+ Hangout hosted by SBA and the White House with SBA Administrator Karen Mills on May 23, 2012. The winners will be invited to participate in the Hangout with Administrator Mills. Winning videos will also be featured during National Small Business Week 2012 and may be used by the agency at other high-profile Agency functions.

3. Competition Rules:

1. *Eligibility to participate:* The contest is open to small businesses in the United States and its territories, including but not limited to, Puerto Rico, the U. S. Virgin Islands and Guam. Small businesses must meet SBA's size standards as stated in 13 CFR 121, and must have used at least one SBA program or service, including but not limited to: SBA Loan Programs (7a, 504, Microloan, etc.); SBA Contracting Programs or Certifications (8(a), HUBZone); SBA Disaster Assistance; Participating in counseling or training with an SBA Resource Partner service such as SCORE, Small Business Development Centers (SBDCs), Women's Business Centers (WBCs), Veterans Business Outreach Centers (VBOCs), or U.S. Export Assistance Centers (USEACs); or SBIC Portfolio Companies. Any videos developed with federal funding- either grant, contract, or loan proceeds—are not eligible to win. Federal employees and their immediate families, current SBA contractors and SBA grant recipients may enter the contest but are not eligible to win. ''Immediate family members'' include spouses, siblings, parents, children, grandparents, and grandchildren, whether as ''in-laws'', or by current or past marriage, remarriage, adoption, co-habitation or other familial extension, and any other persons residing at the same household location, whether or not related. The small business owner(s) must be a U.S. citizen or permanent resident and at least 18 years old to enter and win.

2. *Process for participants to register:* All Contest participants must enter the Competition through the Competition Web page on the *Challenge.gov* portal *http://smallbizvid.challenge.gov* by 5 p.m. EDT on May 11, 2012. Submissions will be accepted starting at 12 p.m. EDT on April 16, 2012. Contest participants should review all contest rules and eligibility requirements. Submissions must consist of an original video, 2 minutes or less in high-resolution format that answers the following questions within the video: ''What is the name of your small business and where is it located (City/State)?''; ''Which SBA program or service did you utilize?''; ''What were you able to accomplish from the SBA program or service you utilized? For example, were you able to hire new employees, start your business, expand your operations, purchase equipment etc.?''; ''What is the most rewarding part about starting or growing your small business?''; ''How has the assistance benefited the local community?''

3. *Basis on which the winners will be selected:* All eligible videos will be judged by a panel of senior SBA officials on the following criteria: Inspirational nature of the message for potential small business owners; Creativity and uniqueness of video concept; use of SBA programs and/or services; and audio and visual quality of the video. Winners will be selected based on an overall score. All judging is in SBA's sole discretion and all decisions are final. SBA senior officials intend to select three winning videos.

Authority: Public Law 111–358 (2011).

Dated: April 18, 2012.

Fred Baldassaro,

Assistant Administrator, Office of Communications and Public Liaison.

[FR Doc. 2012–9753 Filed 4–23–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7854]

Certification Pursuant to Section 7041(A) of The Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (DIV. I, Pub. L. 112–74)

By virtue of the authority vested in me as Secretary of State pursuant to section 7041(a) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74), I hereby certify that the Government of Egypt is meeting its obligations under the 1979 Egypt-Israel Peace Treaty.

This determination shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: March 8, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–9867 Filed 4–23–12; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 7855]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Quay Brothers: On Deciphering the Pharmacist's Prescription for Lip-Reading Puppets''

AGENCY: State Department.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Quay Brothers: On Deciphering the Pharmacist's Prescription for Lip-Reading Puppets'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, NY, from on or about August 12, 2012, until on or about January 7, 2013; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 16, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–9915 Filed 4–23–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7853]

Determination on Foreign Military Financing Assistance for Egypt

Pursuant to section 7041(a)(1)(C) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (''the Act''), I hereby determine that it is in the national security interest of the United States to waive the requirements of section 7041(a)(1)(B) of the Act with respect to the provision of Foreign Military Financing for Egypt, and I hereby waive this restriction.

This determination shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: March 23, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–9870 Filed 4–23–12; 8:45 am]

BILLING CODE 4710–31–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

Meeting No. 12–02

April 26, 2012

The TVA Board of Directors will hold a public meeting on April 26, 2012, in the Grand Ballroom at the General Morgan Inn, 111 North Main Street, Greeneville, Tennessee. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. (ET). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 8:30 a.m. (ET). Pre-registered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Status: Open.

Agenda

Chairman's Welcome.

Old Business

Approval of minutes of February 16, 2012, Board Meeting

New Business

1. Report from President and CEO
2. Financial Update
3. Report of the Finance, Rates, and Portfolio Committee
   - A. Proposed contract with Holtec, Inc., for Dry Cask Storage of Spent Nuclear Fuel
   - B. Proposed Optional Wholesale Rates
   - C. Contract amendments with two directly served industrial customers
   - D. Proposed contract with Energy Northwest for uranium and uranium enrichment services
4. Joint Report of the Finance, Rates, and Portfolio Committee and the Nuclear Oversight Committee
   - A. Watts Bar Nuclear Plant Unit 2 Cost and Schedule Estimate
5. Report of the Nuclear Oversight Committee
   - A. Nuclear Safety Policy
6. Report of the People and Performance Committee
7. Report of the Audit, Risk, and Regulation Committee
8. Report of the External Relations Committee
   - A. Renewal of the Regional Resource Stewardship Council Charter

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: April 19, 2012.

Ralph E. Rodgers,

General Counsel and Secretary.

[FR Doc. 2012–9918 Filed 4–20–12; 11:15 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Request for Public Comments Regarding Beneficiary Countries

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: In compliance with section 203(f) of the ATPA, as amended, 19 U.S.C. 3202(f)(2), the Office of the United States Trade Representative (USTR) is requesting the views of interested parties on whether the remaining designated beneficiary country (as of May 15, 2012), Ecuador, is meeting the eligibility criteria under the ATPA. (*See* 19 U.S.C. 3203(b)(6)(B)). This information will be used in the preparation of a report to the Congress on the operation of the program.

DATES: Public comments are due at USTR by noon, May 22, 2012.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2012–0006. If you are unable to provide submissions through *www.regulations.gov,* please contact Bennett Harman, at (202) 395–9446 to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Deputy Assistant USTR for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: The ATPA, as amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002, 19 U.S.C. 3201 *et seq.,* provides trade benefits for eligible Andean countries. The original Act allowed only Bolivia, Ecuador, Colombia, and Peru to be considered as beneficiary countries if they met eligibility requirements laid out in 19 U.S.C. 3203(b)(6)(B).

In Proclamation 8323 of November 25, 2008, the President determined that Bolivia no longer satisfies the eligibility criteria related to counternarcotics and suspended Bolivia's status as a beneficiary country for purposes of the ATPA and ATPDEA. In a June 30, 2009 report to Congress, the President did not determine that Bolivia satisfies the requirements set forth in section 203(c) of the ATPA (19 U.S.C. 3202(c)) for being designated as a beneficiary country. Therefore, as provided for in section 208(a)(3) of the Act (19 U.S.C. 3206(a)(3)), no duty free treatment or other preferential treatment extended under the ATPA remained in effect with respect to Bolivia after June 30, 2009.

Further, Section 201 of the Omnibus Trade Act of 2010 (Pub. L. 111–344), which re-authorized the ATPDEA, terminated any duty free treatment or other preferential treatment available under ATPDEA to Peru, effective December 31, 2010.

On February 12, 2011, the trade benefits conferred under the ATPDEA lapsed but were re-instated retroactively on October 21, 2011 for eligible countries via section 501 of the United States-Colombia Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 Note). Since January 1, 2011, only Ecuador and Colombia have been eligible beneficiary countries, pursuant to statute. Colombia will no longer be an eligible beneficial country under the ATPDEA as of May 15, 2012, when the U.S.–Colombia Trade Promotion Agreement enters into force (19 U.S.C. 3805 Note).

Section 203(f) of the ATPA (19 U.S.C. 3202(f)) requires the USTR, not later than June 30, 2012, to submit to Congress a report on the operation of the ATPA. Before submitting such report, USTR is required to request comments on whether beneficiary countries are meeting the criteria set forth in 19 U.S.C. 3203(b)(6)(B) (which incorporates by reference the criteria set forth in sections 3202(c) and (d)). USTR refers interested parties to the **Federal Register** notice published on August 15, 2002 (67 FR 53379), for a full list of the eligibility criteria.

Public Comment Requirements for Submissions: Persons submitting written comments must do so in English and must identify (on the first page of the submission) ''USTR Report on Operation of the Andean Trade Preference Act.'' Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2012–0006. In order to be assured of consideration, comments should be submitted by noon, May 22, 2012.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0006 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comments'' field, or by attaching a document using an ''Upload File'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''see attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Bennett Harman at (202) 395–9675. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov*. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov*. The non-confidential summary will be placed in the docket and open to public inspection.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Bennett Harman in advance of transmitting a comment. Mr. Harman should be contacted at (202) 395–9446. General information concerning USTR is available at *http://www.ustr.gov.*

Inspection of Submissions: Submissions in response to this notice, except for information granted ''business confidential'' status, will be available for public viewing at *http://www.regulations.gov.* Such submissions may be viewed by entering the docket number USTR–2012–0006 in the search field at: *http://www.regulations.gov*.

Douglas Bell,

Assistant U.S. Trade Representative for Trade Policy & Economics.

[FR Doc. 2012–9838 Filed 4–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Waiver of Acceptable Risk Restriction for Launch and Reentry

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of waiver.

SUMMARY: This notice concerns two petitions for waiver submitted to the FAA by Space Exploration Technologies Corp. (SpaceX): a petition to waive the restriction that the risk to the public from the launch of an expendable launch vehicle not exceed an expected average number of 0.00003 casualties ($E_c \leq 30 \times 10^{-6}$) from debris; and a petition to waive the restriction that the combined risk to the public from the launch and reentry of a reentry vehicle not exceed an expected average number of 0.00003 casualties ($E_c \leq 30 \times 10^{-6}$). The FAA grants both petitions.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this waiver, contact Charles P. Brinkman, Licensing Program Lead, Commercial Space Transportation—Licensing and Evaluation Division, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7715; email: *Phil.Brinkman@faa.gov.* For legal questions concerning this waiver, contact Laura Montgomery, Senior Attorney for Commercial Space Transportation, AGC–200, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3150; email: *Laura.Montgomery@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2011, SpaceX submitted a petition, which it updated on February 9, 2012, to the Federal Aviation Administration's (FAA's) Office of Commercial Space Transportation (AST) requesting two waivers with respect to launch and reentry licenses for flight 003 of a Falcon 9 launch vehicle (Falcon 9 003) carrying a Dragon reentry vehicle. First, SpaceX requested a waiver of 14 CFR 417.107(b)(1), which prohibits the launch of an expendable launch vehicle if the total expected average number of casualties (E_c) for the launch exceeds 0.00003 for risk from debris. Second, SpaceX requested a waiver of 14 CFR 431.35(b)(1)(i),[1] which prohibits a

[1] Even though Dragon is a reentry vehicle and not a reusable launch vehicle, 14 CFR 435.35

mission involving a reentry vehicle when the E_c for both the launch and reentry together (referred to as a ''mission'' for purposes of part 431) exceeds 0.00003 for debris.

The FAA licenses the launch of a launch vehicle and reentry of a reentry vehicle under authority granted to the Secretary of Transportation in the Commercial Space Launch Act of 1984, as amended and re-codified by 51 U.S.C. Subtitle V, chapter 509 (Chapter 509), and delegated to the FAA Administrator and the Associate Administrator for Commercial Space Transportation, who exercises licensing authority under Chapter 509.

SpaceX is a private commercial space flight company. It has entered into a Space Act Agreement with the National Aeronautics and Space Administration (NASA) as part of NASA's Commercial Orbital Transportation Services (COTS) program. The COTS program is designed to stimulate efforts by the private sector to demonstrate safe, reliable, and cost-effective space transportation to the International Space Station. Currently, no domestic U.S. companies or entities provide transportation or supplies to the International Space Station.

The petition addresses an upcoming demonstration flight that SpaceX plans to undertake as part of the COTS program. This flight is a long-duration cargo mission to the International Space Station to demonstrate flight and berthing capabilities. SpaceX's Falcon 9 launch vehicle will launch from Cape Canaveral Air Force Station, and deploy SpaceX's reentry vehicle, Dragon, once on orbit. Once Dragon is on orbit, it will be subjected to a ground-implemented health check. The health check is designed to check time-dependent variables to ensure the health and functionality of the propulsion, power, and other safety critical subsystems. Once Dragon passes the health check and completes orbital phasing by firing its onboard thrusters, it will berth with the International Space Station. After a period of time determined by NASA, Dragon will depart from the International Space Station. When SpaceX issues a ground command or Dragon passes its onboard health check, Dragon will conduct a guided reentry to land in the Pacific Ocean.

The FAA advised SpaceX that the preliminary calculation of E_c for both the launch and the entire mission exceeded the 0.00003 limit imposed by section 417.107(b)(1) and section 431.35(b)(1)(i). SpaceX, therefore, seeks a waiver of these risk requirements.

Waiver Criteria

Chapter 509 allows the FAA to waive a license requirement if the waiver (1) will not jeopardize public health and safety, safety of property; (2) will not jeopardize national security and foreign policy interests of the United States; and (3) will be in the public interest. 51 U.S.C. 50905(b)(3) (2011); 14 CFR 404.5(b) (2011).

Sections 417.107(b)(1) and 431.35(b)(1)(i) Waiver Petition

Section 417.107(b)(1) prohibits the launch of a launch vehicle if the total E_c for the launch exceeds 0.00003. Section 431.35(b)(1)(i) prohibits a launch and reentry mission if the total E_c for that mission exceeds 0.00003. For reasons described below, the FAA waives the restrictions in section 417.107(b)(1) and section 431.35(b)(1)(i) to allow SpaceX to conduct a mission whose total E_c is currently calculated to be between approximately 0.000098 and 0.000121. The lowest number in the range accounts for a nighttime launch and the upper number accounts for a daytime launch. The FAA recognizes that any estimate of the E_c for the F9–003 launch includes substantial uncertainties, and that the risk number computed on the day of launch may be different from the current range listed above. In order to account for the potential variation in the E_c for the F9–003 computed on the day of launch, the FAA will allow SpaceX to conduct a mission where launch risk does not exceed 0.00013.

A. Launch of the Falcon 9 Vehicle

The FAA waives the debris risk requirement of section 417.107(b)(1) because the Falcon 9 003 launch will not jeopardize public health and safety or safety of property, a national security or foreign policy interest of the United States, and is in the public interest.

i. Public Health and Safety and Safety of Property

The Falcon 9 003 launch is the first launch for which the FAA has ever waived the E_c requirement of 0.00003 for launch. The 45th Space Wing Range Safety calculated the collective risk to the public from the Falcon 9 003 launch to be between approximately 0.000098 and 0.000121. The low end of this calculation is less than the 0.0001 expected casualty criterion used by NASA, the United States Air Force, and other U.S. National Test Ranges. *See* U.S. Air Force Instruction 91–217, *Space Safety and Mishap Prevention Program* (2010); NASA Procedural Requirements 8715.5 Rev A, *Range Flight Safety Program* (2010); Range Commanders Council (RCC) Standard 321–10, *Common Risk Criteria Standards for National Test Ranges* (2010). The increase in the E_c for this third launch of the Falcon 9 is largely attributable to two factors. First, the launch will follow a specific trajectory to reach the International Space Station. In order to place Dragon in the correct orbit, and accounting for Falcon 9's launch location of Cape Canaveral, Falcon 9 must take a flight path that overflies more populated areas than the first two flights, and thus results in a higher E_c. Second, the FAA's regulations identify a large credible range of relatively high values for the estimated probability of failure to the launch vehicle based on the small number of launches the Falcon 9 has completed. *See* Table A417–3 Launch Vehicle Failure Probability Reference Estimates and Confidence Bounds of [Vehicles] with Two or More Flights, 14 CFR part 417, App. A. This probability of failure is one of the most critical variables in the E_c calculations.

The flight path for the Falcon 9 is severely constrained by the mission objectives and the propellant available in the Falcon 9 and Dragon. Desired mission objectives include navigation to, and berthing with the International Space Station. Preliminary objectives include a demonstration of the Dragon's motion control, which is accomplished through controlled firing of onboard thrusters. This demonstration is comprehensive in nature to ensure safe approach and berthing with the International Space Station, utilizing considerable fuel. In order to meet all Dragon objectives, including de-orbit burns and a reasonable fuel reserve, the launch vehicle trajectory must place the Dragon in an initial location such that it has adequate fuel for all mission objectives.

This mission intends to demonstrate orbital control capability for the Dragon capsule. Should this objective be successfully demonstrated, future Dragon missions to the International Space Station will not require further demonstrations of on-orbit navigational control. Additionally, the Dragon fuel requirements will be lower, and therefore the required launch vehicle trajectory will result in a lower E_c.

The current E_c requirement for government launches from U.S. National Test Ranges is 0.0001, which, because it comprises debris, toxics, and overpressure, means that the federal launch ranges can permit the risk attributable to debris to exceed the FAA's risk threshold. *See* Air Force

incorporates and applies section 431.35 to all reentry vehicles.

Instruction 91–217, *Space Safety and Mishap Prevention Program* (2010). The U.S. Air Force approved a government launch of a Titan, where the risk ranged from 145 to 317 in a million. Dept. of the Air Force Memorandum, Overflight Risk Exceedance Waiver for Titan IV B–30 Mission, (Apr. 4, 2005). That risk was mainly attributable to downrange overflight, as is the case for the Falcon 9 launch. Additionally, of historical interest, during Space Shuttle launches debris risk routinely exceeded U.S. Air Force and FAA established risk criteria, mainly due to a large number of visitors on Kennedy Space Center property. The FAA notes that the F9–003 launch is a NASA-sponsored mission, flying a similar trajectory as previous Space Shuttle missions going to the International Space Station. The FAA also notes that the E_c for the F9–003 launch, as currently calculated, may exceed the E_c requirement for government launches from U.S. Government ranges, but only by a small amount relative to the modeling and input data uncertainties, particularly the probability of failure. Based on this uncertainty, as well as the fact that Falcon 9's E_c is smaller than that of a Space Shuttle and is close to the requirement for government launches, granting a waiver in this case would not jeopardize public health and safety or safety of property.

ii. National Security and Foreign Policy Implications

The FAA has identified no national security or foreign policy implications associated with granting this waiver.

iii. Public Interest

The waiver is consistent with the public interest goals of Chapter 509. Three of the public policy goals of Chapter 509 are: (1) To promote economic growth and entrepreneurial activity through use of the space environment; (2) to encourage the United States private sector to provide launch and reentry vehicles and associated services; and (3) to facilitate the strengthening and expansion of the United States space transportation infrastructure to support the full range of United States space-related activities. *See* 51 U.S.C. 50901(b)(1), (2), (4). Additionally, in the Notice of Proposed Rulemaking and the Final Rule for Commercial Space Transportation Licensing Requirements, the FAA contemplated launches carrying government payloads for a critical national need exceeding the E_c requirements. *Commercial Space Transportation Licensing Regulations,* Notice of Proposed Rulemaking, 62 FR 13230 (Mar. 19, 1997). The Final Rule noted that, as recognized in the NPRM, commercial launches may carry government payloads, and a waiver of the risk requirement might be warranted. *Commercial Space Transportation Licensing Regulations,* Final Rule, 64 FR 19605 (Apr. 21, 1999).

With the elimination of the Space Shuttle Program, the U.S. is seeking other means of reaching the International Space Station. NASA is using the COTS Program to develop the capability to resupply the International Space Station. There currently exists a need for additional means to supply the International Space Station. To date, the Russian Soyuz-U rocket,[2] European ATV and the Japanese HTV foreign vehicles have demonstrated the capability to provide supplies to the International Space Station. The COTS Program exists to provide a reliable, domestic capability for supplying the International Space Station, the importance of which is highlighted by the recent Russian failure. SpaceX's demonstrated capability to connect with the International Space Station would further the public interest in the U.S. ability to transit to, and support the ISS. The FAA notes that currently there is no domestic capability to supply the International Space Station, and has taken this fact into account when determining the public interest.

The COTS Program was established to develop a robust domestic commercial space transportation capability. This capability would provide the United States with the ability to resupply the International Space Station. As such, granting SpaceX's waiver request is consistent with Chapter 509's policy goals because it: (1) Promotes SpaceX's entrepreneurial activity in the space environment; (2) encourages SpaceX, a private U.S. company, to develop and launch new launch and reentry vehicles; and (3) facilitates the expansion of the United States space transportation infrastructure by sustaining NASA's COTS program.

B. Reentry of the Dragon Capsule

SpaceX's request for a waiver of the requirements in section 431.35(b)(1)(i) raises the same issues as its previous request for waiver of mission risk for the Falcon 9 002 launch and reentry of Dragon. For the reasons stated in a previous Waiver of Acceptable Mission Risk Restriction for Reentry and a Reentry Vehicle, 75 FR 75619 (Dec. 6, 2010) the FAA is waiving the requirements of section 431.35(b)(1)(i) for the Falcon 9 003 launch and reentry of Dragon.

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

Kenneth Wong,

Licensing and Evaluation Division Manager, Commercial Space Transportation.

[FR Doc. 2012–9737 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–13–P

[2] On August 24, 2011, a Soyuz rocket engine carrying a Progress resupply ship to the International Space Station failed. This failure delayed a mission to provide supplies to the people working at the International Space Station, including U.S. astronauts. The Russians resolved this issue and successfully launched the Soyuz-U on October 30, 2011. On November 2, 2011, an M–13M cargo ship successfully berthed with the International Space Station.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0043]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel STEPPIN UP; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

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 24, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012 0043. 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 STEPPIN UP is:

Intended Commercial Use of Vessel: ''All Inclusive Chartering, up to 10 days, full and half day charters, pick up and discharge passengers at same ports.''

Geographic Region: ''New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Louisiana, and Texas.''

The complete application is given in DOT docket MARAD–2012 0043 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).

By Order of the Maritime Administrator.

Dated: April 19, 2012

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–9879 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0042]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel JOJO MARIA; Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

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 24, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012 0042. 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 JOJO MARIA is:

Intended Commercial Use of Vessel: ''Private Sailboat Charter Tours from City Island located in the Bronx, New York.''

Geographic Region: ''New York, Connecticut.''

The complete application is given in DOT docket MARAD–2012 0042 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).

By Order of the Maritime Administrator.

Dated: April 19, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–9873 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss recommendations to the Secretary on the integration of marine highways into the national transportation system and the development of a steady and reliable funding mechanism for port infrastructure development. A public comment period will commence at 1:30 p.m. on May 8, 2012. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by May 1, 2012. Commenters will be placed on the agenda in the order in which notifications are received. If time

allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by May 11, 2012.

DATES: The meeting will be held on Tuesday, May 8, 2012, from 9:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Media Center at the U.S. Department of Transportation Headquarters, 1200 New Jersey Ave. SE., Washington, DC 20590. To participate via teleconference, please contact Richard Lolich at the Maritime Administration as indicated below.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–0704; Maritime Administration, MAR–540, Room W21–310, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; *richard.lolich@dot.gov.*

Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B.

Dated: April 19, 2012.

By order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–9835 Filed 4–23–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration Electric Vehicle Safety Technical Symposium

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Announcement of public symposium.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is announcing a technical symposium that will be held in Washington, DC on May 18, 2012 to discuss safety considerations for electric vehicles powered by lithium-ion (Li-ion) batteries. The symposium will include brief NHTSA presentations outlining current agency research and activities related to Li-ion batteries and Li-ion battery-powered vehicles, as well as presentations by the Department of Energy, voluntary standards bodies, and automotive and battery manufacturers. Information on the date, time, location, and framework for this public event is included in this notice. Because of space limitations, registration by May 11, 2012 is highly recommended. There are no fees to register or to attend this event.

DATES: The symposium will be held on May 18, 2012, at the location indicated in the **ADDRESSES** section below. The symposium will start at 8:30 a.m. and is scheduled to continue until 4:30 p.m., local time. However, the symposium will continue beyond 4:30 p.m. if the presiding official believes that allowing the discussion to extend beyond that time would be beneficial. If you plan to attend the technical symposium, please follow the registration process described under **FOR FURTHER INFORMATION CONTACT** by May 11, 2012. Depending on the available space, registration may be accepted after that date.

ADDRESSES: The May 18, 2012 symposium will be held in the West Atrium of the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Registration. The meeting will be open to the public and will be physically accessible to people with disabilities. Due to space limitations, pre-registration is highly recommended. If you would like to attend the symposium, please register by the date specified under the **DATES** section above, by visiting *http://www.nhtsa.gov/nhtsa/events/register.cfm* and filling out the on-line form provided. To register, you will be required to provide your first and last name and an email address, and indicate whether you are a U.S. citizen. Please specify any requests for sign language interpretation, other auxiliary aids, or other reasonable accommodation by contacting Mr. Chris Morris, whose contact information is listed under **FOR FURTHER INFORMATION CONTACT,** no later than May 11, 2012. Last minute requests will be accepted, but may be impossible to fulfill.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Charlie Case, NHTSA Office of Vehicle Safety Compliance, telephone (202) 366–5319, email address: *charlie.case@dot.gov.*

For logistical issues: Mr. Chris Morris, NHTSA Office of Vehicle Safety, telephone (202) 493–2218; email address: *christopher.morris@dot.gov.*

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA) is hosting a public technical symposium to discuss regulatory and safety considerations for lithium-ion (Li-ion) battery-powered vehicles.

Electric vehicles show great promise as an innovative and fuel-efficient option for American drivers. Significant research and other activities related to the safety of these vehicles are ongoing by NHTSA, the Department of Energy (DOE), vehicle and battery manufacturers, standards organizations, and others. The purpose of this symposium is to bring together relevant stakeholders to share information on the status of safety activities related to the use of Li-ion batteries in vehicles designed for on-road use.

In recognition of the growth in the vehicle segment, NHTSA has been focusing increased attention on Li-ion battery safety. For example, the agency has been working with vehicle manufacturers to ensure they have appropriate post-crash protocols. Earlier this year, with the assistance of the National Fire Protection Association, DOE, and others, NHTSA issued interim guidance for consumers, emergency responders, and tow truck operators. This guidance was aimed at increasing awareness about the specific attributes related to Li-ion battery-powered vehicles and at identifying appropriate safety measures to be used in the event of a crash involving such a vehicle.

At the same time, NHTSA is actively involved in developing a body of research regarding electric vehicle safety. The agency is assessing the performance and functional requirements of battery storage systems. NHTSA is conducting a detailed Failure Analysis approach to help the agency to identify the problems that can occur in Li-ion batteries and the severity of their occurrence. This will help NHTSA prioritize its research and potential rulemaking in this area.

Technical Symposium Agenda. NHTSA expects that the following topics will be part of the symposium: NHTSA's ongoing research on Li-ion battery safety; DOE's perspective on Li-ion battery safety; an overview of industry voluntary standards applicable to Li-ion battery-powered vehicles; emergency response procedures relevant to Li-ion battery-powered vehicles; and other safety issues, including those related to battery management systems, battery design parameters, and safety testing.

Technical Symposium Procedures and Logistics. NHTSA will conduct the symposium informally. The symposium will include brief presentations from NHTSA, DOE, voluntary standards bodies, and automotive and battery manufacturers. There will be opportunities for attendees to ask questions of NHTSA and of the technical presenters.

To attend this symposium, please follow the registration process described under **FOR FURTHER INFORMATION CONTACT** by the date specified under the **DATES** section. Pre-registration is highly recommended because of security and space limitation reasons. Depending on the available space, late registration may be accepted. After registration, NHTSA will send attendees follow-up

information regarding symposium day logistics (i.e., directions to the building, parking accommodations, etc.).

For security purposes, government-issued photo identification is required to enter the Department of Transportation building. Non-U.S. citizens will be required to show passports. To allow sufficient time to clear security and enter the building, NHTSA recommends that symposium participants arrive 30 to 60 minutes prior to the start of the event.

Issued on: April 18, 2012.

David L. Strickland,

Administrator.

[FR Doc. 2012–9786 Filed 4–19–12; 4:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 303X); Docket No. AB 980 (Sub-No. 1X)]

Union Pacific Railroad Company—Abandonment of Freight Easement Exemption—in Alameda and Santa Clara Counties, CA (San Jose Industrial Lead); Santa Clara Valley Transportation Authority—Abandonment of Residual Common Carrier Obligation Exemption—in Alameda and Santa Clara Counties, CA (San Jose Industrial Lead)

On April 4, 2012, Union Pacific Railroad Company (UP) and Santa Clara Valley Transportation Authority (VTA) jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for UP to abandon its freight operating easement on, and for VTA, the owner of the line, to abandon its residual common carrier obligation for, a portion of the San Jose Industrial Lead between milepost 7.35 near Warm Springs and milepost 16.30 near San Jose, a distance of 8.95 miles, in Alameda and Santa Clara Counties, CA [1] The line traverses United States Postal Service Zip Codes 95116, 95122, 95112, 95133 and 94533.

In addition to an exemption from the provisions of 49 U.S.C. 10903, petitioners seek an exemption from 49 U.S.C. 10904 (offer of financial assistance (OFA) procedures) and 49 U.S.C. 10905 (public use provisions). In support, petitioners state that the line is to be abandoned for freight rail service, but will be retained and rebuilt for future inclusion in the Bay Area Rapid Transit System (BART). Petitioners assert that the right-of-way is thus needed for a valid public purpose and that there is no other overriding public need for continued freight rail service.[2] These requests will be addressed in the final decision.

According to petitioners, the line does not contain Federally granted rights-of-way. Any documentation in petitioners' possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 23, 2012.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 14, 2012. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket Nos. AB 33 (Sub-No. 303X) and AB 980 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) petitioners' representatives, Mack H. Shumate, Jr., 101 North Wacker Drive, Suite 1920, Chicago, IL 60606 (UP), and Charles A. Spitulnik, 1001 Connecticut Ave. NW., Suite 800, Washington, DC 20036 (VTA). Replies to the petition are due on or before May 14, 2012.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

Decided: April 19, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–9815 Filed 4–23–12; 8:45 am]

BILLING CODE 4915–01–P

[1] According to petitioners, VTA purchased the line from UP in December 2002, with UP retaining an operating easement. *See Santa Clara Valley Transp. Auth.—Acquisition Exemption—Union Pac. R.R.,* FD 34292 (STB served Dec. 26, 2002, and Apr. 30, 2003).

[2] Petitioners state that the two former shippers on the line, Clean Harbors San Jose LLC and Frank-Lin Distillers Products Ltd., have, pursuant to agreements with VTA, relocated and will continue to be rail served at their new locations.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A, Form 1040EZ, Form 1040NR, Form 1040NR–EZ, Form 1040X, and All Attachments to These Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR–EZ; Form 1040X; and all attachments to these forms (see the Appendix to this notice).

DATES: Written comments should be received on or before May 24, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Chief, RAS:R:TAM, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each ''collection of information'' that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. Burden estimates for each control number are displayed in (1) PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) OMB's database of approved information collections.

Taxpayer Burden Model

The Individual Taxpayer Burden Model (ITBM) estimates burden experienced by individual taxpayers when complying with Federal tax laws and incorporates results from a survey of tax year 2007 individual taxpayers, conducted in 2008 and 2009. The approach to measuring burden focuses on the characteristics and activities undertaken by individual taxpayers in meeting their tax return filing obligations.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers in complying with the Federal tax system and are estimated separately. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples include tax return preparation fees, the purchase price of tax preparation software, submission fees, photocopying costs, postage, and phone calls (if not toll-free).

The methodology distinguishes among preparation method, taxpayer activities, taxpayer type, filing method, and income level. Indicators of tax law and administrative complexity, as reflected in the tax forms and instructions, are incorporated into the model.

Preparation methods reflected in the model are as follows:

- Self-prepared without software,
- Self-prepared with software, and
- Use of a paid preparer or tax professional.

Types of taxpayer activities reflected in the model are as follows:

- Recordkeeping,
- Tax planning,
- Gathering tax materials,
- Use of services (IRS and other),
- Form completion, and
- Form submission (electronic and paper).

Taxpayer Burden Estimates

Summary level results using this methodology are presented in Table 1 below. The data shown are the best forward-looking estimates available for income tax returns filed for tax year 2011. Note that the estimates presented in this table differ from those published in the tax form instructions and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

Table 1 shows burden estimates based upon current statutory requirements as of October 21, 2011 for taxpayers filing a 2011 Form 1040, 1040A, or 1040EZ tax return. Time spent and out-of-pocket costs are presented separately. Time burden is broken out by taxpayer activity, with recordkeeping representing the largest component. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples include tax return preparation and submission fees, postage and photocopying costs, and tax preparation software costs. While these estimates do not include burden associated with post-filing activities, IRS operational data indicate that electronically prepared and filed returns have fewer arithmetic errors, implying lower post-filing burden.

Reported time and cost burdens are national averages and do not necessarily reflect a ''typical'' case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. For instance, the estimated average time burden for all taxpayers filing a Form 1040, 1040A, or 1040EZ is 18 hours, with an average cost of $230 per return. This average includes all associated forms and schedules, across all preparation methods and taxpayer activities. The average burden for taxpayers filing Form 1040 is about 22 hours and $290; the average burden for taxpayers filing Form 1040A is about 10 hours and $120; and the average for Form 1040EZ filers is about 7 hours and $50.

Within each of these estimates there is significant variation in taxpayer activity. For example, non-business taxpayers are expected to have an average burden of about 12 hours and $150, while business taxpayers are expected to have an average burden of about 32 hours and $410. Similarly, tax preparation fees and other out-of-pocket costs vary extensively depending on the tax situation of the taxpayer, the type of software or professional preparer used, and the geographic location.

The estimates include burden for activities up through and including filing a return but do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer arithmetic errors, implying a lower associated post-filing burden.

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR–EZ, Form 1040X; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Current Actions: The change in estimated aggregate compliance burden can be explained by three major sources—technical adjustments, statutory changes, and discretionary agency (IRS) actions.

Technical Adjustments—The largest adjustments are from incorporation of new taxpayer data, updated forecasting targets, and refinements to the estimation methodology. The incorporation of new taxpayer data to better reflect the impact of the current economic environment provides the largest adjustment.

Statutory Changes—The primary drivers for the statutory changes are credits provided in the American Recovery and Reinvestment Act (ARRA)

of 2009 and implementation of new reporting requirements in the Emergency Economic Stabilization Act of 2008. The provisions listed below are more than offset by the impact of the expiring ARRA provision.

Primary examples include:

New or Changed Provisions

Capital Gains and Losses: In most cases, transactions for capital gains and losses must now be entered on the new Form 8949 and the subtotal of the sales price, basis, and adjustment amounts from Form 8949 are carried to the Schedule D. Up to six separate Forms 8949 could be required depending on the holding period of the assets, whether or not basis related to the transaction was reported by the broker, and whether a reporting document was received for the transaction. These changes were made to coincide with the new Form 1099–B basis reporting.

The number of filers affected: 21,000,000.

Alternative Minimum Tax: The AMT exemption amount was increased to $48,450 ($74,450 if married filing jointly or a qualified widow; $37,225 if married filing separately).

Had this legislation not been enacted, at least 20 million additional taxpayers would have been required to file Form 6251, Alternative Minimum Tax.

Expired Provisions

The Making Work Pay Credit expired.

The number of filers who claimed this provision in 2010: 100,000,000.

IRS Discretionary Changes—IRS discretionary changes include expanded e-file availability, registration fees for paid preparers, and fees for a new competency exam for certain preparers.

Discretionary changes also include a change for the repayment of the first-time homebuyer credit. Repayment may now be made without attaching Form 5405.

The number of filers affected: 550,000.

These initiatives have a net effect of a slight decrease in time that is not shown due to rounding as well as a net effect of increasing money burden.

Total—Taken together, the changes discussed above have decreased the total reported burden by 22,000,000 hours.

Type of Review: Revision of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 153,200,000.

Total Estimated Time: 2.679 billion hours (2,679,000,000 hours).

Estimated Time per Respondent: 17.49 hours.

Total Estimated Out-of-Pocket Costs: $34.131 billion ($34,131,000,000).

Estimated Out-of-Pocket Cost per Respondent: $230.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 19, 2012.

Robert Dahl,

Treasury Departmental Clearance Officer.

TABLE 1—ESTIMATED AVERAGE TAXPAYER BURDEN FOR INDIVIDUALS BY ACTIVITY

[The average time and costs required to; complete and file Form 1040, Form 1040A, Form 1040EZ, their schedules, and accompanying forms will vary depending on individual circumstances. The estimated averages are:]

Primary form filed or type of taxpayer	Percentage of returns	Average time burden (hours)						
		Total Time *	Record-keeping	Tax planning	Form completion	Form submission	All other	Average cost (dollars) **
All taxpayers Primary forms filed	100	18.0	8.0	2.0	4.0	1.0	3.0	230
1040	68	22.0	10.0	3.0	4.0	1.0	3.0	290
1040A	19	10.0	4.0	1.0	3.0	1.0	2.0	120
1040EZ	13	7.0	2.0	1.0	2.0	1.0	1.0	50
Nonbusiness ***	70	12.0	5.0	2.0	3.0	1.0	2.0	150
Business ***	30	32.0	16.0	4.0	6.0	1.0	4.0	410

* Detail may not add to total time due to rounding.

** Dollars rounded to the nearest $10.

*** A "business" filer files one or more of the following with Form 1040: Schedule C, C–EZ, E, F, Form 2106, or 2106–EZ. A "non-business" filer does not file any of these schedules or forms with Form 1040 or if you file Form 1040A or 1040EZ.

TABLE 2—ICB ESTIMATES FOR THE 1040/A/EZ/NR/NR–EZ/X SERIES OF RETURNS AND SUPPORTING FORMS AND SCHEDULES

[FY 2012]

	Previously approved FY11	Program change due to adjustment	Program change due to new legislation	Program change due to Agency	FY12
Number of Taxpayers	146,700,000	6,500,000			153,200,000
Burden in Hours	2,701,000,000	16,000,000	(37,000,000)		2,679,000,000

TABLE 2—ICB ESTIMATES FOR THE 1040/A/EZ/NR/NR–EZ/X SERIES OF RETURNS AND SUPPORTING FORMS AND SCHEDULES—Continued

[FY 2012]

	Previously approved FY11	Program change due to adjustment	Program change due to new legislation	Program change due to Agency	FY12
Burden in Dollars	35,193,000,000	(673,000,000)	(418,000,000)	29,000,000	34,131,000,000

APPENDIX

Forms	Filed by individuals and others	Title
673		Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911.
926	X	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	X	Application To Use LIFO Inventory Method.
972	X	Consent of Shareholder To Include Specific Amount in Gross Income.
982	X	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
1040		U.S. Individual Income Tax Return.
1040 SCH A		Itemized Deductions.
1040 SCH B		Interest and Ordinary Dividends.
1040 SCH C	X	Profit or Loss From Business.
1040 SCH C–EZ	X	Net Profit From Business.
1040 SCH D		Capital Gains and Losses.
1040 SCH D–1		Continuation Sheet for Schedule D.
1040 SCH E	X	Supplemental Income and Loss.
1040 SCH EIC		Earned Income Credit.
1040 SCH F	X	Profit or Loss From Farming.
1040 SCH H	X	Household Employment Taxes.
1040 SCH J		Income Averaging for Farmers and Fishermen.
1040 SCH R		Credit for the Elderly or the Disabled.
1040 SCH SE		Self-Employment Tax.
1040 A		U.S. Individual Income Tax Return.
1040ES (NR)		U.S. Estimated Tax for Nonresident Alien Individuals.
1040ES (PR)		Estimated Federal Tax on Self Employment Income and on Household Employees (Residents of Puerto Rico).
1040 ES–OCR–V		Payment Voucher.
1040 ES–OTC		Estimated Tax for Individuals.
1040 EZ		Income Tax Return for Single and Joint Filers With No Dependents.
1040 NR		U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ		U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
1040 V		Payment Voucher.
1040 V–OCR–ES		Payment Voucher.
1040 X		Amended U.S. Individual Income Tax Return.
1045	X	Application for Tentative Refund.
1116	X	Foreign Tax Credit.
1127	X	Application For Extension of Time For Payment of Tax.
1128	X	Application To Adopt, Change, or Retain a Tax Year.
1310		Statement of Person Claiming Refund Due a Deceased Taxpayer.
2106		Employee Business Expenses.
2106 EZ		Unreimbursed Employee Business Expenses.
2120		Multiple Support Declaration.
2210	X	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
2210 F	X	Underpayment of Estimated Tax by Farmers and Fishermen.
2350		Application for Extension of Time To File U.S. Income Tax Return.
2350 SP		Solicitud de Prórroga para Presentar la Declaración del Impuesto Personal sobre el Ingreso de los Estados Unidos.
2439	X	Notice to Shareholder of Undistributed Long-Term Capital Gains.
2441		Child and Dependent Care Expenses.
2555		Foreign Earned Income.
2555 EZ		Foreign Earned Income Exclusion.
2848	X	Power of Attorney and Declaration of Representative.
3115	X	Application for Change in Accounting Method.
3468	X	Investment Credit.
3520	X	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
3800	X	General Business Credit.
3903		Moving Expenses.
4029		Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4070 A		Employee's Daily Record of Tips.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
4136	X	Credit for Federal Tax Paid On Fuels.
4137		Social Security and Medicare Tax on Unreported Tip Income.
4255	X	Recapture of Investment Credit.
4361		Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4562	X	Depreciation and Amortization.
4563		Exclusion of Income for Bona Fide Residents of American Samoa.
4684	X	Casualties and Thefts.
4797	X	Sales of Business Property.
4835		Farm Rental Income and Expenses.
4852	X	Substitute for Form W–2, Wage and Tax Statement or Form 1099–R, Distributions From Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
4868		Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4868 SP		Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos.
4952	X	Investment Interest Expense Deduction.
4970	X	Tax on Accumulation Distribution of Trusts.
4972	X	Tax on Lump-Sum Distributions.
5074		Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5213	X	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
5329		Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
5405		First-Time Homebuyer Credit.
5471	X	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5471 SCH J	X	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
5471 SCH M	X	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH O	X	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5695		Residential Energy Credits.
5713	X	International Boycott Report.
5713 SCH A	X	International Boycott Factor (Section 999(c)(1)).
5713 SCH B	X	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	X	Tax Effect of the International Boycott Provisions.
5754	X	Statement by Person(s) Receiving Gambling Winnings.
5884	X	Work Opportunity Credit.
6198	X	At-Risk Limitations.
6251		Alternative Minimum Tax—Individuals.
6252	X	Installment Sale Income.
6478	X	Credit for Alcohol Used as Fuel.
6765	X	Credit for Increasing Research Activities.
6781	X	Gains and Losses From Section 1256 Contracts and Straddles.
8082	X	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
8275	X	Disclosure Statement.
8275 R	X	Regulation Disclosure Statement.
8283	X	Noncash Charitable Contributions.
8332		Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379		Injured Spouse Claim and Allocation.
8396		Mortgage Interest Credit.
8453		U.S. Individual Income Tax Declaration for an IRS e-file Return.
8582	X	Passive Activity Loss Limitations.
8582 CR	X	Passive Activity Credit Limitations.
8586	X	Low-Income Housing Credit.
8594	X	Asset Acquisition Statement.
8606		Nondeductible IRAs.
8609–A	X	Annual Statement for Low-Income Housing Credit.
8611	X	Recapture of Low-Income Housing Credit.
8615		Tax for Certain Children Who Have Investment Income of More Than $1,800.
8621	X	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8621–A	X	Late Deemed Dividend or Deemed Sale Election by a Passive Foreign Investment Company.
8689		Allocation of Individual Income Tax To the Virgin Islands.
8693	X	Low-Income Housing Credit Disposition Bond.
8697	X	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8801	X	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
8812		Additional Child Tax Credit.
8814		Parents' Election To Report Child's Interest and Dividends.
8815		Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
8818		Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8820	X	Orphan Drug Credit.
8821	X	Tax Information Authorization.
8822	X	Change of Address.
8824	X	Like-Kind Exchanges.
8826	X	Disabled Access Credit.
8828		Recapture of Federal Mortgage Subsidy.
8829		Expenses for Business Use of Your Home.
8832	X	Entity Classification Election.
8833	X	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
8834	X	Qualified Electric Vehicle Credit.
8835	X	Renewable Electricity and Refined Coal Production Credit.
8838	X	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8839		Qualified Adoption Expenses.
8840		Closer Connection Exception Statement for Aliens.
8843		Statement for Exempt Individuals and Individuals With a Medical Condition.
8844	X	Empowerment Zone and Renewal Community Employment Credit.
8845	X	Indian Employment Credit.
8846	X	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8847	X	Credit for Contributions to Selected Community Development Corporations.
8853		Archer MSAs and Long-Term Care Insurance Contracts.
8854		Initial and Annual Expatriation Information Statement.
8858	X	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8858 SCH M	X	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
8859		District of Columbia First-Time Homebuyer Credit.
8860	X	Qualified Zone Academy Bond Credit.
8861	X	Welfare-to-Work Credit.
8862		Information to Claim Earned Income Credit After Disallowance.
8863		Education Credits.
8864	X	Biodiesel Fuels Credit.
8865	X	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
8865 SCH K–1	X	Partner's Share of Income, Credits, Deductions, etc.
8865 SCH O	X	Transfer of Property to a Foreign Partnership.
8865 SCH P	X	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
8866	X	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8873	X	Extraterritorial Income Exclusion.
8874	X	New Markets Credit.
8878		IRS e-file Signature Authorization for Form 4868 or Form 2350.
8878 SP		Autorizacion de firma para presentar por medio del IRS e-file para el Formulario 4868(SP) o el Formulario 2350(SP).
8879		IRS e-file Signature Authorization.
8879 SP		Autorizacion de firma para presentar la Declaracion por medio del IRS e-file.
8880		Credit for Qualified Retirement Savings Contributions.
8881	X	Credit for Small Employer Pension Plan Startup Costs.
8882	X	Credit for Employer-Provided Childcare Facilities and Services.
8885		Health Coverage Tax Credit.
8886	X	Reportable Transaction Disclosure Statement.
8888		Allocation of Refund (Including Savings Bond Purchases).
8889		Health Savings Accounts (HSAs).
8891		U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.
8896	X	Low Sulfur Diesel Fuel Production Credit.
8898		Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
8900	X	Qualified Railroad Track Maintenance Credit.
8903	X	Domestic Production Activities Deduction.
8906		Distills Spirits Credit.
8907		Nonconventional Source Fuel Credit.
8908		Energy Efficient Home Credit.
8910		Alternative Motor Vehicle Credit.
8911		Alternative Fuel Vehicle Refueling Property Credit.
8914		Exemption Amount for Taxpayers Housing Midwestern Displaced Individuals.
8915		Qualified Hurricane Retirement Plan Distribution and Repayments.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
8917		Tuition and Fees Deduction.
8919		Uncollected Social Security and Medicare Tax on Wages.
8925	X	Report of Employer-Owned Life Insurance Contracts.
8931	X	Agricultural Chemicals Security Credit.
8932	X	Credit for Employer Differential Wage Payments.
9465		Installment Agreement Request.
9465 SP		Solicitud para un Plan de Pagos a Plazos.
Notice 2006–52		
Notice 160920–05		Deduction for Energy Efficient Commercial Buildings.
Pub 972 Tables		Child Tax Credit.
REG–149856–03		Notice of Proposed Rulemaking Dependent Child of Divorced or Separated Parents or Parents Who Live Apart.
SS–4	X	Application for Employer Identification Number.
SS–8	X	Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
T (Timber)	X	Forest Activities Schedules.
W–4		Employee's Withholding Allowance Certificate.
W–4 P		Withholding Certificate for Pension or Annuity Payments.
W–4 S		Request for Federal Income Tax Withholding From Sick Pay.
W–4 SP		Certificado de Exencion de la Retencion del Empleado.
W–4 V		Voluntary Withholding Request.
W–7		Application for IRS Individual Taxpayer Identification Number.
W–7 A		Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W–7 SP		Solicitud de Numero de Identicacion Personal del Contribuyente del Servicio de Impuestos Internos.

Forms removed from this ICR:

Reason for removal:

Forms added to this ICR:

9465–FS, 9465–FS (SP) Installment Agreement Request

Justification for Addition:

[FR Doc. 2012–9778 Filed 4–23–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Tuesday,

No. 79 April 24, 2012

Part II

The President

Executive Order 13606—Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology

Federal Register
Vol. 77, No. 79
Tuesday, April 24, 2012

Presidential Documents

Title 3—

The President

Executive Order 13606 of April 22, 2012

Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, hereby determine that the commission of serious human rights abuses against the people of Iran and Syria by their governments, facilitated by computer and network disruption, monitoring, and tracking by those governments, and abetted by entities in Iran and Syria that are complicit in their governments' malign use of technology for those purposes, threaten the national security and foreign policy of the United States. The Governments of Iran and Syria are endeavoring to rapidly upgrade their technological ability to conduct such activities. Cognizant of the vital importance of providing technology that enables the Iranian and Syrian people to freely communicate with each other and the outside world, as well as the preservation, to the extent possible, of global telecommunications supply chains for essential products and services to enable the free flow of information, the measures in this order are designed primarily to address the need to prevent entities located in whole or in part in Iran and Syria from facilitating or committing serious human rights abuses. In order to take additional steps with respect to the national emergencies declared in Executive Order 12957 of March 15, 1995, as relied upon for additional steps in subsequent Executive Orders, and in Executive Order 13338 of May 11, 2004, as modified in scope and relied upon for additional steps in subsequent Executive Orders, and to address the situation described above, I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State:

(A) to have operated, or to have directed the operation of, information and communications technology that facilitates computer or network disruption, monitoring, or tracking that could assist in or enable serious human rights abuses by or on behalf of the Government of Iran or the Government of Syria;

(B) to have sold, leased, or otherwise provided, directly or indirectly, goods, services, or technology to Iran or Syria likely to be used to facilitate computer or network disruption, monitoring, or tracking that could assist in or enable serious human rights abuses by or on behalf of the Government of Iran or the Government of Syria;

(C) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsections (a)(ii)(A) and (B) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(D) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the two national emergencies identified in the preamble to this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 3. The prohibitions in section 1 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens who meet one or more of the criteria in section 1 of this order would be detrimental to the interests of the United States, and I hereby suspend the entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 5. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. Nothing in section 1 of this order shall prohibit transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

Sec. 7. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''information and communications technology'' means any hardware, software, or other product or service primarily intended to fulfill or enable the function of information processing and communication by electronic means, including transmission and display, including via the Internet;

(c) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(d) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(e) the term ''Government of Iran'' means the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran; and

(f) the term ''Government of Syria'' means the Government of the Syrian Arab Republic, its agencies, instrumentalities, and controlled entities.

Sec. 8. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the two national emergencies identified in the preamble to this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order and to take necessary action to give effect to that determination.

Sec. 11. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 12. The measures taken pursuant to this order with respect to Iran are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 13. This order is effective at 12:01 a.m. eastern daylight time on April 23, 2012.

THE WHITE HOUSE,
April 22, 2012.

Billing code 3295–F2–P

ANNEX

Individual

1. Ali MAMLUK [director of the Syrian General Intelligence Directorate, born 1947]

Entities

1. Syrian General Intelligence Directorate
2. Syriatel
3. Islamic Revolutionary Guard Corps
4. Iranian Ministry of Intelligence and Security
5. Law Enforcement Forces of the Islamic Republic of Iran
6. Datak Telecom

[FR Doc. 2012–10034
Filed 4–23–12; 11:15 am]
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